

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:3

PLR-161316-04

Date:

May 26, 2005

Company:

Facility:

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Dear _____ :

This letter responds to a letter from your authorized representative dated November 3, 2004, as well as subsequent correspondence, submitted on behalf of Company, requesting various rulings under § 1362 of the Internal Revenue Code. Company represents the following facts.

FACTS

Company was incorporated under the laws of State on a and elected to be an S corporation effective that same date. Company operated a Facility as a sub-lessee. It assigned this lease to an unrelated party in b, remaining liable under the lease for the balance of its term. Company filed its final tax return for the year ending c but took no affirmative action to dissolve itself. State administratively dissolved Company on d.

Company's assignee of the sub-lease filed for bankruptcy in e, resulting in a lawsuit against Company over the lease. On f, after filing the necessary documents and paying the applicable fees, State retroactively reinstated Company as a state law corporation, effective g.

In connection with expenses it incurred in the lawsuit, Company determined that it had a filing requirement for its tax year ending g. Based on conflicting advice from several sources regarding its status under federal law, Company applied for a new employer identification number (EIN), receiving it on h.

Company represents that for all applicable periods, it continued to be a small business corporation as defined by § 1361(b).

LAW AND ANALYSIS

Section 1361(a)(1) provides that the term "S corporation" means a small business corporation for which an election under § 1362 is in effect.

Effective for tax years beginning before January 1, 2005, Section 1361(b)(1) provides that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not (A) have more than 75 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 non-resident alien as a shareholder, and (D) have more than 1 class of stock.

Whether an organization is to be taxed as a corporation under the Code is determined by federal, not state, law. If the conduct of the affairs of a corporation continues after the expiration of its charter or the termination of its existence, it becomes an association. See Ochs v. United States, 158 Ct. Cl. 115, 305 F.2d 844, 847 (1962),

cert. denied, 373 U.S. 923 (1963). A corporation is subject to federal corporate income taxation as long as it continues to do business in a corporate manner, despite the fact that its recognized legal status under state law is terminated. See Messer v. Commissioner, 438 F.2d 774 (3d Cir. 1971).

CONCLUSIONS

Based solely on the facts submitted and the representations made, we conclude as follows.

(1) As long as Company qualified as a small business corporation under § 1361(b) before it was administratively dissolved under state law, its status as a small business corporation under federal law did not terminate upon this dissolution.

(2) Company ordinarily would not be required to make a new election under § 1362(a) or apply for a new EIN upon its retroactive reinstatement under state law. However, Company did apply for and receive a new EIN. Therefore, within 60 days from the date of this letter, Company must file a new Form 2553 (Election by a Small Business Corporation) with the appropriate service center, indicating an effective date of i. A copy of this ruling letter should be attached to the election form.

Except for the specific conclusions above, no opinion is expressed or implied concerning the federal income tax consequences of the facts of this case under any other provision of the Code. Specifically, no opinion is expressed or implied regarding Company's eligibility to be an S corporation.

Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,

MARY BETH COLLINS
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2): copy of this letter ruling
copy for § 6110 purposes