Internal Revenue Service

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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:02
PLR-148314-13

Date:
April 01, 2014

Legend

X =

Trust1 =

Trust2 =

Trust3 =

State =

A =

B =

C =

D =

E =

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Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Date6 =

Date7 =

Date8 =

Date9 =

Date10 =

Date11 =

Date12 =

Year1 =

Year2 =

n =

Dear :

This responds to a letter dated October 31, 2013, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting a ruling under §1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated under the laws of State on Date1. X elected to be an S corporation effective Date2. Among X's shareholders are three trusts, Trust1, Trust2 and Trust3. X represents that all of its individual shareholders, as well as the trust beneficiaries of Trust1, Trust2 and Trust3, are U.S. citizens, and that Trust1, Trust2 and Trust3 are domestic trusts.

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On Date3, A established Trust1 as a revocable trust for his benefit and, at his death, for the benefit of his children, B, C and D. Trust1 became irrevocable upon A's death on Date6. Pursuant to the Date5 restatement of the trust agreement for Trust1, separate trust shares were created for the respective benefit of A's three children, B, C and D. Trust1 owned stock of X at the time of A's death. No additional stock of X had been added to Trust1 since A's death. In addition, no X stock had been allocated to D's separate share of Trust1. X represents that the separate shares of Trust1 for the benefit of B and C meet the requirements as Qualified Subchapter S Trusts (QSSTs), except that no QSST elections had been timely filed on behalf of the separate shares of Trust1 for the benefit of B and C by Date7 (the due date for the election, taking into account both § 1361(c)(2)(A)(ii) and § 1361(d)(2)(D)) under § 1361(d)(2).

On Date4, A established Trust2 as an irrevocable trust for the benefit of B and C. The trust agreement for Trust2 named B and C as the trustees for their respective separate shares of Trust2. Also on Date4, A gifted shares of X to each separate share of Trust2. X represents that the beneficiaries of the separate shares of Trust2 timely filed QSST elections on behalf of their respective separate shares of Trust2. C died on Date9, and C's spouse, E, became the successor income beneficiary of C's separate share of Trust2. For Year1 and Year2, E, as current income beneficiary of E's separate share of Trust2, erroneously believed that the trust was permitted to sprinkle income among various individuals and requested that the trust income be distributed among E and E's children. E made this request based on advice from an attorney that did not have knowledge that Trust2 held S corporation stock and that, as a QSST, it was not permitted to distribute trust income to more than one individual. B, acting as trustee of E's separate share of Trust2 at the time, complied with this request and caused income of Trust2 to be distributed to E and E's children in Year1 and Year2. X represents that E and E's children each reported and paid tax on this income on their individual returns for Year1 and Year2.

On Date8, C established Trust3 as a revocable trust. Upon C's death on Date9, Trust3 became irrevocable and E became the trustee of Trust3. Upon C's death, the shares of X that C had owned individually were transferred to Trust3 for the benefit of E. A QSST election on behalf of Trust3 was not timely filed by Date10 (the due date for the election, taking into account § 1361(d)(2)(D)). However, X represents that E reported all of the income from Trust3 on E's individual return as if a QSST election had been properly and timely made.

X represents that the separate shares of Trust1, the separate shares of Trust2, and Trust3 otherwise satisfy the requirements as QSSTs under § 1361(d)(3), except as indicated above.

X represents that X and X's shareholders have filed tax returns consistent with X being an S corporation since Date7, except as otherwise described above. X further represents that the circumstances resulting in the termination of X's S corporation

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election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X and each person who was or is a shareholder of X at any time since Date7 agree to make any adjustments (consistent with the treatment of X as an S corporation) as may be required by the Secretary with respect to such period.

The period of limitations on assessments under § 6501(a) has either expired or will soon expire for taxable years ending before Date11. However, the period of limitations on assessments under § 6501(a) has not expired for the taxable years beginning on Date11, or for any subsequent years.

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)(B) provides that a "small business corporation" means a domestic corporation that is not an ineligible corporation and that does not 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.

Section 1362(a)(1) 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 election under § 1362(a) shall 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. A termination of an S corporation election under § 1362(d)(2) is effective on or after the date of cessation.

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 the termination, steps were taken so that the corporation is a small business corporation; and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified under § 1362(f), agrees to make the adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary for that period, then, notwithstanding the circumstances resulting in such termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on Date7 due to the failure of the beneficiaries to properly and timely file QSST elections for their separate shares of

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Trust1. In addition, X's S corporation election would have terminated when the trustee of E's separate share of Trust2 distributed trust income to more than one individual in a tax year, had the election not already terminated on Date7. X's S corporation election would also have terminated on Date10 due to the failure of the beneficiary to properly and timely file a QSST election for Trust3, had X's S corporation election not already terminated on Date7. We conclude that the termination was inadvertent within the meaning of § 1362(f). We further conclude that, to the extent that X's S corporation election would have terminated as a result of the subsequent events described above, had the election not terminated earlier, such terminations would have been inadvertent within the meaning of § 1362(f).

Pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation on Date7 and thereafter, unless X's S corporation election otherwise terminated under § 1362(d) for reasons not stated in this letter, provided that the following conditions are met.

As an adjustment under § 1362(f)(4), a payment of $n and a copy of this letter must be sent to the following address: Internal Revenue Service, Cincinnati Service Center, 201 West Rivercenter Blvd., Covington, KY 41001, Stop 31, Terri Lackey, Manual Deposit. This payment must be sent no later than 45 days from the date of this letter.

This ruling is contingent upon the beneficiaries of the separate shares of Trust1 filing QSST elections for their separate shares of Trust1, with an effective date of Date12, within 120 days of the date of this letter. In addition, the beneficiary of Trust3 must file a QSST election for Trust3, with an effective date of Date9, within 120 days of the date of this letter. A copy of this letter should be attached to each QSST election.

If the above conditions are not met, then this letter ruling is null and void. Furthermore, if these conditions are not met, X must send a notification that its S election has terminated to the service center with which X's S election was filed.

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 regarding X's eligibility to be an S corporation or the validity of its S corporation election. Further, no opinion is expressed or implied as to whether Trust1 and/or its separate shares, Trust2 and/or its separate shares, and Trust3 qualify as QSSTs. Finally, no opinion is expressed or implied regarding whether the separate shares of Trust1 and Trust2 are substantially separate and independent shares of a trust within the meaning of § 643(b) and properly treated as separate trusts for purposes of § 1361(c) and (d).

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury

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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.

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 is being sent to your authorized representative.

Sincerely,

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

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

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