Internal Revenue Service

Number: **201924006**
Release Date: 6/14/2019

Index Number: 1362.04-00, 1361.03-02

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-120601-18
Date:
January 28, 2019

LEGEND

X =

Y =

Z =

A =

B =

C =

D =

Trust1 =

Trust2=

Trust3=

Trust4=

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Date6=

Date7 =

Date8 =

Year =

State1 =

State2 =

Dear :

This responds to a letter dated June 21, 2018, 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, X was incorporated on Date1 under the laws of State2. Effective Date2, X elected to be taxed as an S corporation.

On Date3, A, a shareholder of X, transferred his shares in X to Trust1, a grantor trust. On Date4, A died. Trust1 was an eligible shareholder of X until Date 5. Trust1 provided that, upon A's death, Trust1 was to be split into separate trusts for the benefit of B, C, and D, each separate trust qualifying as a qualified subchapter S trust (QSST). However, B, C, and D, the beneficiaries of Trust1, did not file a timely election to treat their separate shares of Trust1 as QSSTs, thereby causing X's S corporation election to terminate as of Date5.

In Year, Y was formed under the laws of State1. X merged into Y in a § 368(a)(1)(F) reorganization with Y surviving the merger. Y then changed its name to X. X represents that the § 368(a)(1)(F) reorganization was a mere change in the place of organization from State2 to State1 for which the S election effective Date2 would have remained in effect under Rev. Rul. 64-250, 1964-2 C.B. 333. X represents that it nevertheless made another timely S election, effective Date6. On Date7, X was sold to Z, an ineligible shareholder, terminating X's S election.

On Date8, Trust1 was divided into Trust2, Trust3, and Trust4 for the benefit of B, C, and D, respectively.

X represents that the circumstances resulting in the failure to file a QSST election for Trust1 and later Trust2, Trust3, and Trust4 were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X represents that it has filed its tax returns consistent with a valid S election being in place from Date2 through Date7. X represents that it treated Trust1 as if a valid QSST election were in place for each of B, C, and D's separate shares. X and its shareholders have agreed to make such 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) 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) 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)(A)(ii) provides that a trust may be an S corporation shareholder if it was described in section 1361(c)(2)(A)(i) immediately before the death of the deemed owner and it continues in existence after such death, but only for the 2-year period beginning on the day of the deemed owner's death.

Section 1361(d)(1) provides that in the case of a QSST with respect to which a beneficiary makes an election under § 1361(d)(2) the trust is treated as a trust

described in § 1361(c)(2)(A)(i) and, for purposes of § 678(a), the beneficiary of the trust is treated as the owner of that portion of the trust which consists of stock in a S corporation with respect to which the election under § 1361(d)(2) is made.

Section 1362(f) provides, in relevant part, that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3) or § 1361(b)(3)(C); (2) the Secretary determines that the circumstances resulting in such 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 § 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 termination, such corporation shall be treated as an S corporation during the period specified by the Secretary.

Revenue Ruling 64-250, provides that, when an S corporation merges into a newly formed corporation in a transaction qualifying as a reorganization under § 368(a)(1)(F), and the newly formed surviving corporation also meets the requirements of an S corporation, the reorganization does not terminate the S election. Thus, the S election remains in effect for the new corporation.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on Date5 as a result of the failure to make a timely QSST election for Trust1. We further conclude that the termination of X's S election on Date5 was inadvertent within the meaning of § 1362(f). Pursuant to the provisions of §1362(f), X will be treated as continuing to be an S corporation from Date5 through Date7, provided that B C, and D file QSST elections for Trust 2, Trust3 and Trust4 with an effective date of Date5 with the appropriate service center within 120 days from the date of this letter, and provided X's S corporation election is not otherwise terminated under § 1362(d). A copy of this letter must be attached to the QSST election.

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. Further, no opinion is expressed or implied concerning whether Trust1, Trust2, Trust3 or Trust4 meet the requirements of a QSST under § 1361(d)(3). We also express no opinion on whether X's merger into Y qualifies as a § 368(a)(1)(F) reorganization.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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