

## Internal Revenue Service

Number: **201328010**

Release Date: 7/12/2013

Index Number: 1362.04-00, 1362.02-03

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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Refer Reply To:

CC:PSI:B01

PLR-132960-12

Date:

January 25, 2013

### LEGEND

X =

A =

B =

Trust =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

State =

Dear :

This responds to a letter dated July 23, 2012, submitted on behalf of X by X's authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

## FACTS

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

On Date 2, A, a shareholder of X, died. Pursuant to A's will, A's X shares were transferred to Trust on Date 3. Trust was an eligible shareholder of X until Date 4.

As of Date 4, Trust was intended to be treated as a qualified subchapter S trust (QSST) however, B, the beneficiary of Trust, did not file a timely election to treat Trust as a QSST, therefore causing X's S corporation election to terminate as of Date 4.

X represents that Trust qualified as a QSST under § 1361(d) as of Date 4 and thereafter. X further represents that the circumstances resulting in the failure to file a QSST election for Trust was inadvertent and was not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make such adjustments (consistent with the treatment of X as an S corporation) as may be required by the Secretary.

## 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.

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 a S corporation with respect to which the election under § 1361(d)(2) is made.

Section 1361(c)(2)(A)(iii) provides that a trust with respect to stock transferred to it pursuant to a will, but only for the 2-year period beginning on the day on which such is

transferred to it.

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.

## CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on Date 4 as a result of the failure to make a timely QSST election for Trust. We further conclude that the termination of X's S election on Date 4 was 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 4 and thereafter, provided that B files a QSST election for Trust with an effective date of Date 4 with the appropriate service center within 120 days from the date of this letter, and X's S corporation election is not otherwise terminated under § 1362(d). A copy of this letter must be attached to the QSST election.

Accordingly, X's shareholders, in determining their respective income tax liabilities, must include their pro rata share of the separately and non-separately computed items of X as provided in § 1366, make any adjustments to stock basis as provided in § 1367, and take into account distributions made by X as of provided by § 1368.

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. Further, no opinion is expressed or implied concerning whether Trust meets the requirements of a QSST under § 1361(d)(3).

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 your authorized representative.

Sincerely,

*Faith Colson*

Faith Colson

Senior Counsel, 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

cc: