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Person To Contact:
, ID No.

Telephone Number:

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April 29, 2024

LEGEND

X = EIN:

A =

Original Trust =

Trust 1 =

EIN:

Trust 2 =

EIN:

Trust 3 =

EIN:

Trust 4 =

EIN

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

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

FACTS

According to the information submitted, X was incorporated under the laws of State on Date 1 and elected to be treated as an S corporation effective Date 2.

A, an individual and eligible shareholder owned shares of X. During A's lifetime, A transferred the shares of X to Original Trust. Original Trust was treated as an eligible shareholder of X under § 1361(c)(2)(A)(i). On Date 3, A died. Following A's death, Original Trust continued to own the shares of X until Date 4, and, therefore, remained an eligible shareholder of X under § 1361(c)(2)(A)(ii).

On Date 4, Original Trust transferred all its shares of X to Trust 1, Trust 2, Trust 3, and Trust 4. X represents that each of Trust 1 through Trust 4 satisfy the requirements of a Qualified Subchapter S Trust (QSST) set forth in § 1361(d)(3)(A). However, the income beneficiary of each of Trust 1 through Trust 4 failed to make a valid QSST election. Therefore, each of Trust 1 through Trust 4 became an ineligible shareholder on Date 4, thereby causing X's S corporation election to terminate as of Date 4.

X represents that X and the beneficiaries of each of Trust 1 through Trust 4 intended that each of the trusts be treated as a QSST and that the inadvertent failure to make valid QSST elections under § 1361(d)(2) was neither motivated by tax avoidance or retroactive tax planning nor part of a plan to terminate X's S corporation election.

X represents that X has qualified as an S corporation and has been consistently treated as an S corporation since Date 2. X also represents that the beneficiaries of Trust 1, Trust 2, Trust 3, and Trust 4 treated each of their respective trusts as QSSTs effective as of Date 4, received all income (within the meaning of § 643(b)) from the trust each taxable year, and reported their respective shares of X's income on their individual tax returns for all relevant taxable years. Finally, X and its shareholders agree

to make any adjustments that the Secretary may require as a condition of obtaining relief 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, 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 of the Code) 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(c)(2)(A)(ii) provides that, for purposes of § 1361(b)(1)(B), a trust described in § 1361(c)(2)(A)(i) immediately before the death of the deemed owner and which continues in existence after such death may be a shareholder, but only for the 2-year period beginning on the day of the deemed owner’s death.

Section 1361(d)(3) provides that the term “qualified subchapter S trust” means 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 income 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 § 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. A substantially separate and independent share of a trust within the meaning of § 663(c) shall be treated as a separate trust for purposes of § 1361(d)(3) and § 1361(c).

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 S corporation files its income tax returns the applicable form or a statement including the information listed in § 1.1361-1(j)(6)(ii).

Section 1.1361-1(j)(6)(iii)(A) provides that the QSST election must be made within the 16-day-and-2 month period beginning on the day that the stock is transferred to the trust.

Section 1361(d)(1) provides that in the case of a QSST with respect to 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 such trust shall be treated as the owner of that portion of the trust which consists of stock in an S corporation with respect to which the election under § 1361(d)(2) is made.

Section 1362(d)(2)(A) provides that 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. 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 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 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 representations made, we conclude that X's S corporation election terminated on Date 4 because no valid QSST elections were made for Trust 1, Trust 2, Trust 3, or Trust 4. We further conclude that the termination of X's S corporation election on Date 4 was inadvertent within the meaning of § 1362(f). Accordingly, X will be treated as an S corporation effective Date 4, and thereafter, provided X's S corporation election was otherwise valid and was not otherwise terminated under § 1362(d). Further, Trust 1, Trust 2, Trust 3, and Trust 4 will be treated as QSSTs from Date 4 and each year thereafter, provided each of the trusts meet the requirements of § 1361(d)(3)(A) and the beneficiary of each trust is treated, for purposes of § 678, as the owner of the X shares transferred to its respective trust on Date 4.

This ruling is contingent on the following: (1) the beneficiary of each of Trust 1, Trust 2, Trust 3, and Trust 4 must file within 120 days of the date of this letter a QSST election effective Date 4 with the appropriate service center; (2) each of Trust 1, Trust 2, Trust 3, and Trust 4 must file within 120 days from the date of this letter amended returns for all years consistent with the requested relief to properly reflect the treatment of each of Trust 1, Trust 2, Trust 3, and Trust 4 as a QSST; and (3) Trust 1, Trust 2, Trust 3, and Trust 4 must properly indicate its status as a QSST on all future returns. A copy of this letter should be attached to the QSST elections and any amended returns.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied concerning the eligibility of X to be an S corporation or the eligibility of Trust 1, Trust 2, Trust 3, or Trust 4 to be QSSTs.

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

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.

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,

/s/

Laura C. Fields
Branch Chief, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure

Copy for § 6110 purposes

cc-