

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B01-PLR- 118582-99

Date:

November 3, 2000

Trust =

X =

A =

B =

C =

Date 1=

Date 2=

Date 3=

Date 4=

a =

b =

State =

This responds to a letter dated November 15, 1999, submitted on behalf of Trust requesting a ruling that Trust will be eligible to be a Qualified Subchapter S Trust (QSST) under section 1361(d) of the Internal Revenue Code.

Facts

On Date 1 A died testate. Pursuant to A's will, a% of X stock was transferred to Trust. A's will provides that for the life of B, B is the only beneficiary entitled to distributions of income or corpus from Trust unless the value of Trust should fall below

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\$b. In the event that Trust's value should drop below \$b, the trustee of Trust is given discretion to distribute the entire corpus of Trust to either B or C.

X elected to be treated as an S corporation effective Date 2. Trust intended to file an election to be treated as a QSST under section 1361(d), however, Trust was not eligible to elect QSST status as there was the possibility that corpus could be distributed to someone other than B during B's lifetime. Trust, therefore, elected to be treated as an Electing Small Business Trust (ESBT) under section 1361(e).

On Date 3 Trust petitioned the Superior Court of State to reform Trust. On Date 4 the Superior Court of State reformed paragraph E of article IV of Trust so that in the event the value of Trust should fall below \$b only B will be entitled to a distribution of Trust property. Taxpayer represents that Trust was reformed so that Trust could convert from an ESBT to a QSST.

### Law and Analysis

Section 1361(a)(1) defines an S corporation as a small business corporation for which an election under section 1362(a) is in effect. Section 1361(b)(1) defines "small business corporation" as a domestic corporation that is not an ineligible corporation and that does not (A) have more than 75 shareholders, (B) have as a shareholder a person (other than an estate, other than a trust described in section 1361(c)(2), and other than an organization described in (c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than one class of stock. Under section 1361(c)(2)(A)(i), 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 a shareholder of a small business corporation.

Section 1361(d)(1) of the Code provides that a QSST whose beneficiary makes an election under section 1362(d)(2) will be treated as a trust described in section 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 QSST's S corporation stock to which the election under 1361(d)(2) applies. Under section 1361(d)(2)(A) of the Code, a beneficiary of a QSST (or legal representative) may elect to have section 1361(d) apply. Under section 1361(d)(2)(D), this election will be effective up to 15 days and two months before the date of the election.

Section 1361(d)(3) defines the term QSST as a trust whose terms require that: (i) during the life of the current income beneficiary, there will 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 will 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 will distribute all of its assets to the

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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.

### Conclusion

Based upon the information submitted and the representations set forth above, we conclude that Trust, as reformed, satisfies the requirements to qualify as a QSST under section 1361(d)(3) and will be a permitted S corporation shareholder provided that B make a QSST election under section 1362(d)(2). No opinion is expressed or implied concerning the federal tax consequences of the conversion from an ESBT to a QSST; Trust must follow the procedures set forth in section 5 of Revenue Procedure 98-23,1998-1 C.B. 662.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the above-described facts under any other provision of the Code. In particular, no opinion is expressed or implied concerning whether X is a small business corporation described in section 1361(b)(1) of the Code.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code 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 your authorized representative.

Sincerely,  
Dianna K. Miosi, Chief, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2)  
Copy of this letter  
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