

**Internal Revenue Service**

Department of the Treasury  
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Person To Contact: \_\_\_\_\_, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B01  
PLR-104136-24

Date:  
August 30, 2024

Legend

X =

State =

Year 1 =

Year 2 =

Date 1 =

Date 2 =

A =

Trust =

Dear \_\_\_\_\_ :

This letter responds to a letter dated February 15, 2024, and subsequent correspondence, submitted on behalf of X by X's authorized representatives, 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 1 and made an election to be treated as an S corporation effective Year 2. A held shares in X through Trust, 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 1. Trust continued to qualify as an eligible S corporation shareholder under § 1361(c)(2)(A)(ii) for the two-year period beginning on Date 1 and ending on Date 2. X represents that Trust was eligible to be a qualified subchapter S trust (QSST) under § 1361(d); however, the beneficiary of Trust failed timely to file such a QSST election.

X represents that the circumstances resulting in the failure to file a QSST election for Trust were inadvertent and not motivated by tax avoidance or retroactive tax planning. X also represents that it and its shareholders have filed tax returns consistent with X being an S corporation for all relevant periods. X and its shareholders have agreed to make any adjustments required by the Secretary as a condition of obtaining relief 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, 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 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 may be a shareholder of an S corporation, but only for the 2-year period beginning on the day of the deemed owner's death.

Section 1361(d)(1) provides, in part, 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 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) of the Income Tax Regulations 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 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)(3) defines a QSST as 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.

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 information submitted and the representations made, we conclude that X's S corporation election terminated on Date 2, when Trust became an ineligible shareholder. We further conclude that the circumstances resulting in the termination of X's S corporation election were inadvertent within the meaning of § 1362(f). Accordingly, pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from Date 2, and thereafter, provided that X's S corporation election was valid and was not otherwise terminated under § 1362(d). Further, Trust will be treated as a QSST from Date 2, provided that Trust meets the requirements of § 1361(d)(3)(A).

This ruling is contingent on the beneficiary of Trust filing a QSST election for Trust effective Date 2 with the appropriate service center within 120 days of the date of this letter. A copy of this letter should be attached to the QSST election.

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. In addition, we express or imply no opinion as to whether Trust is eligible to elect to be treated as a QSST.

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 requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

Sincerely,

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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: