

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B01

PLR-103728-19

Date:

August 30, 2019

### LEGEND

X =

A =

B =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Trust 5 =

Trust 6 =

Trust 7 =

Trust 8 =

Trust 9 =

Trust 10 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

Date 12 =

State =

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

This responds to a letter dated February 25, 2019, and subsequent information, submitted on behalf of X by X's authorized representative, requesting relief under section 1362(f) of the Internal Revenue Code (the Code).

## FACTS

According to the information submitted and representations made within, X was incorporated on Date 1 under the laws of State, and made a valid S election effective on Date 2.

A, an individual and eligible shareholder, owned shares in X. During, A's lifetime, A transferred shares of X to Trust 1, Trust 2, Trust 3, Trust 4, Trust 5 and Trust 6. Each of which was treated as an eligible shareholder of X under § 1362(c)(2)(A)(i). On Date 3, A died.

Although it was intended that Qualified Subchapter S Trust (QSST) elections be made for Trust 1, Trust 2, Trust 3, Trust 4, and Trust 5 effective Date 7, two years after A's death, QSST elections were inadvertently not made for the trusts.

Trust 6 continued as Trust 7, an administrative trust. An election under § 645 was made to treat Trust 7 as part of A's estate for federal tax purposes. Because Trust 7 was treated as part of A's estate, Trust 7 remained an eligible shareholder of X throughout the period Trust 7 held X stock, as it did not hold any X shares after the applicable date as defined in § 645(b)(2).

On Date 4, Trust 7 transferred a portion of its shares of X to Trust 8. Also on Date 4, Trust 8 transferred most of those shares of X to Trust 9. On Date 5, Trust 9 transferred all of its shares in X to B, an individual and eligible shareholder. On Date 6, B transferred the shares in X to eligible shareholders of X under § 1362(c)(2)(A)(i).

On Date 8, Trust 7 transferred additional X shares to Trust 8 and Trust 10. On Date 9, Trust 7 distributed its remaining shares of X to Trust 8. Also on Date 9, Trust 8 distributed a portion of its shares of X to B. On Date 10, B sold X shares to trusts that are eligible shareholders under § 1362(c)(2)(A)(i).

Trust 8 and Trust 9 were eligible shareholders until Date 11 and Trust 10 was an eligible shareholder until Date 12 under § 1.1361-1(h)(ii)(B). Although it was intended that QSST elections be made for Trust 8 and Trust 9, effective Date 11, and Trust 10, effective Date 12, QSST elections were inadvertently not made for Trust 8, Trust 9, and Trust 10.

The failure to make QSST elections for Trust 1, Trust 2, Trust 3, Trust 4, Trust 5 effective Date 7 caused X's S election to terminate on Date 7. Additionally, if X's S election had not already terminated on Date 7, X's S election would have terminated on Date 11, when Trust 8 and Trust 9 became ineligible shareholders and QSST elections were not made. If X's S election had not already terminated on Date 7 and Date 11, X's S election would have terminated on Date 12, when Trust 10 became an ineligible shareholder and QSST elections were not made for it.

X represents that its S corporation election termination was inadvertent and was not motivated by tax avoidance or retroactive tax planning. Further, X represents that X and its shareholders agree to make any adjustments required as a condition of obtaining relief under the inadvertent termination rule as provided under § 1362(f) of the Code that may be required by the Secretary.

X also represents that all income has been reported on all affected returns of X and all of its shareholders consistent with the treatment of X as an S corporation, and that neither X nor any of its shareholders intended to terminate its subchapter S election. In addition, X represents that Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 8, Trust 9, and Trust 10, qualify as QSSTs under section 1361(d) and have qualified as QSSTs since Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 8, Trust 9, and Trust 10, acquired their X stock. X represents that other than the inadvertent terminations, X has qualified as a small business corporation at all times since its election on Date 2.

## 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) defines a "small business corporation" as 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 1 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) 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(d)(1) provides 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 the trust is 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)(3) provides that the term “qualified subchapter S trust” means 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 income beneficiary, the trust shall distribute all of its assets to such beneficiary, and (B) all of the income (within the meaning of section 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. A substantially separate and independent share of a trust within the meaning of 663(c) shall be treated as a separate trust for purposes of § 1361(d)(3) and § 1361(c).

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 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 terminated under § 1362(d)(2) or (3) or § 1361(b)(3)(C); (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.

Section 645(a) provides that if both the executor (if any) of an estate and the trustee of a qualified revocable trust elect the treatment provided in this section, such trust shall be treated and taxed as part of such estate (and not as a separate trust) for all taxable years of the estate ending after the date of the decedent’s death and before the applicable date.

Section 645(b) provides that for purposes of § 645(a) the term “applicable date” means (A) if no return of tax imposed by chapter 11 of the Code is required to be filed, the date which is 2 years after the date of the decedent’s death, and (B) if such a return is required to be filed, the date which is 6 months after the date of the final determination of the liability for tax imposed by chapter 11 of the Code.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on Date 7 and that if X's S corporation election had not terminated on Date 7 that X's S corporation election would have terminated on Date 11 and later on Date 12. We further conclude that the terminations of X's S election on Date 7, Date 11, and Date 12 were inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation as of Date 7 and thereafter, provided that X's S corporation election is not otherwise terminated under § 1362(d). This ruling is contingent upon the filing of a QSST election for Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 8, Trust 9, and Trust 10, respectively, within 120 days of the date of this letter. A copy of this letter should be attached to each QSST election.

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 provision of the Code. Specifically, we express or imply no opinion regarding X's eligibility to be an S corporation or whether Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 8, Trust 9, and Trust 10, are otherwise valid QSSTs.

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 representatives.

Sincerely,

Laura C. Fields

Laura C. Fields  
Senior Technician Reviewer, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes