

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

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Date:
January 12, 2016

Legend

X =

B =

Trust =

Date 1 =

Date 2 =

Date 3 =

State =

Dear :

This responds to a letter dated July 7, 2015, and subsequent correspondence, submitted on X's behalf by X's authorized representative, requesting relief under § 1362(f) of the Internal Revenue Code.

FACTS

According to the information submitted, X was formed under the laws of State and X elected to be treated as an S corporation effective Date 1. Trust was a shareholder of X as of Date 2. B is deceased as of Date 3.

Trust was intended to be 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, Trust was not a permissible shareholder and X's S corporation election terminated on Date 2.

The estate of B represents that since Date 2, B reported the income, gain, and loss allocated to Trust by reason of ownership of X stock. X represents that Trust qualified as a QSST under section 1361(d) from Date 2. 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) 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 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 a QSST whose beneficiary makes an election under § 1361(d)(2) will be treated as a trust described in § 1361(c)(2)(A)(i), and the QSST's beneficiary will be treated as the owner (for purposes of section 678(a)) of that portion of the trust which consists of stock in an S corporation with respect to which the election under § 1361(d)(2) applies. Under § 1361(d)(2)(A), a beneficiary of a QSST may elect to have § 1361(d) apply. Section 1.1361-1(j)(6)(iii) provides that, if S corporation stock is transferred to a trust, the QSST election must be made within the 16-day-and-2-month period beginning on the day that the stock is transferred to the trust.

Section 1361(d)(3)(A) defines a QSST as a trust the terms of which require that:

- (i) during the life of the current income beneficiary, there shall be only one income

beneficiary of the trust; (ii) any corpus distributed during the life of the current income beneficiary may be distributed only to that beneficiary; (iii) the income interest of the current income beneficiary in the trust shall terminate on the earlier of the beneficiary's death or the termination of the trust; and (iv) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to the beneficiary. Section 1361(d)(3)(B) further defines a QSST as a trust all of the income of which is distributed (or required to be distributed) currently to one individual who is a citizen or resident of the United States.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3), (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 the representations made, we conclude that X's S corporation election was terminated on Date 2 because the beneficiary of Trust failed to make a timely QSST election. We further conclude that the termination of X's S corporation election was inadvertent within the meaning of § 1362(f). Therefore, X will be treated as continuing to be an S corporation on and after Date 2, provided that X's S corporation election was otherwise valid and was not otherwise terminated under § 1362(d).

This ruling is contingent on the beneficiary of Trust (or the beneficiary's representative) filing a QSST election for Trust effective Date 2, with the appropriate service center within 120 days of the date of this letter. A copy of this letter should be attached to the elections.

Accordingly, X's shareholders, in determining their respective income tax liabilities, must include their pro rata share of the separately stated and nonseparately 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 provided by § 1368.

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 or implied on whether X was or is otherwise eligible to be treated as an S corporation or whether Trust meets the requirements of a QSST.

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 your authorized representative.

Sincerely,

Laura C. Fields

Laura C. Fields
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
Passthroughs and Special Industries

Enclosures (2)

Copy of this letter

Copy of this letter for § 6110 purposes

cc: