

**Internal Revenue Service**

Department of the Treasury  
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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B01  
PLR-118689-19  
Date:  
February 5, 2020

Legend

X =

Y =

Z =

W =

Date 1 =

Date 2 =

State =

Dear :

This responds to a letter dated August 1, 2019 submitted on behalf of X by X's authorized representatives, requesting relief under § 1362(f) of the Internal Revenue Code (the Code).

Facts

According to the information submitted and representations made, X was formed as a business trust under the laws of State. X filed Form 8832, Entity Classification Election intending to be treated as an association taxable as a corporation effective on Date 1. X subsequently filed Form 2553, Election by a Small Business Corporation for X intending to be treated as an S corporation effective on Date 1. X, as the parent S corporation filed Form 8869, Qualified Subchapter S subsidiary Election, intending for Y

to be treated as a qualified subchapter S subsidiary (“QSub”) effective on Date 1. X, as the parent S corporation filed Forms 8869, intending for Z and W respectively to be treated as QSubs effective on Date 2. However, X later discovered that these elections were invalid because the signature dates on the filed Form 8832, Form 2553 and Forms 8869 preceded the ownership of X, Y, Z and W. In addition, X discovered that X’s S corporation election was also ineffective because X’s trust agreement created a second class of stock.

X represents that since Date 1, it has not declared a preferential dividend to any class of stock and it has filed its federal income tax returns consistent with it being an S corporation. X further represents that X’s S election and QSub elections were inadvertently invalid and the invalid elections were not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make any adjustments required as a condition of obtaining relief under the inadvertent termination rule of § 1362(f).

### 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 1.1361-1(l)(1) provides, in part, that a corporation is generally treated as having only one class of stock if all outstanding shares of stock of the corporation confer identical rights to distribution and liquidation proceeds.

Section 1.1361-1(l)(2)(i) provides that the determination of whether all outstanding shares of stock confer identical rights to distribution and liquidation proceeds is made based on the corporate charter, articles of incorporation, bylaws, applicable state laws, and binding agreements relating to distribution and liquidation proceeds (collectively, governing provisions).

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 taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1361(b)(3)(A) generally provides that a QSub shall not be treated as a separate corporation and all assets, liabilities, and items of income, deduction, and credit of a QSub shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

Section 1361(b)(3)(B) defines a QSub as a domestic corporation which is not an ineligible corporation, if 100 percent of the stock of the corporation is owned by the S corporation, and the S corporation elects to treat the corporation as a QSub.

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), (3), or § 1361(b)(3)(C), (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 an S corporation or a QSub, 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 or a QSub) 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 or a QSub during the period specified by the Secretary.

### Conclusion

We conclude that due to the signature error, X's S election and QSub elections for Y, Z and W were invalid and, thus not effective. Also, even if these elections were effective, we conclude that X's S election and QSub elections for Y, Z and W would be invalid because X's trust agreement created a second class of stock and thus, X's S election was ineffective and as a result, X was an ineligible parent to make QSub elections. We also conclude that these invalid elections were inadvertent within the meaning of § 1362(f). Accordingly, under § 1362(f), X will be treated to be an S corporation on and after Date 1, Y will be treated to be a QSub on and after Date 1 and Z and W will be treated to be QSubs on and after Date 2, provided that X's S corporation election and QSub elections for Y, Z and W are valid and not otherwise terminated under § 1362(b). This letter ruling is subject to the following conditions: No later than 120 days from the date of this letter, (1) X must file a completed Form 8832 to be treated as an association taxable as a corporation effective on Date 1 with the appropriate service center; (2) X must file a completed Form 2553 for X to be treated as an S corporation effective on Date 1 with the appropriate service center; (3) X, as the parent S corporation must file a completed Form 8869 for Y to be treated as a QSub effective on Date 1 with the appropriate service center; (4) X, as the parent S corporation must file a completed Form 8869 for Z to be treated as a QSub effective on

Date 2 with the appropriate service center; (5) X, as the parent S corporation must file a completed Form 8869 for W to be treated as a QSub effective on Date 2 with the appropriate service center; and (6) X must amend the trust agreement to remove the language pertaining to the second class of stock. If these conditions are not met, then this ruling is null and void. Furthermore, if these conditions are not met, X must send notification that its S election and QSub elections have terminated to the service center with which X's S election and QSub elections were filed.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of any transaction described above under any other provisions of the Code.

This ruling is directed only to the taxpayers requesting it. § 6110(k)(3) of the Code provides that it 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 X's authorized representative.

Sincerely,

*David R. Haglund*

David R. Haglund  
Branch Chief, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of Letter  
Copy for 6110 purposes

cc: