

**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:B01

PLR-106891-19

Date:

August 16, 2019

LEGEND

X =

A =

Trust 1=

Trust 2=

Trust 3=

Trust 4 =

Trust 5 =

Trust 6 =

Date 1=

Date 2=

Date 3=

Date 4=

State =

Dear \_\_\_\_\_ :

This responds to a letter dated March 29, 2019, submitted on behalf of X, 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, X was formed and made a timely S corporation election effective Date 1, under the laws of State.

X represents that on Date 2, Trust 1, a grantor trust, acquired shares in X. On Date 3, A, the grantor of Trust 1, died. On Date 4, Trust 1 transferred X shares to Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6. The trustees of Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6 failed to make timely Electing Small Business Trust (ESBT) elections, thus causing X's S corporation election to terminate.

X represents that Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6 were eligible to make Electing Small Business Trust (ESBT) elections as of Date 4, however, the trustees of Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6 inadvertently failed to file ESBT elections. X represents that Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6 have been treated as if valid ESBT elections were made on Date 4 and have at all times since Date 4 met the requirements of an ESBT under § 1361(d)(3). X further represents that Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6 reported their allocable shares of Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6 income on all affected returns consistent with being an ESBT.

X represents that the circumstances resulting in the termination of X's S corporation election and the failure to make timely ESBT elections were inadvertent and not motivated by tax avoidance or retroactive tax planning. X further 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 represents that other than the failure to file ESBT elections for Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6 on Date 4, X has qualified as a small business corporation at all times since its election on Date 1. Lastly, X and its shareholders agree to make any adjustments required as a condition of obtaining relief under § 1362(f) that may be required by the Secretary.

## LAW AND ANALYSIS

Section 1361(a) provides that an S corporation is a small business corporation for which an election under § 1362(a) is in effect.

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 the year.

Section 1361(b)(1) provides that the terms “small business corporation” means 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(e) 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(c)(2)(A)(i) of the Code provides that for purposes of section 1361(b)(1) a trust all of which is treated (under subpart E of part I of subchapter J of this chapter) as owned by an individual who is a citizen or resident of the United States may be an S corporation shareholder.

Section 1361(c)(2)(A)(v) provides that for purposes of § 1361(b)(1)(B), an ESBT is a permissible shareholder.

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(a) provides that a small business corporation may elect to be an S corporation.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the 1st day of 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 § 1362(a) by any corporation 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); (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 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 on the facts submitted and the representations made, we conclude that the failure of Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6 to file ESBT elections effective Date 4 caused an inadvertent termination of X's S corporation election within the meaning of § 1362(f) on Date 4. Pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation beginning on and after Date 4, unless X's S corporation election is otherwise terminated under § 1362(d).

This letter ruling is subject to the condition that within 120 days from the date of this letter, an election to treat Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6 as ESBTs effective Date 4, must be filed with the appropriate service center. A copy of this letter ruling should be attached to the ESBT election. If this condition is not met, then this ruling is null and void. Furthermore, if this condition is 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 or whether Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6 were or are otherwise eligible to be ESBTs.

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.

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.

Pursuant to the power of attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

Sincerely,

*David R. Haglund*

David R. Haglund  
Branch Chief, 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

cc: