

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-123171-18
Date:
February 12, 2019

LEGEND

X =

Date 1 =

Date 2 =

State =

Trust 1 =

Trust 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

A =

B =

n =

Dear _____ :

This responds to a letter dated July 27, 2018, and subsequent correspondence, submitted on behalf of X by its authorized representative requesting a ruling under § 1362(f) of the Internal Revenue Code (the Code).

FACTS

X was organized on Date 1 as a corporation under the laws of State. Effective Date 2, X elected to be treated as an S corporation.

Trust 1, a revocable trust created by A, and Trust 2, a revocable trust created by B, both owned stock in X as of Date 2. A died on Date 3 and B died on Date 4. X represents that both Trust 1 and Trust 2 are eligible to be electing small business trusts (ESBTs) under § 1361(e). X represents that Trust 1 intended to elect ESBT treatment effective Date 5, which is two years after Date 3, and that Trust 2 intended to elect ESBT treatment effective Date 6, which is two years after Date 4. However, no ESBT elections were timely filed by the trustees of Trust 1 or Trust 2 and X's S corporation election terminated on Date 5.

X represents the failure to file the ESBT elections for Trust 1 and Trust 2 was inadvertent and was not motivated by tax avoidance or retroactive tax planning. X has filed all returns consistent with X's status as an S corporation since Date 2. X and its shareholders agree to make any adjustments required as a condition of obtaining relief under the inadvertent termination rule as provided in § 1362(f) of the Code.

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 § 1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not 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.

Section 1361(c)(2)(A)(i) provides that 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 is an eligible 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 an eligible 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 an ESBT is an eligible shareholder.

Section 1361(e)(1)(A) provides that, except as provided in § 1362(e)(2)(B), 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)(2), (3), (4), or (5), or (IV) 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)(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 the 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 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) 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) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the 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 the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the facts and representations submitted, we conclude that X's S corporation election was terminated on Date 5 because of the failure of Trust 1 to file an ESBT election, and that this termination was inadvertent within the meaning of § 1362(f).

We hold that, pursuant to the provisions of § 1362(f), X will be treated as an S corporation from Date 5, and thereafter, provided X was otherwise eligible to make an S corporation election and provided that any such election would not have otherwise been terminated under § 1361(d). Trust 1 will be treated as an ESBT effective Date 5. Trust 2 will be treated as an ESBT effective Date 6. The shareholders of X must include their pro-rata share of the separately stated and nonseparately computed items of X as provided in § 1366, make any adjustments to basis as provided in § 1367, and take into

account any distributions made by X as provided in § 1368. If X or its shareholders fail to treat themselves as described above, this ruling is null and void.

This ruling is conditioned upon the trustees of Trust 1 filing an appropriately completed ESBT election for Trust 1 effective Date 5, and upon Trust 1 and its beneficiaries filing timely amended federal income tax returns consistent with the treatment of Trust 1 as an ESBT effective Date 5. This ruling is further conditioned upon the trustees of Trust 2 filing an appropriately completed ESBT election for Trust 2 effective Date 6, and upon Trust 2 and its beneficiaries filing timely amended federal income tax returns consistent with the treatment of Trust 2 as an ESBT effective Date 6. The elections must be made and the amended returns must be timely filed within 60 days following the date of this letter and a copy of this letter should be attached to the election and the returns.

Furthermore, as an adjustment under § 1362(f), a payment of \$n and a copy of this letter ruling must be sent to the following address:

Internal Revenue Service
Kansas City Service Center
333 W. Pershing Road, Kansas City, MO 64108
Stop 7777
Manual Deposit

The payment and a copy of this letter must be sent no later than Date 7.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code. This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. Pursuant to a power of attorney on file, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Adrienne M. Mikolashek
Branch Chief, Branch 3
Associate Chief Counsel
(Passthroughs and Special Industries)

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

cc: