

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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CC:PSI:B01

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Date:

January 27, 2016

LEGEND

X =

Y =

Z =

Trust1 =

Trust2 =

D1 =

D2 =

D3 =

D4 =

State1 =

State2 =

Dear _____ :

This responds to a letter dated October 30, 2015, submitted on behalf of X, requesting inadvertent termination relief pursuant to § 1362(f) of the Internal Revenue Code (the Code).

FACTS

According to the information submitted, X was incorporated and elected to be taxed as an S corporation on D1, under the laws of State1.

On D2, Trust1 and Trust2 acquired shares of Y, an S corporation. Trust 1 and Trust 2 made timely qualified subchapter S trust (QSST) elections. On D3, X formed Z, as an S corporation acquisition subsidiary, organized under the laws of State2.

On D4, Z was merged with and into Y, with Y surviving the merger. Each Y shareholder received shares in X. As a result of the merger, Y became a wholly owned subsidiary of X and X made an election to treat Y as a qualified S corporation subsidiary. Trust 1 and Trust 2 failed to make timely QSST elections effective D4, thus causing X's S corporation election to terminate.

X represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X further represents that X and its shareholders have filed their income tax returns consistent with having a valid S election in effect for all taxable years since X elected to be an S corporation. X also represents that Trust1 and Trust2, and their beneficiaries, have filed their tax returns consistent with the trusts qualifying as QSSTs. X represents that Trust1 and Trust2 are eligible to elect to be treated as QSSTs and have qualified as QSSTs except for the failure to file a timely election to be treated as QSSTs.

LAW AND ANALYSIS

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for the year.

Section 1361(b)(1) defines a "small business corporation" as a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 1361(c)(2)(A)(i) provides that, for purposes of section 1361(b)(1), a trust all of which is treated (under subpart E of part I of subchapter J) as owned by an individual who is a citizen or resident of the United States may be an S corporation shareholder.

Section 1361(d)(1) provides that a QSST whose beneficiary makes an election under paragraph 1361(d)(2) will be treated as a trust described in subsection 1361(c)(2)(A)(i) and for purposes of section 678(a), the beneficiary of the trust will be treated as the owner of that portion of the trust that consists of stock in an S corporation with respect to which the election under paragraph 1362(d)(2) is made.

Section 1361(d)(3) defines the term “qualified subchapter S trust” as a trust all of the income (within the meaning of section 643(b)) of which is distributed (or required to be distributed) currently to one individual who is a citizen or resident of the United States. In addition, the terms of the trust must require that (i) during the lifetime of the current income beneficiary, there shall be only one income beneficiary of the trust, (ii) any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary, (iii) the income interest of the current income beneficiary in the trust shall terminate on the earlier of such beneficiary's death or the termination of the trust, and (iv) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to such beneficiary.

Section 1362(f) provides in part that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d), (2) the Secretary determines that the circumstances resulting in the termination were inadvertent, (3) no later than a reasonable period of time after the discovery of the circumstances resulting in the termination, steps were taken so that the corporation for which the termination occurred is a small business corporation, and (4) the corporation for which the termination occurred, and each person who was a shareholder in such corporation at any time during the period of inadvertent termination of the S election, agrees to makes such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the termination, the corporation is treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude X's S election terminated on D4 when Trust1 and Trust2 became shareholders. We also conclude that the termination of X's S corporation election was inadvertent within the meaning of § 1362(f).

Accordingly, under § 1362(f), X will be treated as continuing to be an S corporation from D4 and thereafter, provided that X's S election is valid and not otherwise terminated under § 1362(d).

This relief is contingent upon the beneficiaries of Trust1 and Trust2 each filing a QSST election for their respective trust effective D4 within 120 days from the date of this letter. A copy of this letter should be attached to the election.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied concerning the eligibility of X to be an S corporation or Trust1 and Trust2 to be QSSTs.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to the taxpayer's authorized representative.

Sincerely,

David R. Haglund

David R. Haglund
Branch Chief, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes

cc: