

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202009001**

Release Date: 2/28/2020

Index Number: 1361.03-02, 1362.02-00,
1362.02-02, 1362.04-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-101402-19

Date:
August 07, 2019

LEGEND

X =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Trust 5 =

Trust 6 =

Trust 7 =

Trust 8 =

Date 1 =

Date 2 =

Date 3 =

Years =

State =

Dear _____ :

This responds to a letter dated December 14, 2018, submitted on behalf of X by X's authorized representative, and supplemental correspondence, requesting a ruling under § 1362(f) of the Internal Revenue Code.

FACTS

According to the information submitted, X was incorporated on Date 1, under the laws of State. Effective Date 2, X elected to be taxed as an S corporation.

On Date 3, shares in X were transferred to Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, and Trust 8. The beneficiaries of Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, and Trust 8 failed to make timely qualified subchapter S trust (QSST) elections. Thus, X's S corporation election terminated on Date 3.

X represents that Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, and Trust 8 qualified to elect to be QSSTs under § 1361(d) as of Date 3 and thereafter. X further represents that the circumstances resulting in the failure to file a QSST election for Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, and Trust 8 were inadvertent and not motivated by tax avoidance or retroactive tax planning. 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.

Section 1361(d)(1) provides, in part, that a QSST whose beneficiary makes an election under § 1361(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 § 678(a)) of that portion of the QSST consisting of S corporation stock with respect to which the election under § 1361(d)(2) applies. Under § 1361(d)(2)(A), a beneficiary of a QSST may elect to have § 1361(d) apply. Under § 1361(d)(2)(D), this 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 § 1361(d), the term QSST means a trust (A) the terms of which require that – (i) during the life of the current income beneficiary, there shall be only 1 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 the 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 § 643(b)) of which is distributed (or required to be distributed) currently to 1 individual who is a citizen or resident of the United States.

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 terminated under § 1362(d)(2) or (3) or § 1361(b)(3)(C); (2) the Secretary determines that the circumstances resulting in the termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in the 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 the 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 X's S corporation election terminated on Date 3 as a result of the failure to make a timely QSST election for Trust 1 Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, and Trust 8. We further conclude that the termination of X's S election on Date 3 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 as of Date 3 and thereafter, provided that X's S corporation election was otherwise valid and is not otherwise terminated under § 1362(d), and provided that (1) within 120 days from the date of this letter, the beneficiaries of Trust 1 Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, and Trust 8 file QSST elections for Trust 1 Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, and Trust 8 with an effective date of Date 3, with the appropriate service center; and (2) within 120 days from the date of this letter, or prior to the expiration of the applicable statute of limitations, whichever is sooner, Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, and Trust 8, and each of their beneficiaries, amend their tax returns for Years consistent with the relief granted in this ruling. If these conditions are not satisfied, this ruling is null and void. A copy of this letter must be attached to the QSST elections.

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.

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 penalties 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,

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

cc: