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February 16, 2012

LEGEND

A =

B =

Company =

State =

Trust =

Dear :

This responds to your letter dated November 23, 2011, submitted on behalf of A, requesting rulings under §§ 671 and 1361 of the Internal Revenue Code.

Facts

A and B (hereinafter referred to as the “Settlor” or “Settlers” as the case may be), each a resident of State, intend to create Voting Trust, a valid voting trust under the laws of State. Under the Voting Trust Agreement (“VTA”), A is the trustee of the Voting Trust. Company represents that it is taxable as an S corporation for Federal income tax purposes.

Article I of the VTA provides that, in exchange for Voting Trust Certificates (“Certificates”), each participating shareholder (sometimes hereinafter referred to as a “beneficial owner”) shall deposit with the trustee the share certificates evidencing all of the Company shares currently owned by such shareholder. The Voting Trust will have a single class of Certificates.

Section A.1. of Article VIII of the VTA provides that, except as otherwise provided in the VTA, the trustee shall possess all rights and powers of absolute ownership of the Company shares contributed to the trust, including the right to vote with respect to the shares held by the trust for every purpose and with respect to any proposal presented for the consideration of Company shareholders.

Section A.2. of Article VIII of the VTA provides that, notwithstanding the provisions of Section A.1 of Article VIII, no trustee who has transferred in his or her individual capacity Company shares or a Certificate corresponding to Company shares to any holder of Certificates (other than to the spouse of such trustee) in a transaction which was not a bona fide sale for adequate and full consideration within the meaning of § 2036(a)(1) of the Internal Revenue Code of 1986, as amended (the “Code”), shall be empowered to vote such Company shares.

Article III of the VTA requires that all distributions with respect to the Company shares held in the Voting Trust promptly be paid to the beneficial owners of such shares.

Section A of Article V of the VTA provides that the trust shall terminate upon the earliest to occur of: (1) the date that is 10 years after the date of the VTA, or, if the VTA has been renewed for one or more 10-year terms in accordance with the provisions of the VTA, upon such expiration date as the holders of Certificates may agree upon in writing, (2) the redemption or purchase by Company of all Company shares, (3) subject to the written agreement of the trustee, upon the effectiveness of (i) a sale or transfer of Company shares or Certificates representing in the aggregate in excess of two-thirds of the voting power of Company, or (ii) a merger in which Company is the surviving entity and the shareholders of Company prior to such merger do not retain at least one-third of the voting power of Company following the merger, and (4) as soon as practicable, but no later than thirty days following the distribution to the trustee of the proceeds from (i) a merger of Company with or into another entity where Company is not the surviving entity, (ii) a consolidation of Company with or into another entity where the shareholders of Company prior to such consolidation do not retain at least one-third of the voting power of Company or (iii) a liquidation of Company following a sale of substantially all of the assets of Company (the transactions described in (i), (ii) and (iii) of clause (4) are collectively hereinafter referred to as a “Sale of Company”) and (5) the written agreement of the trustee and a majority interest of the holders of Certificates to terminate the VTA.

Section B of Article V of the VTA requires title and possession of the Company shares held in the trust to be delivered to the beneficial owners upon a termination of the VTA, other than a termination in connection with a Sale of Company. Thus, in the case of a sale of Company stock described in Section A(3) of Article V, the Company shares will be distributed to the Certificate holders in connection with such a sale.

Section E of Article VIII of the VTA provides that the trustee may not (1) sell, assign, pledge, encumber, transfer or otherwise dispose of Company shares, except in connection with a Sale of Company (or as provided in Section B of Article V of the VTA) or (2) hold any property other than Company shares, except in connection with a Sale of Company, or in accordance with a final order of any court having jurisdiction over the administration of the trust. Section E further provides that the trustee may not reinvest any proceeds of a Sale of Company, and instead shall distribute any such proceeds to the holders of Certificate holders in accordance with Section F of Article VIII of the VTA.

Section F of Article VIII of the VTA provides that, in connection with a Sale of Company, the trustee shall distribute the sale proceeds to the holders of Certificates promptly after they surrender their Certificates to the trustee.

Under the estate planning documents of the A and B, Certificates owned by the decedent will pass outright or to one of their descendants or to one or more trusts for the benefit of their descendants that are permitted S corporation shareholders.

### Law

Section 1361(b)(1)(B) of the Code provides, in pertinent part, that individuals, estates, and trusts described in Section 1361(c)(2) of the Code are permitted S corporation shareholders.

Section 1361(c)(2)(A)(iv) of the Code provides that a trust created primarily to exercise the voting power of stock transferred to it is a permitted S corporation shareholder.

Section 1361(c)(2)(B)(iv) of the Code provides that each beneficiary of a voting trust shall be treated as a shareholder of an S corporation of which such voting trust is a shareholder.

Section 1.1361-1(h)(1)(v) of the Income Tax Regulations provides that a voting trust is a permitted S corporation shareholder (a "qualified voting trust") if the trust (i) was created primarily to exercise the voting power of the property transferred to it, (ii) the beneficial owners are treated as the owners of their respective portions of the trust under Subpart E (i.e., it is a wholly-grantor trust), and (iii) was created pursuant to a written trust agreement entered into by the shareholders that (A) delegates to one or more trustees the right to vote, (B) requires all distributions with respect to the stock of the corporation held by the trust to be paid to, or on behalf of, the beneficial owners of that stock, (C)

requires title and possession of that stock to be delivered to those beneficial owners upon the termination of the trust, and (D) terminates, under its terms or by state law, on or before a specific date or event.

Section 301.7701-4(c) provides that an “investment trust” will be classified as a trust if (i) there is no power under the trust agreement to vary the investment of the certificate holders, and (ii) such trust either (a) has a single class of ownership interests representing undivided beneficial interests in the assets of the trust, or (b) has multiple classes of ownership interests if the trust is formed to facilitate direct investment in the assets of the trust and the existence of multiple classes of ownership interests is incidental to that purpose.

Section 671 provides that where it is specified in subpart E of Part I of subchapter J that the grantor or another person shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account under chapter 1 in computing taxable income or credits against the tax of an individual.

Section 677(a) of the Code provides that the grantor of a trust shall be treated as the owner of any portion of a trust whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be (1) distributed to the grantor or the grantor’s spouse, (2) held or accumulated for future distribution to the grantor or the grantor’s spouse, or (3) applied to the payment of premiums on certain policies of insurance on the life of the grantor or the grantor’s spouse (i.e., such portion of the trust will be a “grantor trust” with respect to such grantor).

Section 1.671-2(e)(3) provides that a “grantor” (for purposes of Subpart E) includes “any person” who acquires an interest in a trust from a grantor of the trust if the interest acquired is (among other types of qualifying interests) an interest in an “investment trust” described in § 301.7701-4(c). Section 7701(a)(1) of the Code defines “person” to include an individual, trust, estate, partnership, or corporation.

Section 1.641(b)-3(a) provides that income received by an estate is considered to be the income of the estate only for so long as the period actually required by the administrator or executor to perform the ordinary duties of administration, and that an estate is considered terminated for U.S. federal income tax purposes after the expiration of such period.

Rulings

We rule as follows:

1. During the lives of A and B and after their deaths, Voting Trust will be classified as an “investment trust” under § 301.7701-4(c) for U.S. federal income tax purposes.
2. During the lives of A and B (assuming they are the only holders of the Certificates during their lives), Voting Trust will be considered a qualified voting trust under § 1361(c)(2)(A)(iv) and § 1.1361-1(h)(1)(v). Accordingly, Voting Trust will be a permitted S corporation shareholder. If, during their lives, A or B transfer all or a portion of their Certificates to a transferee that is a permitted S corporation shareholder, the transferee will be treated as a successor grantor of the Voting Trust. Therefore, (i) Voting Trust will continue to be a voting trust described in § 1361(c)(2)(A)(iv) and a permitted S corporation shareholder, and (ii) the Certificate holders will include in their gross income and report their proportionate share of the S corporation income that is allocated to the Company shares held by the Voting Trust.
3. After the death of A or B, when the executor of their respective Wills (the “Executor”) holds the Certificates held by A or B, as applicable, prior to their deaths, A’s and B’s respective estates (if the period during which such estates hold the Certificates does not exceed the period actually required to fully administer the estates as described in § 1.641(b)-3(a)) will be treated as successor grantors of the Voting Trust. After the Executor distributes the Certificates held by A or B in accordance with the terms and provisions of their estate planning documents, as applicable, such transferees of the Certificates will be treated as successor grantors of their portions of the Voting Trust. Therefore, (i) Trust will continue to be a voting trust described in § 1361(c)(2)(A)(iv) and a permitted S corporation shareholder, and (ii) the Certificate holders will include in their gross income and report their proportionate share of the S corporation income that is allocated to the Company shares held by the Voting Trust.

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 an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed as to whether Company’s S corporation election was valid and provided that the election was not otherwise terminated under § 1361(d).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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 ruling will be sent to the taxpayer's representative.

Sincerely,

Bradford R. Poston  
Senior Counsel, Branch 2  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

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