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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-113551-18

Date:
November 26, 2018

LEGEND

X =

A

Trust =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Years 1 =

State =

Dear :

This responds to a letter dated January 24, 2018, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting relief under section 1362(f) of the Internal Revenue Code.

FACTS

According to the information submitted and representations within, X was incorporated on Date 1 under the laws of State. Effective Date 2, X elected to be taxed as an S corporation. 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 grantor 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 an Electing Small Business Trust (ESBT), but its beneficiary made no ESBT election. As a result, X's S corporation election terminated on Date 5.

X represents that Trust has at all times met the requirements of an ESBT within the meaning of § 1361(d)(3), except that the trustee of Trust did not make a timely ESBT election under § 1361(e)(3). X further represents that Trust has not filed their income tax returns consistent with being an ESBT for Years 1.

X represents that, other than the failure to make a valid ESBT election by Date 5, X has qualified as a small business corporation at all times since its election on Date 2. X further represents that X and its shareholders have treated X as an S corporation at all relevant times. In addition, X 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 further represents that X, its shareholders, and the beneficiaries of Trust, will amend their income tax returns for all open tax years within 120 days of the date of this ruling letter to reflect treatment of Trust as an ESBT.

X represents that its S corporation election termination was inadvertent and was not motivated by tax avoidance or retroactive tax planning.

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 such 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 § 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(c)(2)(A)(v) provides that, for purposes of § 1362(b)(1)(B), an electing small business trust (ESBT) may be an S corporation shareholder.

Section 1361(e) provides that 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(e)(1)(B) provides that the term ESBT does not include (i) any qualified subchapter S trust (as defined in § 1361(d)(3)) if an election under § 1361(d)(2) applies to any corporation the stock of which is held by such trust, (ii) any trust exempt from tax under subtitle A, and (iii) any charitable remainder annuity trust or charitable remainder unitrust (as defined in § 664(d)).

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(d)(2) provides that an S corporation election will be terminated whenever (at any time on or after the first day of the first 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 (A) 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) or to obtain shareholder consents, or (B) was terminated under § 1362(d)(2) or (3) or § 1361(b)(3)(C); (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 election was made or 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 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 letter ruling is subject to the following conditions: (1) Within 120 days from the date of this letter, an election to treat Trust as an ESBT effective Date 5 must be made with the appropriate service center; and (2) X's shareholders, and the beneficiaries of Trust, must amend their income tax returns for all open tax years within 120 days of the date of this ruling letter to reflect the treatment of Trust as an ESBT. A copy of this letter should be attached to the ESBT election. If these conditions are not met, then this letter 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.

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,

Joy C. Spies

Joy C. Spies

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 section 6110 purposes