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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:

CC:PT&E:B01

PLR-122229-24

Date:

May 28, 2025

LEGEND

X =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Trust 5 =

Trust 6 =

Trust 7 =

Trust 8 =

Trust 9 =

Trust 10 =

Trust 11 =

Trust 12 =

Trust 13 =

Trust 14 =

State =

Date 1 =

Date 2 =

Date 3 =

Year =

Dear :

This letter responds to a letter dated December 10, 2024, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

FACTS

The information submitted states that X was incorporated under the laws of State in Year. X filed an election to be treated as an S corporation effective Date 1. In addition, X filed elections to treat each of Sub 1, Sub 2, Sub 3, and Sub 4 as a Qualified Subchapter S Subsidiary ("QSub") effective Date 1.

Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, Trust 8, Trust 9, Trust 10, Trust 11, and Trust 12 (collectively "Trusts 1-12") held shares of X stock on Date 1. X represents that Trusts 1-12 each met the requirements of an Electing Small Business Trust (ESBT) within the meaning of § 1361(e)(1)(A), except that the trustees of each of Trusts 1-12 failed to file elections under § 1361(e)(3) for each respective trust to be an ESBT effective Date 1. Consequently, Trusts 1-12 were ineligible shareholders of X and X's S corporation election and X's QSub elections for Sub 1, Sub 2, Sub 3, and Sub 4 were all ineffective.

Furthermore, on Date 2, Trust 13 acquired shares of X stock and, on Date 3, Trust 14 acquired shares of X stock. X represents that Trust 13 and Trust 14 met the requirements to be ESBTs within the meaning of § 1361(e)(1)(A), except that the trustees of Trust 13 and Trust 14 failed to file elections under § 1361(e)(3) for the trusts to be treated as ESBTs effective Date 2 and Date 3, respectively. Consequently, Trust 13 and Trust 14 were ineligible shareholders of X and X's S corporation status and X's QSub elections for Sub 1, Sub 2, Sub 3, and Sub 4 would have terminated on Date 2 or Date 3, had the elections not been ineffective on Date 1.

X represents that it intended to make a valid S corporation election effective Date 1 and that the ineffectiveness of the election was inadvertent and not motivated by tax avoidance or retroactive tax planning. X further represents that the circumstances that would have resulted in the termination of X's S corporation election had X's S corporation been effective were not motivated by tax avoidance or retroactive tax planning considerations. X additionally represents that for each taxable year since X elected to be an S corporation, X and its shareholders have filed their federal income tax returns consistent with having a valid S corporation election in effect for X. In particular, X represents that Trusts 1-12, Trust 13, and Trust 14 have filed federal income tax returns consistent with having a valid ESBT elections in effect during all relevant taxable years. Further, X and its shareholders have agreed to make any adjustments consistent with the treatment of X as an S corporation or Sub 1, Sub 2, Sub 2, and Sub 4 as QSubs as may be required by the Secretary with respect to the period specified by § 1362(f).

LAW

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(b)(3)(A) provides that, except as provided in regulations prescribed by the Secretary and for purposes of the Code, a corporation which is 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) provides that the term “QSub” means any domestic corporation which is not an ineligible corporation (as defined in § 1361(b)(2)), if (i) 100 percent of the stock of such corporation is held by the S corporation, and (ii) the S corporation elects to treat such corporation as a QSub.

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) of the Income Tax Regulations 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 1.1361-3(a)(1) provides that the corporation for which a QSub election is made must meet all the requirements of § 1361(b)(3)(B) at the time the election is made and for all periods for which the election is to be effective.

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

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) or § 1361(b)(2)(B)(ii) 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) or § 1361(b)(3)(C); (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 or QSub, as the case may be; 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 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 ineffectiveness or termination, such corporation shall be treated as an S corporation or 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 was ineffective on Date 1 as a result of the failure to make timely ESBT elections for Trusts 1-12. We also conclude that had X's S corporation election been effective, X's election would have subsequently terminated on Date 2 when Trust 13 became a shareholder and Date 3 when Trust 14 became a shareholder. We further conclude that X's QSub elections for Sub 1, Sub 2, Sub 3, and Sub 4 were ineffective on Date 1 and would have subsequently terminated on Date 2 and Date 3 because of the ineffectiveness and terminations of X's election to be an S corporation.

We conclude that the circumstances resulting in the ineffectiveness of X's S corporation election and corresponding ineffectiveness of X's QSub elections for Sub 1, Sub 2, Sub 3, and Sub 4 were inadvertent within the meaning of § 1362(f). We further conclude that the circumstances surrounding the subsequent terminations of X's S corporation election and the QSub elections for Sub 1, Sub 2, Sub 3, and Sub 4 had X's S corporation election been effective were inadvertent within the meaning of § 1362(f).

Pursuant to the provisions of § 1362(f), X will be treated as an S corporation from Date 1 and thereafter, and Sub 1, Sub 2, Sub 3, and Sub 4 will be treated as QSubs from Date 1 and thereafter, provided X's S corporation election was otherwise valid and has not otherwise terminated under § 1362(d) and Sub 1, Sub 2, Sub 3, and Sub 4 were otherwise eligible to be treated as QSubs, and provided the following conditions are met. No later than 120 days from the date of this letter: (1) the trustees of Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, Trust 8, Trust 9, Trust 10, and Trust 11 filing an ESBT election for each of Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, Trust 8, Trust 9, Trust 10, and Trust 11 effective Date 1, (2) the trustee of Trust 13 filing an ESBT election for Trust 13 effective Date 2, and (3) the trustee of Trust 14 filing an ESBT election for Trust 14 effective Date 3. The elections must be made with the appropriate service center and a copy of this letter should be attached to each ESBT election.

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion regarding (i) X's eligibility to be an S corporation, (ii) whether Trusts 1-12, Trust 13, or Trust 14 are eligible to be ESBTs, or (iii) whether Sub 1, Sub 2, Sub 3, or Sub 4 are eligible to be QSubs.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers 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 requested rulings, it is subject to verification on examination.

These rulings are directed only to the taxpayers requesting them. Section 6110(k)(3) of the Code provides that they 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 Taxpayers' authorized representative.

PLR-122229-24

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Sincerely,

Caroline E. Hay
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs, Trusts, and Estates)

Enclosure (1)
Copy for § 6110 purposes

cc: