

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:B03

PLR-112378-21

Date:

November 01, 2021

Legend

X =

Trust 1 =

Trust 2 =

Trust 3 =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Year 1 =

Year 2 =

n =

Dear

This letter responds to a letter dated May 5, 2021, and subsequent correspondence, written on behalf of X, requesting a ruling under § 1362(f) of the Internal Revenue Code.

Facts

X was incorporated under the laws of State and elected to be an S corporation effective Date 1. X revoked its S corporation election effective Date 2. X reelected to be an S corporation effective Date 3.

On Date 4, Trust 1, Trust 2, and Trust 3 were created, and shares of X's stock were transferred to Trust 1, Trust 2, and Trust 3 on Date 5. X represents that Trust 1, Trust 2, and Trust 3 were qualified to be Electing Small Business Trusts (ESBTs), within the meaning of § 1361(e), however, no election was made under § 1361(e)(3) to treat Trust 1, Trust 2, or Trust 3 as ESBTs. Consequently, Trust 1, Trust 2, and Trust 3 were ineligible shareholders, and, as a result, X's S corporation election terminated on Date 5.

X represents that there was no intent to terminate X's S corporation election and that the failure to timely file the ESBTs elections for Trust 1, Trust 2, and Trust 3 were inadvertent and not motivated by tax avoidance or retroactive tax planning. X and X's shareholders agree to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary with respect to the period specified by § 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 shareholder 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)(v) provides that for purposes of § 1361(b)(1)(B), an ESBT is a permissible shareholder.

Section 1361(e)(1)(A) provides that, except as provided in § 1361(e)(1)(B), the term “electing small business trust” 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)(2)-(5), or (IV) 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)(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 subsequent taxable years of such trust unless revoked with the consent of the Secretary.

Section 1.1361-1(m)(2)(i) of the Income Tax Regulations provides that an electing small business trust (ESBT) means any trust if it meets the following requirements: the trust does not have as a beneficiary any person other than an individual, an estate, an organization described in § 170(c)(2) through (5), or an organization described in § 170(c)(1) that holds a contingent interest in such trust and is not a potential current beneficiary; no interest in the trust has been acquired by purchase; and the trustee of the trust makes a timely ESBT election for the trust.

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); (2) the Secretary determines that the circumstances resulting in such termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such 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 of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make the adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to this period, then, notwithstanding the circumstances resulting in the termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Section 1.1362-4(d) of the Income Tax Regulations provides that the Commissioner may require any adjustments that are appropriate. In general, the adjustments required should be consistent with the treatment of the corporation as an S corporation during the period specified by the Commissioner.

Conclusion

Based solely on the facts submitted and representations made, we conclude that X's S corporation election was terminated on Date 5 when stock in X was transferred to Trust 1, Trust 2, and Trust 3 because Trust 1, Trust 2, and Trust 3 failed to timely file ESBT elections under § 1361(e)(3). We further conclude that the termination 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 on and after Date 5, unless X's S corporation election is otherwise terminated under § 1362(d). The trustee of Trust 1, Trust 2, and Trust 3 must file an ESBT election effective Date 5 with the appropriate service center within 120 days of the date of this letter.

This ruling is contingent upon X and each of its shareholders, including the trusts and their beneficiaries, filing any necessary original or amended returns consistent with the relief granted in this letter within 120 days of the date of this letter. Specifically, Trust 1, Trust 2, and Trust 3 must file original or amended returns and make adjustments that are necessary to properly reflect the treatment of Trust 1, Trust 2, and Trust 3 as ESBTs for Year 1 taxable year through and including Year 2 taxable year.

Additionally, as an adjustment under § 1362(f), a payment of \$n and a copy of this letter ruling must be sent to the following address:

Kansas City Service Center
333 W. Pershing Road
Kansas City, MO 64108
Stop 7777
Attn: Manual Deposit

This letter must be sent no later than Date 6.

A copy of this letter must be attached to any ESBT elections and income tax returns to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

If all of the above conditions are not met, then this ruling is null and void. Furthermore, if these conditions are not met, X must notify the Ogden Service Center that its S corporation election has terminated.

Except for the specific ruling above, no opinion is expressed or implied concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, no opinion is expressed or implied regarding X's eligibility to be an S corporation or Trust 1, Trust 2, or Trust 3's eligibility to be ESBTs.

The rulings contained in this letter are 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 request for rulings, it is subject to verification on examination.

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.

Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

Richard T. Probst
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

A copy of this letter
A copy for § 6110 purposes

cc: