

Internal Revenue Service

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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:B01

PLR-126064-17

Date:

February 20, 2018

LEGEND

X =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Trust =

A =

B =

C =

D =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

Date 12 =

Date 13 =

Year =

Years 1 =

Years 2 =

Years 3 =

State =

\$a =

Dear _____ :

This responds to a letter dated August 22, 2017, and subsequent correspondence, submitted on behalf of X, by X's authorized representative, requesting relief under section 1362(f) of the Internal Revenue Code (the Code) and § 301.9100-3 of the Procedure and Administration Regulations.

FACTS

According to the information submitted and representations within, X was incorporated on Date 1, under the laws of State, and elected to be treated as an S corporation effective Date 3.

On Date 2, A was an eligible S corporation shareholder of X. A died on Date 7. A's shares in X were transferred to Trust on Date 7. X represents that Trust was eligible to make an ESBT election as of Date 7. However, as of Date 8, the trustee of Trust inadvertently failed to timely file an Electing Small Business Trust (ESBT) election, thereby causing Trust to become an ineligible shareholder of X. As a result, X's S election terminated effective Date 8. X took correction measures, and on Date 12, the trustee of Trust transferred the X shares outright to B, C, and D, all eligible shareholders of X.

X represents that other than the failure to make a timely ESBT election, Trust has at all times, from Date 8 until it transferred its X shares on Date 12, met the requirements of an ESBT under § 1361(d)(3). X represents that the failure to file the ESBT election for Trust was discovered in Year. X represents that Trust will file consistently as if a valid ESBT election is in place for Year. X represents it did not file consistently as if a valid ESBT election was in place for Years 1. X shall make a payment of \$a for Years 2. X represents that it will file amended returns for Years 3.

Effective Date 3, X elected to treat Sub 1, Sub 4, Sub 5, Sub 6, and Sub 8 as Qualified Subchapter S Subsidiaries (QSubs). X represents that, at all relevant times on and

after Date 3, X has owned all of the outstanding stock of Sub 1, Sub 4, Sub 5, Sub 6, and Sub 8. X represents that it has treated Sub 1, Sub 4, Sub 5, Sub 6, and Sub 8 as QSubs effective Date 3 and thereafter and that X has filed tax returns for all relevant tax years consistent with the treatment of Sub 1, Sub 4, Sub 5, Sub 6, and Sub 8 as QSubs.

X also made QSub elections for Sub 2 effective Date 6, and Sub 7 effective Date 5. X represents that, at all relevant times on and after Date 6, X has owned all of the outstanding stock of Sub 2 and that, at all relevant times on and after Date 5, X has owned all of the outstanding stock of Sub 7. X represents that it has treated Sub 2 and Sub 7 as QSubs effective Date 6 and Date 5, respectively, and thereafter and that X has filed tax returns for all relevant tax years consistent with the treatment of Sub 2 and Sub 7 as QSubs.

X represents that as of Date 10, Sub 1, Sub 2, Sub 4, Sub 5 and Sub 6 were merged into X. X represents that as of Date 9, Sub 7 was dissolved and that as of Date 11, Sub 8 was dissolved.

Sub 3 was incorporated under the laws of State on Date 4. X represents that, at all times on and after Date 4, X has owned all of the outstanding stock of Sub 3 and intended to elect to treat Sub 3 as a QSub effective Date 4. However, due to inadvertence, X failed to file Form 8869, Qualified Subchapter S Subsidiary Election. X represents that at all times on and after Date 4, X has treated Sub 3 as a Qsub and that X has filed tax returns for all relevant tax years consistent with the treatment of Sub 3 as a QSub. X represents that the failure to file the QSub election for the Sub 3 was discovered in Year.

X represents that on Date 13, all of its stock was sold in a transaction in which the parties made an election under section 338(h)(10). As a result, Sub 3's Qsub status terminated Date 13.

X represents that the circumstances resulting in the failure to make the QSub and ESBT elections were inadvertent and not motivated by tax avoidance or retroactive tax planning. In addition, X represents that the termination of its S corporation election was inadvertent and was 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 failure to make a valid QSub election and a valid ESBT election, X has qualified as a small business corporation at all times since its election on Date 3. 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(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(b)(3)(A) generally provides that a QSub shall not be treated as a separate corporation and all assets, liabilities, and items of income, deduction, and credit of a QSub shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

Section 1361(b)(3)(B) defines a QSub as a domestic corporation which is not an ineligible corporation, if 100 percent of the stock of the corporation is owned by the S corporation, and the S corporation elects to treat the corporation as a Qualified subchapter S subsidiary .

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 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 1.1361-3(a) prescribes the time and manner for making an election to be classified as a QSub.

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.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term “regulatory election” as an election whose due date is prescribed by a regulation published in the Federal Register or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections.

Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the Government.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that the failure of Trust to make an ESBT election effective Date 8 caused an inadvertent termination of X's S corporation election within the meaning of § 1362(f) on Date 8. Pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation beginning on and after Date 3 unless X's S corporation election is otherwise terminated under § 1362(d).

This letter ruling is subject to the following conditions. No later than 120 days from the date of this letter: (1) an adjustment payment in the amount of \$a for Years 2 and a copy of this letter ruling must be sent to the following address: Internal Revenue Service, Cincinnati Service Center, 201 West Rivercenter Blvd., Covington, KY 41011, Stop 31, Terri Lackey, Manual Deposit; (2) an election to treat Trust as an ESBT effective Date 8, must be made with the appropriate service center. A copy of this letter should be attached to the ESBT election; and (3) X and each of its shareholders must file any original and amended returns for all open taxable years consistent with the relief granted in this letter. 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.

Furthermore, based solely on the facts submitted and representations made, we conclude that the requirements of § 9100-3 have been satisfied. Accordingly, X is granted an extension of time of 120 days from the date of this letter to elect to treat Sub 3 as a QSub effective Date 4. The election should be made by filing Form 8869 with the appropriate service center, and a copy of this letter should be attached to the election.

Finally, Sub 1, Sub 4, Sub 5, Sub 6, and Sub 8 will be treated as QSubs effective Date 3 and thereafter, provided Sub 1, Sub 4, Sub 5, Sub 6, and Sub 8 are otherwise eligible to be treated as QSubs. Sub 2 will be treated as a QSub effective Date 6, Sub 3 will be treated as a QSub effective Date 4, and Sub 7 will be treated as a QSub effective Date 5, provided Sub 2, Sub 3, and Sub 7 are otherwise eligible to be treated as QSubs.

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.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

Sincerely,

Wendy L. Kribell

Wendy L. Kribell
Assistant to the 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