

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:B3

PLR-126652-14

Date:

December 18, 2014

LEGEND

Company =

Trust 1 =

Trust 2 =

A =

B =

State =

Date 1 =

Date 2 =

m =

Dear :

This letter responds to a letter dated June 25, 2014, submitted on behalf of Company, requesting a ruling under § 1362(f) of the Internal Revenue Code.

FACTS

According to the information submitted, Company was incorporated under the laws of State on Date 1, and elected to be an S corporation effective Date 1. On Date 2, m shares of Company stock were transferred to Trust 1, and m shares of Company stock were transferred to Trust 2. Company represents that since Date 2, Trust 1 and Trust 2 have met the definition of a “qualified subchapter S trust” (QSST) under § 1361(d)(3). However, the sole income beneficiary of Trust 1, A, and the sole income beneficiary of Trust 2, B, did not make a timely QSST election under § 1361(d)(2). Therefore, Trust 1 and Trust 2 were not permissible shareholders on Date 2 and thereafter. As a result, Company’s S corporation election terminated on Date 2.

Company represents that there was no intent to terminate Company’s S corporation election and that the termination was inadvertent and not motivated by tax avoidance or retroactive tax planning. Company and its shareholders have treated Company as an S corporation since Date 2. In addition, Company and its shareholders agree to make any adjustments consistent with the treatment of Company as an S corporation as may be required by the Secretary.

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)(B) provides that, for purposes of subchapter S, the term “small business corporation” means a domestic corporation which is not an ineligible corporation and which does not 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, for the purposes of § 1362(b)(1)(B), 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 an S corporation shareholder.

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), (A) such trust will be treated as a trust described in § 1361(c)(2)(A)(i), and (B) 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 (or his legal representative) 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 the trust must make the election under § 1361(d)(2) by signing and filing with the service center with which the corporation files its income tax return the applicable form or statement including the information listed in § 1361-1(j)(6)(ii).

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, 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 that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3), or (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 such 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 facts submitted and representations made, we conclude that Company's S corporation election terminated on Date 2 because A and B failed to make a QSST election under § 1361(d)(2) for Trust 1 and Trust 2 respectively. We also conclude that the termination of Company's S corporation election was inadvertent within the meaning of § 1362(f).

Accordingly, under § 1362(f), Company will be treated as continuing to be an S corporation from Date 2 and thereafter, provided that Company's S corporation election was valid and was not otherwise terminated under § 1362(d), and provided that A and B file an election under § 1361(d)(2)(A) for Trust 1 and Trust 2 with an effective date of Date 2 with the appropriate service center within 120 days from the date of this letter. A copy of this letter should be attached to the election under § 1361(d)(2)(A).

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced

in this letter. Specifically, we express or imply no opinion as to whether Trust 1 and Trust 2 are otherwise eligible to be QSSTs or whether Company is otherwise eligible to be an S corporation for federal tax purposes.

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.

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.

Sincerely,

Richard T. Probst
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: