

Internal Revenue Service

Number: **201943015**

Release Date: 10/25/2019

Index Number: 1361.00-00, 1361.03-00,
1361.03-03, 1361.05-00,
1362.00-00, 1362.02-00,
1362.02-02, 1362.04-00

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:01

PLR-112174-19

Date:

July 10, 2019

Legend

X =

Trust =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

State =

Dear :

This letter responds to a letter dated May 17, 2019, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

Facts

According to the information submitted and representations within, X was incorporated on Date 1, under the laws of State. Effective Date 2, X elected to be taxed as an S corporation.

On Date 2, Trust held shares in X. However, a timely election to treat Trust 1 as an Electing Small Business Trust (ESBT) was not made, causing X's S corporation

election to be ineffective.

X represents that Trust, has at all times, met the requirements of an ESBT within the meaning of section 1361(e), except that the trustee of Trust, did not make a timely ESBT election under section 1361(e)(3). X further represents that Trust, has filed its income tax return consistent with being ESBT since Trust acquired its shares in X.

X represents that upon discovering that its S election had terminated, X took corrective action by filing this request for relief. X represents that the circumstances resulting in the inadvertent termination and the failure to make timely ESBT elections was inadvertent and not motivated by tax avoidance or retroactive tax planning. X further represents that X has filed its income tax returns consistent with having a valid S election in effect for all taxable years since X elected to be an S corporation. X represents that other than the failure to make a valid ESBT election on Date 2, X has qualified as a small business corporation at all times since its election on Date 2. Lastly, X and its shareholders agree to make any adjustments required as a condition of obtaining relief under § 1362(f) that may be required by the Secretary.

X also wholly owns Sub1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, and Sub 8. X represents that it intended to elect to treat Sub1 as a QSub effective D3, Sub 2 as a QSub effective D4, Sub 3 as a QSub effective D5, Sub 4 as a QSub effective D6, Sub 5 as a QSub effective D7, Sub 6 as a QSub effective D8, Sub 7 as a QSub effective D9, and Sub 8 as a QSub effective D10. However, X failed to timely file Form 8869, Qualified Subchapter S Subsidiary Election, for Sub1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, and Sub 8. X represents that it has filed its tax returns for all of the relevant tax years consistent with Sub1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, and Sub 8 being QSubs since D3, D4, D5, D6, D7, D8, D9, and D10, respectively, and that X has acted in good faith. Finally, X represents that granting relief will not prejudice the government.

Law and Analysis

Section 1361(a) provides that an S corporation is a small business corporation for which an election under § 1362(a) is in effect.

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 the year.

Section 1361(b)(1) provides that the terms “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 1 class of stock.

Section 1361(c)(2)(A)(i) provides that for purposes of section 1361(b)(1) a trust all of which is treated (under subpart E of part I of subchapter J of this chapter) as owned by an individual who is a citizen or resident of the United States may be an S corporation shareholder.

Section 1361(c)(2)(A)(iii) provides that a trust with respect to stock transferred to it, pursuant to the terms of a will, is a permissible shareholder for the two year period beginning on the day on which the stock is transferred to it.

Section 1361(c)(2)(A)(v) provides that for purposes of § 1361(b)(1)(B), an ESBT is a permissible shareholder.

Section 1361(e) provides that an ESBT 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)(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 all subsequent taxable years of such trust unless revoked with the consent of the Secretary.

Section 1.1361-1(m)(2)(i) provides 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 trustee of an ESBT must file the ESBT election within the time requirements prescribed in § 1.1361-1(j)(6)(iii) for filing a QSST election (generally within the 16-day-and-2-month period beginning on the day that the stock is transferred to the trust).

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

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 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.

Section 1361(b)(3)(A) provides that except as provided in regulations prescribed by the Secretary, for purposes of Title 26, (i) a corporation that is a QSub shall not be treated as a separate corporation, and (ii) all assets, liabilities, and items of income, deduction, and credit of a QSub shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

Section 1361(b)(3)(B) defines the term “qualified subchapter S subsidiary” as a domestic corporation that is not an ineligible corporation (as defined in § 1361(b)(2)), if 100 percent of the stock of the corporation is held by an S corporation, and the S corporation elects to treat the corporation as a QSub.

Section 1.1361-3(a) of the Income Tax Regulations provides the time and manner of making a QSub election. A taxpayer makes a QSub election for a subsidiary by filing Form 8869 with the appropriate service center.

Section 1.1361-3(a)(4) provides that a QSub election cannot be effective more than two months and 15 days prior to the date of filing.

Section 1.1361-3(a)(6) provides that an extension of time to make a QSub election may be available under §§ 301.9100-1 and 301.9100-3.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code (Code) except subtitles E, G, H, and I. Section 301.9100-1(b) provides that the term “regulatory election” includes an election whose due date is prescribed by a regulation published in the Federal Register.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section

301.9100-3 provides extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Conclusion

Based solely on the facts submitted and the representations made, we conclude that the failure of Trust to make an ESBT election effective Date 2 caused X's S corporation election to be ineffective within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation beginning on and after Date 2, unless X's S corporation election is otherwise terminated under § 1362(d).

This letter ruling is subject to the condition that within 120 days from the date of this letter, an election to treat Trust as an ESBT effective Date 2 must be made with the appropriate service center. A copy of this letter should be attached to the ESBT election. If this condition is not met, then this ruling is null and void. Furthermore, if this condition is not met, X must send notification that its S election has terminated to the service center with which X's S election was filed.

We also conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, X is granted an extension of time of 120 days from the date of this letter to elect to treat Sub1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, and Sub 8 as QSubs, effective D3, D4, D5, D6, D7, D8, D9, and D10, respectively. The elections should be made by filing Forms 8869 with the appropriate service center, with a copy of this letter attached.

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 was or is otherwise eligible to be an ESBT. We also express or imply no opinion concerning whether Sub1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, and Sub 8 are eligible to be QSubs.

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 the appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification and examination.

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.

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

Sincerely,

Holly Porter
Associate Chief Counsel
(Passthroughs and Special Industries)

By: Laura Fields
Laura Fields
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

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

cc: