

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **201948008**  
Release Date: 11/29/2019

Third Party Communication: None  
Date of Communication: Not Applicable

Index Number: 1361.03-03, 1362.01-00,  
1362.04-00

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B03  
PLR-103694-19

Date:  
August 29, 2019

LEGEND

X =

State =

Date 1 =

Date 2 =

Trust 1 =

Trust 2 =

Trust 3 =

Dear :

This responds to a letter dated January 10, 2019, submitted on behalf of X by its authorized representatives, requesting a ruling under § 1362(f) of the Internal Revenue Code.

FACTS

The information submitted states that X was incorporated under the laws of State on Date 1, and that X elected to be an S corporation effective on the same date. On Date 2, shares of X were transferred to Trust 1, Trust 2 and Trust 3 (together, “the

Trusts”). X represents that the Trusts were eligible to be treated as Electing Small Business Trusts (ESBTs) under § 1361(e). However, ESBT elections effective Date 2 were not timely filed for the Trusts. Accordingly, each of the three Trusts was an ineligible shareholder of X, with the result that X's S corporation election terminated on Date 2.

X represents that, other than the failure to timely file valid ESBT elections, X has qualified as a small business corporation at all times since Date 2. X further represents that X and its shareholders have treated X as an S corporation at all relevant times on all relevant returns. X additionally represents that its S corporation election termination was inadvertent and was not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make any adjustments that the Commissioner may require, consistent with the treatment of X as an S corporation.

### 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)(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 “electing small business trust” shall 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 part, 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 submitted and the representations made, we conclude that X's S corporation election terminated on Date 2, because of the inadvertent failure to timely file ESBT elections with respect to the Trusts, and that this termination of X's S election was an inadvertent termination within the meaning of § 1362(f). Accordingly, pursuant to the provisions of § 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 was not otherwise terminated under § 1362(d).

This ruling is contingent upon the respective trustees of the Trusts filing elections to treat the Trusts as ESBTs, effective Date 2, with the appropriate service center within 120 days of the date of this letter. A copy of this letter should be attached to each of the

three ESBT elections. X and its shareholders must also file any necessary original or amended returns consistent with the relief granted in this letter within 120 days of this letter. If X or its shareholders fail to treat X as described above, this letter ruling will be null and void. Furthermore, if these conditions are not met, X must send notification that its S election has terminated to the service center to which X's election was filed.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion on whether X is otherwise eligible to be an S corporation described in § 1361, or whether the Trusts are eligible to be ESBTs within the meaning of § 1361(e).

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

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 representatives.

Sincerely,

Adrienne M. Mikolashek  
Chief, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures: 2  
Copy of this letter  
Copy for § 6110 purposes