

Dear _____ :

This letter responds to a letter dated January 9, 2024, and subsequent correspondence, submitted on behalf of X by its authorized representatives, requesting a ruling under § 1362(f) of the Internal Revenue Code (the Code).

FACTS

According to the information submitted and representations within, X was incorporated in State on Date 1, and elected to be treated as an S corporation effective Date 2. On Date 3, A the grantor of Trust 1 and Trust 2, referred to as Trusts, died. Trusts ceased to be grantor trusts but continued to qualify as eligible S corporation shareholders under § 1362(c)(2)(A)(ii) for the 2-year period beginning on the day of the deemed owner's death. However, Trusts continued to hold the X stock after the 2-year period had ended on Date 4. According to X, Trust 1 and Trust 2 each qualify as a qualified subchapter S trust (QSST), but each of the respective trust beneficiaries, B and C made no QSST election for their respective trust. As a result, X's S corporation election terminated on Date 4.

X represents that Trust 1 and Trust 2 both met the requirements of a QSST within the meaning of § 1361(d)(3) at all time since Date 4, except that the respective beneficiaries of Trust 1 and Trust 2 failed to make the election under § 1361(d)(2).

X further represents that the circumstances resulting in the termination of X's S election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. Additionally, X represents that X and its shareholders have filed all returns consistent with X's status as an S Corporation. X and its shareholders agree to make any adjustments (consistent with the treatment of X as an S Corporation) as may be required by the Secretary.

LAW AND ANALYSIS

Section 1362(a) provides that a small business corporation may elect to be an S corporation.

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 1 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)(B)(i) provides that for purposes of § 1361(b)(1), in the case of a trust described in § 1362(c)(2)(A)(i), the deemed owner shall be treated as the 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, is a permitted shareholder, but only for the 2-year period beginning on the day of the deemed owner's death.

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), (A) such trust shall be treated as a trust described in § 1361(c)(2)(A)(i), (B) 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 the S corporation with respect to which the election under § 1361(d)(2) is made.

Section 1362(f) provides relevant 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 such ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the event resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation for which the election was made or the termination occurred is a small business corporation, 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 such ineffectiveness or termination, the 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 was inadvertent within the meaning of § 1362(f). We further hold that, pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S Corporation from Date 4 and thereafter, provided that X's S corporation election was valid and was not otherwise terminated under § 1362(d).

This ruling is contingent upon B and C the respective beneficiaries of Trust 1 and Trust 2 filing a QSST election for their respective trust effective Date 4 within 120 days from the date of this letter. A copy of this letter should be attached to the election. If X or its shareholders fail to treat themselves as described above, this ruling is null and void.

Except as specifically rules upon above, 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.

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 ruling request, it is subject to verification on examination.

These rulings are directed only to the taxpayer requesting them. Section 6110(k)(3) of the Code provides that it 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,

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

Enclosure:

Copy of this letter for § 6110 purposes

cc: