Internal Revenue Service

Number: **201436007**
Release Date: 9/5/2014
Index Number: 1361.03-03

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:B2
PLR-122965-13
Date:
April 22, 2014

Legend

X =

Trust 1 =

Trust 2 =

D1 =

Dear :

This responds to the letter dated May 3, 2013, and subsequent correspondence submitted on behalf of X by X's authorized representative, requesting a ruling under § 1361(e) of the Internal Revenue Code.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

The information submitted states that X created Trust 1 on D1. TRUST 1 is a grantor trust wholly owned by X. X proposes to create Trust 2 which will be a grantor trust wholly owned by X. X proposes to contribute S corporation stock to TRUST 2 and sell the TRUST 2 remainder interest to TRUST 1. TRUST 2 will elect to be an electing small business trust (ESBT) under 1361(e) upon creation.

X requests a ruling that the sale of the TRUST 2 remainder interest to TRUST 1 will not disqualify TRUST 2 from being an ESBT under § 1361(e) during the period when TRUST 1 is a grantor trust as to X because the sale of the remainder interest is not a purchase within the meaning of § 1361(e). X requests an additional ruling that TRUST 2 will not cease to be or fail to qualify as an ESBT after any termination of TRUST 1's grantor trust status because TRUST 1's acquisition of the remainder is not a purchase within the meaning of § 1361(e).

Section 1361(e)(1)(A)(ii) requires that an ESBT must have no interest in the trust acquired by purchase.

Section 1.1361-1(m)(1)(iii) provides that a trust does not qualify as an ESBT if any interest in the trust has been acquired by purchase.

Section 1361(e)(1)(C) provides that the term "purchase" means any acquisition if the basis of the property acquired is determined under § 1012.

Section 1.1361-1(m)(1)(iii) provides that if any portion of the basis in the acquired interest in the trust is determined under § 1012, such interest has been acquired by purchase.

Rev. Rul. 85-13, 1985-1 C.B. 184, concludes that a grantor's purchase of the corpus of his grantor trust is not a sale because the grantor is considered to own the assets before and after the sale.

Section 1012(a) provides that the basis of property shall be the cost of such property, except as otherwise provided in this subchapter and subchapters C (relating to corporate distributions and adjustments), K (related to partners and partnerships, and P (relating to capital gains and losses).

Section 1015(a) provides that the basis of property acquired by gift after December 31, 1920, shall be the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift, except that if such basis (adjusted for the period before the date of the gift as provided in § 1016) is greater than the fair market value of the property at the time of the gift, then for the purpose of determining loss the basis shall be such fair market value.

Section 1015(b) provides that property acquired after December 31, 1920, by a transfer in trust (other than by a transfer in trust by a gift, bequest, or devise), the basis shall be the same as it would be in the hands of the grantor increased in the amount of gain or decreased in the amount of loss recognized to the grantor on such transfer under the law applicable to the year in which the transfer was made.

Based solely on the facts and the representations submitted, we conclude that the sale of the TRUST 2 remainder interest to TRUST 1 will not disqualify TRUST 2 from being an ESBT under § 1361(e) during the period when TRUST 1 is a grantor trust as to X because the sale of the remainder interest is not a purchase within the meaning of § 1361(e). The sale of the remainder interest is not a purchase within the meaning of 1361(e) because the sale is not governed by § 1012(a). However, to the extent that the sale is treated as a gift, the sale will be covered by § 1015(a). In addition, we conclude that TRUST 2 will not cease to be or fail to qualify as an ESBT after the termination of TRUST 1's grantor trust status because TRUST 1's acquisition of the remainder is not a purchase within the meaning of § 1361(e).

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code, including whether the S corporation issuing the stock transferred to TRUST 2 was or is a small business corporation under § 1361(b). Specifically, we express no opinion regarding the identity of the transferor of the remainder interest in the S corporation stock to TRUST 2 for purposes of §§ 2511 and 2652 or the tax consequences of that transfer. In addition, we express no opinion on whether the S corporation stock will be includible in the gross estate of any transferor under § 2036 or any other provision of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
(Passthroughs & Special Industries)

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

cc: