

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PT&E:B3

PLR-113169-24

Date:

January 21, 2025

LEGEND

X =

Date 1 =

Date 2 =

Date 3 =

State =

Trust =

Dear :

This responds to a letter dated June 7, 2024 on behalf of X by X's authorized representatives, requesting relief under § 1362(f) of the Internal Revenue Code.

FACTS

The information submitted states that X was incorporated under the laws of State on Date 1. X elected to be treated as an S corporation effective Date 3. Trust was treated for federal tax purposes as the owner of shares of X as of Date 3. On Date 2, Trust was also treated as a shareholder of another corporation that made an S corporation election effective Date 2. However, the trustee of Trust failed to make an Electing Small Business Trust (ESBT) election effective Date 2.

X represents that Trust was eligible to make an election to be treated as an ESBT under § 1361(e)(3) effective Date 2. However, because the trustee of Trust failed to make the ESBT election effective Date 2, Trust became an ineligible shareholder of X on Date 3. The failure to make the ESBT election caused X's S corporation election to be ineffective on Date 3.

X represents that it filed income tax returns consistent with having an S corporation election for all taxable years since Date 3. Further, X represents that Trust met the requirements of an ESBT within the meaning of § 1361(e) for all taxable years since Date 2, except that the trustee of Trust did not make a timely ESBT election under § 1361(e)(3).

X represents that the failure to file the ESBT election was inadvertent and not motivated by tax avoidance or retroactive tax planning. X and all its shareholders agree to make any adjustments required by the Secretary as a condition of obtaining relief for an ineffective election under § 1362(f).

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)(v) provides that, for purposes of § 1361(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)(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) provides, in relevant part, that the trustee of the trust 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). Generally, only one ESBT election is made for the trust, regardless of the number of S corporations whose stock is held by the ESBT. However, if the ESBT holds stock in multiple S corporations that file in different service centers, the ESBT election must be filed with all the relevant service centers where the corporations file their income tax returns. This requirement applies only at the time of the initial ESBT election; if the ESBT later acquires stock in an S corporation which files its income tax return at a different service center, a new ESBT election is not required.

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 1362(d)(2) provides that an S corporation election will be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) provides, in relevant part, that if (1) an election under § 1362(a) by any corporation was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or was terminated under § 1362(d)(2) or (3); (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken so that the corporation for which the election was made or termination occurred is a small business corporation; and (4) the corporation for which the election was made or 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 ineffectiveness or 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 representations made, we conclude that X's S corporation election was ineffective because the trustee of Trust failed to timely file an ESBT election under § 1361(e)(3) effective Date 2. We further conclude that the ineffectiveness of X's S corporation election was inadvertent within the meaning of § 1362(f). Accordingly, X will be treated as an S corporation from Date 3 and thereafter,

provided X's S corporation election is otherwise valid and has not otherwise terminated under § 1362(d) for reasons not addressed in this letter.

This ruling is contingent on the trustee of Trust filing an ESBT election for Trust effective Date 2 with the appropriate service center within 120 days from the date of this letter and attaching a copy of this letter to the ESBT election.

Except as specifically ruled above, we express or imply no opinion concerning the federal tax consequences of the facts discussed or referenced in this letter under any other provision of the Code. Specifically, we express or imply no opinion on X's eligibility to be an S corporation or Trust's eligibility to be an ESBT.

The ruling contained in this letter is based on 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 ruling request, it is subject to verification on examination.

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 a power of attorney on file with this office, we are sending a copy of this letter to X's authorized representatives.

Sincerely,

Robert D. Alinsky
Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs, Trust, and Estates)

Enclosure:

Copy of this letter for § 6110 purposes

cc: