

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:01
PLR-119780-23

Date:
April 05, 2024

LEGEND

X =

A =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

State =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

Dear

This letter responds to a letter dated September 20, 2023, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

FACTS

According to the information submitted, X was organized under the laws of State during Year and made an election to be treated as an S corporation effective on Date 1. A held shares in X through Trust 1, a grantor trust under subpart E of part I of subchapter J of Chapter 1 of the Code. Trust ceased to be a grantor trust upon A's death on Date 2. On Date 3, within the two-year period beginning on the day of A's death during which Trust 1 continued to qualify as an eligible S corporation shareholder under § 1361(c)(2)(A)(ii), Trust 1 transferred the shares in X to Trust 2, Trust 3 and Trust 4.

X represents that, beginning on Date 3, Trust 2, Trust 3, and Trust 4 met the requirements of an Electing Small Business Trust (ESBT) within the meaning of § 1361(e)(1)(A). However, the trustees of Trust 2, Trust 3 and Trust 4 did not make timely elections for Trust 2, Trust 3 or Trust 4 to be treated as ESBTs under § 1361(e)(3).

X represents that there was no tax avoidance or retroactive tax planning involved in the failure of Trust 2, Trust 3 or Trust 4 to file an ESBT election and the resulting termination of X's S corporation election. X and its shareholders agree to make any adjustments that may be required as a condition of obtaining relief under the inadvertent termination rule as provided under § 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) provides that the term "small business corporation" means 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 one class of stock.

Section 1361(c)(2)(A)(i) provides that a trust all of which is treated (under subpart E of part I of subchapter J of Chapter 1 of the Code) as owned by an individual who is a citizen or resident of the United States is a permissible shareholder.

Section 1361(c)(2)(A)(ii) provides that 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, but only for the 2-year period beginning on the day of the deemed owner's death is a permissible shareholder.

Section 1361(c)(2)(A)(v) provides that 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), (3), (4), or (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, 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(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), (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 or 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 such ineffectiveness or 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 when Trust 2, Trust 3 and Trust 4 failed to make elections under section § 1362(e) to treat Trust 2, Trust 3 and Trust 4 as ESBTs effective Date 3. We further conclude that the termination of X's S election was inadvertent within the meaning of § 1362(f). Therefore, pursuant to the provisions of § 1362(f), X will be treated as an S corporation effective Date 3 and thereafter, provided X's S corporation election is otherwise valid and not otherwise terminated under § 1362(d).

This letter is contingent on, within 120 days of this letter, the trustees of Trust 2, Trust 3 and Trust 4 filing with the appropriate service center an election to treat Trust 2, Trust 3 and Trust 4 as ESBTs, effective Date 3. A copy of this letter should be attached to any elections.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above 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 2, Trust 3, or Trust 4's eligibility to elect to be treated as an ESBT.

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 request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

/s/

Caroline E. Hay
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure

Copy for § 6110 purposes

cc: