

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-121900-18

Date:

May 06, 2019

LEGEND

X =

Y =

A =

Trust =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Years =

State =

a =

Dear _____ :

This responds to a letter dated July 11, 2018, submitted on behalf of X by X's authorized representative, requesting relief under section 1362(f) of the Internal Revenue Code.

FACTS

According to the information submitted, X was incorporated on Date1 under the laws of State. Effective Date2, X elected to be taxed as an S corporation. Y, a wholly owned subsidiary of X, became a Qualified Subchapter S Subsidiary (QSub) of X on Date2.

A owned shares in X and was an eligible shareholder until A's death on Date3. On Date4, A's shares in X were transferred to Trust. Trust was an eligible shareholder of X until Date5. The trustees of Trust failed to make a timely Electing Small Business Trust (ESBT) election effective Date5, thereby causing X's S corporation election to terminate. As a result of X's S corporation election terminating, Y's QSub election also terminated on Date5.

X represents that, except for the failure to file a timely ESBT election for Trust, Trust has qualified as an ESBT since Date5. X represents that Trust has not filed its tax returns consistent with being an ESBT.

X represents that since Date5, it has filed its federal income tax returns consistent with it being an S corporation and consistent with Y being a QSub. X further represents that the termination of its S corporation election, and in turn its QSub election, as well as the failure to file a timely ESBT election for Trust, were inadvertent and were not motivated by tax avoidance or retroactive tax planning.

Lastly, X represents that X and its shareholders will make any adjustments required as a condition to obtaining relief under the inadvertent termination rule of § 1362(f) that 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) 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)(iii) provides that, for purposes of § 1362(b)(1)(B), a trust may be an S corporation shareholder with respect to stock transferred to it pursuant to the terms of a will, but only for the 2-year period beginning on the day on which such stock is transferred to it.

Section 1361(c)(2)(A)(v) provides that, for purposes of § 1362(b)(1)(B), an ESBT may be an S corporation shareholder.

Section 1361(e)(1)(A) 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)(2), (3), (4), or (5), or (IV) 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)(1)(B) provides that an ESBT does not include (i) any qualified subchapter S trust (as defined in § 1361(d)(3)) if an election under § 1361(d)(2) applies to any corporation the stock of which is held by such trust, (ii) any trust exempt from tax under subtitle A, and (iii) any charitable remainder annuity trust or charitable remainder unitrust (as defined in § 664(d)).

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) of the Income Tax Regulations 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 1361(b)(3)(A) generally provides that a QSub shall not be treated as a separate corporation and 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 a QSub as a domestic corporation which is not an ineligible corporation, if 100 percent of the stock of the corporation is owned by the S corporation, and the S corporation elects to treat the corporation as a QSub.

Section 1362(f) provides, in relevant part, that if (1) an election under § 1362(a) or § 1361(b)(3)(B) by any corporation was terminated under § 1362(d)(2) 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 or a QSub, as the case may be) 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, or a QSub, as the case may be, 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 Date5 as a result of the failure to make a timely ESBT election for Trust. We further conclude that Y's QSub election terminated on Date5. Lastly, we conclude that the termination of X's S election on Date5, and the corresponding termination of Y's QSub election, 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 Date5, and Y will continue to be treated as a QSub as of Date5, and thereafter, provided X's S election does not otherwise terminate, and Y otherwise is eligible to be treated as a QSub, provided that the following conditions are met. No later than 120 days from the date of this letter: (1) As an adjustment under § 1362(f)(4), a payment of \$a and a copy of this letter must be sent to the following address: Internal Revenue Service, Kansas City Service Center, 333 W. Pershing Road, Kansas City, Mo 64108, Stop 7777, Manual Deposit; (2) X and its shareholders must amend (or file) all relevant tax returns for Years consistent with the relief granted in this letter; and (3) the trustee of Trust must file an ESBT election for Trust effective Date5 with the appropriate service center. A copy of this letter should be attached to the ESBT election. If these conditions are not met, then this ruling is null and void. Furthermore, if these conditions are not met, X must send notification that its S election has terminated to the service center with which X's S election was filed.

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 an ESBT or whether Y is eligible to be a QSub.

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 the power of attorney on file with this office, a copy of this letter is being sent to the taxpayer's authorized representatives.

Sincerely,

Joyce C. Spies

Joyce C. Spies
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

cc: