

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-123569-23

Date:
May 31, 2024

LEGEND

- X =
- State =
- Date 1 =
- Date 2 =
- Date 3 =
- Trust 1 =
- Trust 2 =
- \$m =

Dear :

This letter responds to a letter dated November 1, 2023, 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

According to the information submitted, X was incorporated under the laws of State on Date 1. On Date 2, certain shareholders of X transferred shares of X to Trust 1 and Trust 2. Subsequently, X elected to be an S corporation effective Date 3. X represents that Trust 1 and Trust 2 were eligible to be electing small business trusts (“ESBTs”) under § 1361(e)(1) effective Date 3, but the trustee of Trust 1 and Trust 2 failed to timely file an ESBT election with respect to Trust 1 or Trust 2 under § 1361(e)(3). As a result, X's S corporation election was not effective for the taxable year for which it was made.

X represents that the circumstances resulting in X's S corporation election being ineffective were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X represents that since inception X and its shareholders have filed

consistently with X's treatment as an S corporation effective Date 3. Finally, X and its shareholders agree to make any adjustments consistent with the treatment of X as an S corporation and Trust 1 and Trust 2 as ESBT 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 in part 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)(v) provides that for purposes of § 1361(b)(1)(B), an ESBT is a permissible S corporation 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 all 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 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 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 initial S corporation election was ineffective on Date 3 because the trustee of Trust 1 and Trust 2 failed to file timely ESBT elections with respect to Trust 1 and Trust 2 under § 1361(e). We further conclude that the invalidity of X's S corporation election was inadvertent within the meaning of § 1362(f). Therefore, under § 1362(f), X will be treated as an S corporation on and after Date 3, provided X's S corporation election was otherwise valid and not otherwise terminated under § 1362(d).

This ruling is contingent on the following: (1) the trustee of Trust 1 and Trust 2 must file within 120 days of the date of this letter an ESBT election with respect to Trust 1 and Trust 2 effective Date 3 with the appropriate service center and attach a copy of this letter to the ESBT elections; (2) Trust 1 and Trust 2 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 Trust 1 and Trust 2 as ESBTs and attach a copy of this letter to such returns; (3) Trust 1 and Trust 2 must properly indicate their status as ESBTs on all future returns filed by Trust 1 and Trust 2; and (4) the trustee of Trust 1 and Trust 2 must sign a written statement as described in § 1.1362-6(b)(1) consenting to X's S corporation election effective Date 3. The written statement must be filed with the appropriate service center within 120 days from the date of this letter, indicating that the statement is to be associated with X's originally filed Form 2553. A copy of this letter should be attached to each ESBT election, the consent statement and any amended returns.

Furthermore, as an adjustment under § 1362(f)(4), X must send a payment of \$m with a copy of this letter within 45 days from the date of this letter to the following address:

Internal Revenue Service
Kansas City Service Center
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 with which it filed its S corporation election that its election on Date 3 was ineffective.

Except as specifically provided herein, 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 the eligibility of Trust 1 and Trust 2 to be ESBTs within the meaning of § 1361(e).

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. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

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

Sincerely,

Robert D. Alinsky
Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

PLR-123569-23

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Enclosure:

Copy of this letter for Section 6110 purposes

cc: