

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

N =

Dear :

This letter responds to a letter dated May 23, 2022, and subsequent correspondence, submitted on behalf of X by its authorized representatives requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

FACTS

The information submitted states that X was incorporated on Date 1 under the laws of State. X elected to be an S corporation effective Date 2. A and B each owned X stock.

On Date 3, A died, and his executor created Trust 1 on Date 4, for the benefit of C during her life and funded the trust, in part, with A's X stock. C made a qualified subchapter S trust (QSST) election for Trust 1, effective Date 4.

On Date 5, C died. Trust 1 continued as a trust for the benefit of A's children. Under § 1.1361-1(j)(7)(ii), Trust 1 remained an eligible shareholder through Date 6, two years after Trust 1 ceased to be a QSST on Date 5. X's S corporation election terminated on Date 6, because no electing small business trust (ESBT) election was made for Trust 1. X represents that, Trust 1 was qualified to elect to be an ESBT" under § 1361(e) (1), however no ESBT election was filed. On Date 10, the trustees of Trust 1 terminated the trust, and distributed the X voting stock in Trust 1 to A's children.

B transferred her shares in X to Trust 2, a revocable trust, prior to her death on Date 7. X represents that Trust 2 was a trust described in § 1361(c)(2)(A)(i) of which B was the deemed owner. On Date 8, B died, causing Trust 2 to cease being a grantor trust. Under § 1361(c)(2)(A)(ii), Trust 2 remained an eligible shareholder of X until Date 9, two years after B's death. Accordingly, Trust 2 ceased to be an eligible shareholder of X on Date 9. X's S corporation election, had it not otherwise terminated on Date 6,

would have terminated on Date 9. X represents that Trust 2 was qualified to elect to be an ESBT under § 1361(e)(1), but no ESBT election was filed.

X represents that there was no tax avoidance or retroactive tax planning involved in the failure of Trust 1 and Trust 2 to file ESBT elections and the resulting termination of X's S corporation election. X and its shareholders agree to make any adjustments required as a condition of obtaining relief under the inadvertent termination rule as provided under § 1362(f) of the Code that may be required by the Secretary.

LAW

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)(B) defines a "small business corporation", in part, as 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 is a permitted S corporation shareholder.

Section 1361(c)(2)(A)(ii) provides that for purposes of § 1361(b)(1)(B), a trust which was described in § 1361(c)(2)(A)(i) immediately before the death of the deemed owner and which continues in existence after such death, is a permitted S corporation shareholder, but only for the 2-year period beginning on the day of the deemed owner's death.

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, for purposes of § 1361, 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(h)(1)(ii) of the Income Tax Regulations provides that, on death of the deemed owner, a trust that was a qualified subpart E trust immediately before the death of the deemed owner continues in existence after the death of the deemed owner, but only for the 2-year period beginning on the day of the deemed owner's death.

Section 1.1361-1(j)(7)(ii) provides that if, upon the death of the QSST income beneficiary, the trust continues in existence and continues to hold S corporation stock but no longer satisfies the QSST requirements, is not a grantor trust or an ESBT, then, solely for purposes of 1361(b)(1), as of the date of the income beneficiary's death, the estate of that income beneficiary is treated as the shareholder of the S corporation for 2 years or the transfer of the stock by the trust.

Section 1.1361-1(m)(2)(i) provides, in part, 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 ESBT election must be filed within the time requirements prescribed in § 1.1361-1(j)(6)(iii) for filing a QSST election.

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, 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(d)(2)(B) provides that any termination under § 1362(d)(2)(A) is effective on and after the date of cessation.

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 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 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 representations made, we conclude that X's S corporation election terminated on Date 6, because no ESBT election was filed for Trust 1. Further, if X's S corporation election had not already terminated on Date 6, the election terminated on Date 9, because Trust 2 remained an eligible shareholder until Date 9, two years after B's death and no ESBT election had been filed for Trust 2. We further conclude that the termination of X's S election on Date 6, was inadvertent within the meaning of § 1362(f). Accordingly, X will be treated as an S corporation effective Date 6, and thereafter, provided that X's S corporation election was otherwise valid and was not otherwise terminated under § 1362(d).

This letter ruling, is subject to the following must be filed with the appropriate service center within 120 days from the date of this letter (1) the trustee of Trust 1 must file an ESBT effective Date 6, (2) the trustee of Trust 2 must file an election to treat Trust 2 as an ESBT effective Date 9. A copy of this letter must be attached to each ESBT election.

Furthermore, as an adjustment under § 1362(f)(4), a payment of \$N and a copy of this letter must be sent to the following address within 45 days from the date of this letter: Internal Revenue Service, Kansas City Submission Processing Campus, 333 W. Pershing Road, Kansas City, MO 64108, Stop 7777, Attn: Manual Deposit.

If the above conditions are not met, then this ruling is null and void. Furthermore, if these conditions are not met, X must notify the service center where X's S corporation election is filed that its S corporation election has terminated effective Date 6.

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 Trust 1 and Trust 2's eligibility to be ESBTs.

The ruling contained in this letter is based on 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 this ruling may not be used or cited as precedent.

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

Sincerely,

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

Enclosure:
Copy for § 6110 purposes

cc: