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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-118599-18

Date:
November 20, 2018

Legend

X =

Trust 1 =

Trust 2 =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This letter responds to a letter dated May 31, 2018, submitted on X's behalf 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 such submission, X was incorporated on Date 1, under the laws of State. In addition, X made an election to be taxed as an S corporation as of the same date.

On Date 2, shares in X were transferred to Trust 1. At that time, Trust 1, by the terms of its governing documents, did not qualify as an eligible S corporation shareholder. Thus, X's S corporation election terminated on Date 2, when X stock was transferred to Trust 1, an ineligible S corporation shareholder. Furthermore, on Date 3, shares in X were transferred to Trust 2. At that time, Trust 2, by the terms of its governing documents, did not qualify as an eligible S corporation shareholder. X represents that it was always the intent to have both Trust 1 and Trust 2 qualify as qualified subchapter S trusts (QSSTs).

On Date 4, State probate court entered an order approving amendments to Trust 1 to qualify Trust 1 as a valid qualified subchapter S trust (QSST). On Date 5, State probate court entered an order approving amendments to Trust 2 to qualify Trust 2 as a valid QSST.

X represents that the termination of X's S corporation election was inadvertent and was not motivated by a tax avoidance motive or retroactive tax planning. Lastly, X represents that X and its shareholders agree to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary.

Law and Analysis

Section 1361(a)(1) of the Code provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under section 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 section 1361(c)(2), or an organization described in section 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(d)(1) provides that a qualified subchapter S trust (QSST) whose beneficiary makes an election under 1362(d)(2) will be treated as a trust described in 1361(c)(2)(a)(i), and the QSST's beneficiary will be treated as the owner (for purposes of section 678(a)) of that portion of the QSST's S corporation stock to which the election under 1361(d)(2) applies. Under section 1361(d)(2)(A), a beneficiary of a QSST may

elect to have section 1361(d) apply. Under section 1361(d)(2)(D), the election will be effective up to 15 days and two months before the date of the election.

Section 1361(d)(3) provides that for purposes of section 1361(d), the term “qualified subchapter S trust” means a trust (A) the terms of which require that – (i) during the life 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 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 termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to that beneficiary; and (B) 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.

Section 1.1361-1(j)(6)(ii) of the Income Taxation Regulations provides that the current income beneficiary of the trust must make the election by signing and filing with the service center with which the corporation files its income tax return the applicable form or a statement including the information listed in section 1.1361-1(j)(6)(ii).

Section 1362(d)(2)(A) provides that an election under section 1362(a) shall be terminated whenever (at any time on or after 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 section 1362(a) by any corporation was terminated under section 1362(d)(2); (2) the Secretary determines that the circumstances resulting in termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such 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 section 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.

Rev. Rul. 93-79, 1993-2 C.B. 269, provides that a state court order that reforms a trust to meet the requirements of a valid QSST is recognized prospectively.

Conclusion

Based solely on the facts submitted and the representations made within those submissions, we conclude that X's S corporation election terminated on Date 2 when stock was transferred to Trust 1 and Trust 2, ineligible shareholders. We further conclude that the termination of X's S corporation election on Date 2 was inadvertent within the meaning of section 1362(f). Pursuant to the provisions of section 1362(f), X will be treated as continuing to be an S corporation from Date 2 and thereafter, provided that X's S corporation election is valid and not otherwise terminated under section 1362(d).

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 Trust 1 and Trust 2's eligibility to qualify as a QSST.

This ruling is directed only to the taxpayer who requested it. According to section 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 representative.

Sincerely,

David R. Haglund

David R. Haglund
Branch Chief, Branch 1
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes