

**Internal Revenue Service**

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Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

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PLR-147101-05

Date:

February 8, 2006

Legend:

X =

State =

D1 =

D2 =

Year1 =

Year2 =

Dear

This responds to the letter dated May 16, 2005, submitted on behalf of X, requesting a ruling on the proper treatment of an involuntary termination of X.

Facts

X was incorporated in State on D1. X made an election to be treated as a subchapter S corporation effective D2. In Year2, X discovered that it had been administratively dissolved by State in Year1. Upon learning the dissolution, X immediately took an action to reincorporate in State.

Law and Analysis

Section 1361(a)(1) defines an "S corporation" as a small business corporation for which an election under § 1362 is in effect.

Section 1361(b)(1) provides that for purposes of subchapter S, the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not -- (A) have more than 100 shareholders, (B) have as a

shareholder a person (other than an estate, a trust described in subsection (c)(2), or an organization described in subsection (c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

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 law, 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 Cir1971).

### Conclusion

Based solely on the facts submitted and the representations made, we conclude as follows: Provided that X qualifies as a small business corporation under § 1361(b) prior to the administrative dissolution under the laws of State, X's status as a small business corporation is not terminated by reason of the administrative dissolution and subsequent reincorporation, and X will not be required to make a new election under § 1362(a).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed concerning whether the original election made by X to be treated as an S corporation was a valid election under § 1362.

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

Sincerely,

Dianna K. Miosi

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

Enclosures (2)  
Copy of this letter  
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