

## 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:B03

PLR-114053-18

Date:

April 26, 2018

### Legend

X =

A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Trust =

State =

Dear :

An earlier version of this Private Letter Ruling, dated May 18, 2017 (PLR-101478-17), was published. This letter responds to the letter dated December 31, 2016, that was submitted on behalf of X, requesting a ruling under § 1362(f) of the Internal Revenue Code (the Code). This letter, as of its effective date, supersedes PLR-101478-17.

### FACTS

The information submitted states that X was incorporated in State on Date 1 and elected to be an S corporation on Date 2.

On Date 3, A, a shareholder of X, transferred X stock to Trust. Trust was a grantor trust described in § 1361(c)(2)(A)(i) of which A was the deemed owner. On Date 4, A died and Trust ceased to be a grant trust, but continued to qualify as an eligible S corporation shareholder under § 1361(c)(2)(A)(ii) for the 2-year period beginning on the day of the deemed owner's death. However, Trust continued to hold the X stock after the 2-year period had ended on Date 5. According to X, Trust qualifies as a qualified subchapter S trust (QSST), but its beneficiary made no QSST election. As a result, X's S corporation election terminated on Date 5.

X represents that Trust met the requirements of a QSST within the meaning of § 1361(d)(3) at all time since Date 5, except that the beneficiary of Trust failed to make the election under § 1361(d)(2). X also represents that X and its shareholders, including Trust, have filed income tax returns consistent with the treatment of X as an S corporation.

### LAW

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

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 such year.

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

Section 1361(c)(2)(A)(ii) provides that a trust which was described in § 1361(c)(2)(A)(i) immediately before the death of the deemed owner and which continues in existence after such death, is a permitted shareholder, but only for the 2-year period beginning on the day of the deemed owner's death.

Section 1361(d)(1) provides, in part, that in the case of a QSST with respect to which a beneficiary makes an election under § 1361(d)(2) (A) such trust shall be treated as a trust described in § 1361(c)(2)(A)(i), (B) for purposes of § 678(a), the beneficiary of such trust shall be treated as the owner of that portion of the trust which consists of stock in an S corporation with respect to which the election under § 1361(d)(2) is made.

Section 1362(f) provides, in part, that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which it was made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents, or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in such ineffectiveness were inadvertent, (3) no later than a reasonable period of time after discovery of the event resulting in the ineffectiveness, steps were taken (A) so that the corporation is a small business corporation, or (B) to acquire the required shareholder consents, and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make 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 such ineffectiveness, the corporation shall be treated as an S corporation during the period specified by the Secretary.

### CONCLUSION

Based solely upon the facts submitted and the representations made, we conclude that the termination of X's S corporation election on Date 5 was inadvertent within the meaning of § 1362(f). We further hold that, pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from Date 5 and thereafter, provided X's S corporation election was valid and was not otherwise terminated under § 1362(d).

This ruling is contingent upon the beneficiary of Trust filing a QSST election effective Date 5 within 120 days from the date of this letter. A copy of this letter should be attached to the election. If X or its shareholders fail to treat themselves as described above, this ruling is null and void.

Except as specifically ruled upon above, 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.

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.

Pursuant to the power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

Sincerely,

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By: Richard T. Probst  
Senior Technician Reviewer, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)