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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:03
PLR-114535-20

Date:
December 04, 2020

Legend

X =

A =

B =

C =

D =

Trust =

State =

Date 1 =

Date 2 =

a =

Dear :

This letter responds to a letter dated June 23, 2020, and subsequent correspondence, submitted on behalf of X by its authorized representative requesting a ruling under §1362(f) of the Internal Revenue Code (Code).

Facts

The information submitted states that X was incorporated under the laws of State on Date 1 and elected to be an S corporation effective Date 1. On Date 2, D sold a shares of X to Trust. Since Date 2, X's shareholders are A, B, C, and Trust.

X represents that Trust satisfied the qualified subchapter S trust (QSST) requirements under §1361(d)(3). However, D, Trust's sole income beneficiary, inadvertently failed to timely make a QSST election under §1361(d)(2) with respect to Trust.

X represents that the respective failure to file a QSST election was inadvertent and not motivated by tax avoidance or retroactive tax planning. X also represents that from Date 2, X and its shareholders have filed all returns consistent with X's status as an S corporation. Further, X and D represent that X, Trust, and D have filed all returns consistent with the treatment of Trust as a QSST. 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) 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)(i) provides that, for purposes of § 1361(b)(1)(B), a trust all of which is treated (under subpart E of part I of subchapter J of chapter 1) 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(d)(1) provides that in the case of a QSST for 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 shall be treated as the owner of that portion of the trust that consists of stock in an S corporation with respect to which the election under §1361(d)(2) is made.

Section 1361(d)(2)(A) provides that a beneficiary of a QSST may elect to have §1361(d)

apply. Section 1.1361-1(j)(6)(ii) provides that the current income beneficiary of a QSST must make the election under §1361(d)(2) by signing and filing with the service center with which the corporation files its income tax returns the applicable form or a statement including the information listed in §1.1361-1(j)(6)(ii).

Section 1361(d)(3) defines a QSST as a trust, (A) the terms of which require that (i) during the life of the current income beneficiary, there shall be only one income beneficiary of the trust, (ii) any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary, (iii) the income interest of the current 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 such beneficiary, and (B) all of the income (within the meaning of section 643(b)) of which is distributed (or required to be distributed) currently to one individual who is a citizen or resident of the United States.

Section 1362(d)(2) provides that (A) in general, an election under §1362(a) shall 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, and (B) any termination under §1362(d)(2) shall be effective on and after the date of cessation.

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 required 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 D's failure, as the beneficiary of Trust to make a QSST election with respect to Trust effective Date2. We further conclude that this termination of X's S corporation 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 X's S corporation election was valid and not otherwise terminated under §1362(d).

This ruling is contingent upon D, as the beneficiary of Trust, filing a QSST election for Trust with an effective date of Date 2 with the appropriate service center within 120 days of the date of this ruling. A copy of this letter should be attached to the QSST election. If X or its shareholders fail to treat X as described above, this letter ruling will be null and void.

Except as specifically set forth above, no opinion is expressed concerning the Federal tax consequences of the facts described above under any other provision of the Code, including whether X is a small business corporation under §1361(b), or whether Trust is a QSST within the meaning of §1361(d)(3).

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 representative.

Sincerely,

Wendy L. Kribell
Senior Counsel, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: