

IRC Section 1361(d)(2) Election by Beneficiary of a QSST

Overview

IRC 1361(d)(2) permits the income beneficiary of certain qualifying trusts to elect to treat the trust as a qualified subchapter S trust (QSST). A QSST is a permitted S corporation shareholder. If the QSST election is made, the income beneficiary of the trust will be treated as the owner of that portion of the trust which holds the S corporation stock. A “qualified subchapter S trust” is a trust that meets the statutory requirements of 1361(d)(3).

Once a 1361(d)(2) election is made with respect to any beneficiary, it will be treated as made by each successive beneficiary unless the successive beneficiary files an election refusing to consent. A 1361(d)(2) election can only be revoked with the permission of the Secretary of the Treasury.

When to File

Part III of Form 2553, Election by a Small Business Corporation, permits the income beneficiary to make the 1361(d)(2) election at the same time a corporation makes an S corporation election. Form 2553 may only be used to make the election if the corporation’s stock has been transferred to the trust on or before the date on which the corporation makes the election to be an S corporation.

If the corporation’s stock is transferred to the trust after the S corporation election, the QSST election must be made and filed separately. The election statement must be filed either within the 2 month and 15 day grace period beginning on the date the S corporation stock is transferred to the trust, or within the 2 month and 15 day grace period beginning on the first day of the first taxable year in which the S corporation election is effective, whichever is later. If the stock has been transferred to the trust on or before the date on which the corporation makes its S corporation election under 1362(a) and if that election

and the transfer are made before the beginning of the first day of the first year for which the election is effective, the election must be filed within the 2 month and 15 day period beginning on the date the corporation makes the 1362(a) election. The election statement must be signed under the penalties of perjury by the current income beneficiary of the trust or his or her legal representative (or if the current income beneficiary is a minor and no legal representative has been appointed, by a natural or adopted parent).

The 1361(d)(2) election must be made separately for each S corporation's stock held by the trust.

Where to File

Form 2553, or the election statement, is signed and mailed to the designated Internal Revenue Service Center where the corporation files its income tax return.

Index

1. Code Section: 1361
2. Topic: S Corporations; Trust, Estates and Gifts
3. Return Type: 1120S

Authorities

IRC §1361(d)(2); Reg. §18.1361-1