

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

Telephone Number:

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Date:

December 16, 2005

Legend

X =

A =

State =

Date 1 =

Date 2 =

Date 3 =

Dear

This letter responds to a letter dated November 1, 2004, and subsequent correspondence, submitted on behalf of X, by X's authorized representative, requesting relief under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was incorporated under State law on Date 1. A, X's sole shareholder, intended for X to be an S corporation effective Date 1. However, no Form 2553, Election by a Small Business Corporation, was timely filed for X. On Date 2, State administratively dissolved X because X failed to file an Annual Report and pay a franchise tax. Upon discovery of the administrative dissolution, X reincorporated in State on Date 3.

Section 1362(b)(5) provides that if -- (A) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making such election for such taxable year or no such election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make such election, the Secretary may treat such an election as timely made for such taxable year.

The core test of corporate existence for purposes of federal income taxation is always a matter of federal law. 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, 305 F.2d 844, 847 (Ct. Cl. 1962), cert. denied, 373 U.S. 923 (1963). A corporation is subject to federal corporate income tax liability 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 (3rd Cir. 1971).

Based solely on the facts and representations submitted, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation effective Date 1. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 effective Date 1, along with a copy of this letter, with the appropriate service center within 60 days from the date of this letter, then such election will be treated as timely made for Date 1. X's administrative dissolution and subsequent reincorporation did not cause X to cease to be a corporation for federal income tax purposes and does not affect this ruling.

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, including whether X was or is a small business corporation under § 1361(b).

This ruling is directed only to the taxpayer who 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 X's authorized representative.

Sincerely,

J. Thomas Hines
Chief, Branch 2
Associate Chief Counsel
(Passthroughs and Special Industries)

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