

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B1-PLR-110178-02

Date:

April 4 2002

Legend:

T =

X =

State =

D1 =

A =

D2 =

D3 =

D4 =

This responds to the letter dated October 22, 2001, submitted on behalf of T, requesting relief under §1361(e)(3) of the Internal Revenue Code.

FACTS

X is a corporation of the State, which elected to be treated as a Subchapter S corporation effective D1. A created T. A transferred stock to T on D2. The beneficiary of T intended to make a Qualified Subchapter S Trust ("QSST") election effective D2, but failed to file the election timely. As a result, X's S election was terminated as of D2.

The beneficiary of T filed a late QSST election and the election was accepted by the IRS. Subsequently, the trustee of T made an Electing Small Business Trust ("ESBT") election, effective D3.

The trustee of T now requests to revoke the ESBT election and convert T to a QSST.

LAW AND ANALYSIS

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Section 1361(a)(1) defines an “S corporation”, with respect to any taxable year, as a small business corporation for which an S election under §1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides that a small business corporation cannot 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)(i) provides that a trust, all of which is treated (under subpart E of part I of subchapter J of Chapter 1) as owned by an individual who is a citizen or resident of the United States, may be a Subchapter S corporation shareholder.

Section 1361(d)(3) defines the term “qualified Subchapter S trust” as a trust -

(A) the terms of which require that

- (i) during the life of the current income beneficiary, there shall be only 1 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 beneficiary, the trust shall distribute all 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 1 individual who is a citizen or resident of the United States.

Section 1361(d)(1) states that a QSST whose beneficiary makes an election under §1361(d)(2) will be treated as a trust described in §1361(c)(2)(A)(i), and the QSST's beneficiary will be treated as the owner (for purposes of §678(a)) of that portion of the QSST's S corporation stock to which the election under §1362(d)(2) applies.

Under §1361(d)(2)(A), the beneficiary of a QSST may elect to have §1361(d) apply. Under §1361(d)(2)(D), this election will be effective up to 15 days and two months before the date of the election.

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 taxable year for which the corporation is an S corporation) the corporation ceases to be a small business corporation. The termination is effective on and after the day of the cessation. §1362(d)(2)(B).

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Section 1361(c)(2)(A)(v) provides that an ESBT may be a shareholder of an S corporation for purposes of §1361(b)(1)(B).

Section 1361(e)(1)(A) provides that, for purposes of §1361, and except as provided in §1361(e)(1)(B), the term “electing small business trust” means any trust if (i) the trust does not have as a beneficiary any person other than an individual, an estate, or an organization described in §170(c)(2), (3), (4), or (5); (ii) no interest in the trust was acquired by purchase; and (iii) an election under §1361(e) applies to the trust.

Section 1361(e)(3) provides that an election under §1361(e) shall be made by the trustee. The election shall apply to the tax year of the trust for which made and all subsequent tax years of the trust unless revoked with the consent of the Secretary.

Section 3 of Rev. Proc. 98-23 provides in pertinent part that, a trust that wishes to convert within 36 months of a previous conversion must submit an application for consent to revoke the QSST or ESBT election to the Service in the form of a letter ruling request.

Section 1362(f), in relevant part, provides that, if: (1) an election under §1362(a) by any corporation was terminated under §1362(d); (2) the Secretary determines that the termination was inadvertent; (3) no later than a reasonable period of time after discovery of the event resulting in the termination, steps were taken so that the corporation is once more a small business corporation; and (4) the corporation, and each person who was a shareholder in the corporation at any time during the period specified pursuant to §1362(f), agrees to make any 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 terminating event, the corporation shall be treated as continuing to be an S corporation during the period specified by the Secretary.

The Committee reports accompanying the Subchapter S Revision Act of 1982 explain §1362(f) as follows:

If the Internal Revenue Service determines that a corporation’s subchapter S election is inadvertently terminated, the Service can waive the effect of the terminating event for any period if the corporation timely corrects the event and if the corporation and the shareholders agree to be treated as if the election had been in effect for such period.

The committee intends that the Internal Revenue Service be reasonable in granting waivers, so that corporations whose subchapter S eligibility requirements have been inadvertently violated do not suffer the tax consequence of a termination if no tax avoidance would result from the continued subchapter S treatment. In granting a waiver, it is hoped that the taxpayers and the government will work out agreements that protect the revenues without undue hardship to taxpayers It is expected that the waiver may be made retroactive for all years, or retroactive for the period in which the corporation again became eligible for subchapter S treatment, depending on the facts.

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S. Rep. No. 640, 97th Cong., 2d Sess. 12-13 (1982), 1982-2 C.B. 718, 723-24; H.R. Rep. No. 826, 97th Cong., 2d Sess. 12 (1982), 1982-2 C.B. 730, 735.

CONCLUSIONS

Based solely on the fact submitted and the representations made, we conclude that X's Subchapter S election terminated on D2 when X's stock was issued to T. We also conclude that the termination constituted an "inadvertent termination" within the meaning of section 1362(f).

Further, we conclude that, pursuant to §1362(f), X will be treated as continuing to be an S corporation from D2, assuming X's S corporation election is valid and not otherwise terminated under §1362(d).

In addition, we conclude that T's ESBT election effective D3 is revoked effective D4. T has until sixty (60) days from the date of this letter to elect to treat T as a QSST, effective D4. The election should be made with the appropriate service center. A copy of this letter should be attached to the election.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X is a valid S corporation or whether T is a valid QSST or ESBT.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,
David R. Haglund
Senior Technician Reviewer
Branch 1
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes