

Internal Revenue Service

Number: **201805010**

Release Date: 2/2/2018

Index Number: 1362.00-00, 1362.04-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:1

PLR-117639-17

Date:

October 31, 2017

Legend

X =

Trust1 =

Trust2 =

Trust3 =

Trust4 =

Trust5 =

State =

Date1 =

Date2 =

Date3 =

Dear _____ :

This responds to a letter dated May 30, 2017, submitted on behalf of X, by X's authorized representative, requesting relief under section 1362(f) of the Internal Revenue Code (the Code).

FACTS

According to the information submitted and representations within, X was incorporated under the laws of State effective Date1. The organizers of X filed a Form 2553, Election by a Small Business Corporation, electing to treat X as an S corporation effective Date1. The organizers who consented to the election did not own any stock in X effective Date1. X issued stock and began business operations on Date2.

X represents that on Date2, Trust1, Trust2, Trust3, and Trust4 were shareholders of X. Trust5 became a shareholder of X on Date3. Each trust failed to make a timely Electing Small Business Trust (ESBT) election and was thus an ineligible S corporation shareholder.

X represents that Trust1, Trust2, Trust3, and Trust4 were eligible to make an ESBT election as of Date2, and Trust5 was eligible to make an ESBT election effective Date3. However, the trustee of each trust inadvertently failed to file an ESBT election. X represents that each trust has been treated as if a valid ESBT election had been made and has at all times met the requirements of an ESBT under § 1361(d)(3). X further represents that each trust has reported its allocable share of income consistent with being an ESBT.

X represents that upon discovering that its S election was invalid, X took corrective action by filing this request for relief. X represents that the circumstances resulting in the inadvertent invalid election and the failure to make timely ESBT elections were inadvertent and not motivated by tax avoidance or retroactive tax planning. X further represents that X has filed its 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 represents that other than the circumstances described in this letter, X has qualified as a small business corporation at all times since Date2. Lastly, X and its shareholders agree to make any adjustments required as a condition of obtaining relief under § 1362(f) that may be required by the Secretary.

LAW AND ANALYSIS

Section 1361(a) provides that an S corporation is a small business corporation for which an election under § 1362(a) is in effect.

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) provides that the terms “small business corporation” means 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(e) an ESBT means any trust if (i) such trust does not have as a beneficiary any person other than (I) an individual, (II) an estate, (III) an organization described in § 170(c)(1) which holds a contingent interest in such trust and is not a potential current beneficiary, (ii) no interest in such trust was acquired by purchase, and (iii) an election under § 1361(e) applies to such trust.

Section 1361(c)(2)(A)(i) of the Code 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 of this chapter) as owned by an individual who is a citizen or resident of the United States may be an S corporation shareholder.

Section 1361(c)(2)(A)(v) provides that for purposes of § 1361(b)(1)(B), an ESBT is a permissible shareholder.

Section 1361(e)(3) provides that an election under § 1361(e) shall be made by the trustee. Any such election shall apply to the taxable year of the trust for which made and all subsequent taxable years of such trust unless revoked with the consent of the Secretary.

Section 1.1361-1(m)(2)(i) provides that the trustee of an ESBT must make the ESBT election by signing and filing, with the service center where the S corporation files its income tax return, a statement that meets the requirements of § 1.1361-1(m)(2)(ii).

Section 1.1361-1(m)(2)(iii) provides that the trustee of an ESBT must file the ESBT election within the time requirements prescribed in § 1.1361-1(j)(6)(iii) for filing a QSST election (generally within the 16-day-and-2-month period beginning on the day that the stock is transferred to the trust).

Section 1362(a) provides that a small business corporation may elect to be an S corporation.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) provides, in relevant part, that if (1) an election under § 1362(a) by any corporation was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b); (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or 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 specified pursuant to § 1362(f), agrees to make the adjustments (consistent with the treatment of such corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election effective Date1 was ineffective. We further conclude that the ineffectiveness of X's S corporation election, the failure of Trust1, Trust2, Trust3, and Trust4 to make ESBT elections effective Date2, and the failure of Trust5 to make an ESBT election effective Date3 were inadvertent within the meaning of § 1362(f). Consequently, under § 1362(f), we rule that X will be treated as continuing to be an S corporation from Date2 and thereafter, unless X's S corporation election is otherwise terminated under § 1362(d).

This letter ruling is contingent on X filing a valid Form 2553 effective Date2 within 120 days from the date of this letter with the appropriate service center. Elections to treat Trust1, Trust2, Trust3, and Trust4 as ESBTs effective Date2 and Trust5 as an ESBT effective Date3 must also be made with the appropriate service center within 120 days. X and its shareholders must also file any required original or amended income tax returns consistent with the relief granted in this letter within 120 days. A copy of this letter should be attached to all of the elections and any returns filed. If these conditions are not met, then this ruling is null and void. Furthermore, if these conditions are not met, X must send notification that its S election has terminated to the service center with which X's S election was filed.

Except as specifically ruled upon above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the

Code. Specifically, we express or imply no opinion regarding X's eligibility to be an S corporation or whether Trust1, Trust2, Trust3, Trust4, or Trust5 were or are otherwise eligible to be ESBTs.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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 your authorized representative.

Sincerely,

Laura C. Fields

Laura C. Fields
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy of this letter for § 6110 purposes

cc: