

Internal Revenue Service

Number: **200548012**

Release Date: 12/2/2005

Index Number: 1362.04-00

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:B01

PLR-131656-05

Date:

August 17, 2005

Legend

X =

State =

D1 =

D2 =

D3 =

D4 =

#A =

#B =

Dear :

This responds to a letter dated June 6, 2005, submitted on behalf of X by its authorized representative, requesting inadvertent termination relief under § 1362(f) of the Internal Revenue Code.

STATEMENT OF FACTS

According to the information submitted and representations therein, X incorporated under the laws of State on D1 and elected S corporation status effective D2. Prior to and including D3, X's Articles of Incorporation provided that no more than #A of persons could hold X stock. On D3, X discovered that #B of persons held X stock. On D4, X took corrective action with State to retain its status as a State corporation. X represents

that despite its technical violation of its Articles of Incorporation, such violation and subsequent correction did not cause X to lose its corporate charter.

X further represents that at all times it has filed consistently with its belief that it was an S corporation. X represents that has never lost its corporate charter, that it has continuously operated since D1, and that it has filed all required State and Federal tax and corporate returns and forms as an S corporation. As soon as X discovered its violation of its Articles of Incorporation, it initiated corrective action. Finally, X and each person who was a shareholder in X agree to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary.

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) provides, in part, that a "small business corporation" must be a domestic corporation.

The core test of corporate existence for purposes of Federal income taxation is always a matter of Federal law. See, Ochs v. U.S., 305 F.2d 844, 847 (Ct. Cl. 1962), cert. denied, 373 U.S. 923 (1963).

Section 301.7701-2(b) presently provides the definition of a corporation for Federal tax purposes. Accordingly, in order to satisfy the requirements of § 1361(b), an organization must qualify as a corporation under § 301.7701-2(b).

Section 301.7701-2(b)(1) provides that the term corporation includes a business entity organized under a Federal or State statute, or under a statute of a Federally recognized Indian tribe, if the statute describes or refers to the entity as incorporated or as a corporation, body corporate, or body politic.

X was formed under the State corporate statute. As long as X remains organized under the State corporate statute, X will be classified as a corporation for Federal tax purposes. State law provides that X continued to remain organized under its corporate statute despite X's violation of its Articles of Incorporation. Accordingly, the violation did not alter X's classification under § 301.7701-2(b)(1).

CONCLUSION

Based solely upon the facts submitted and the representations made, we conclude that provided that X qualified as a small business corporation under § 1361(b) prior to its violation of its Articles of Incorporation, X's status as a small business corporation is not terminated by reason of the violation of its Articles of Incorporation. Thus, X will not be required to make a new S corporation election under § 1362(a).

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed on whether X's original election to be an S corporation was a valid election under § 1362.

This ruling is directly only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to the taxpayer.

Sincerely,

/s/ Dianna K. Miosi

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

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