

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B01  
PLR-104232-24

Date:  
August 15, 2024

LEGEND

X =

Trust 1 =

Trust 2 =

Date 1 =

State =

Dear :

This responds to a letter dated February 22, 2024, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting relief under section 1362(f) of the Internal Revenue Code (the Code).

FACTS

The information submitted states that X was formed on Date 1 under the laws of State and elected to be treated as an S corporation as of formation.

Trust 1 and Trust 2 acquired shares in X on Date 1, and X represents that Trust 1 and Trust 2 qualified to elect to be treated as Electing Small Business Trusts (ESBTs) as of Date 1. However, the trustees of Trust 1 and Trust 2 failed to make timely ESBT

elections under § 1361(e)(3), thereby causing X's S corporation election to be ineffective.

X represents that there was no tax avoidance or retroactive tax planning involved in the failure of Trust 1 and Trust 2 to file an ESBT election and the resulting ineffectiveness of X's S corporation election. X and its shareholders agree to make any adjustments required as a condition of obtaining relief as provided in § 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)(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) through (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(f) provides, in relevant part, that if (1) an election under § 1362(a) by any corporation 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), (2) the Secretary determines that the circumstances resulting in such ineffectiveness were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness, steps were taken so that the corporation for which the election was made is a small business corporation, and (4) the corporation for which the election was made, 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, 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 was ineffective as of Date 1, because the trustees of Trust 1 and Trust 2 failed to file ESBT elections under § 1361(e). Additionally, we conclude that the ineffectiveness of the X's S corporation election on Date 1 was inadvertent within the meaning of § 1362(f). Accordingly, X will be treated as an S corporation effective Date 1 and thereafter, provided that X's S corporation election was otherwise valid and has not otherwise terminated under § 1362(d).

This letter ruling is contingent on the trustees of Trust 1 and Trust 2 filing within 120 days from the date of this letter ESBT elections on behalf of Trust 1 and Trust 2 effective Date 1, and upon Trust 1, Trust 2, and their beneficiaries filing timely amended federal income tax returns for all open years consistent with the treatment of Trust 1 and Trust 2 as ESBTs effective Date 1, as necessary, with the appropriate service center. A copy of this letter should be attached to each ESBT election. If this condition is not met, then this letter ruling is null and void.

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 provisions of the Code. Specifically, we express or imply no opinion regarding X's eligibility to be an S corporation or Trust 1 or Trust 2's eligibility to be ESBTs.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

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.

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

Sincerely,

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

Enclosure

Copy of this letter for Section 6110 purposes

cc: