

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:B03

PLR-100840-07

Date: February 16, 2007

LEGEND

Company =

Shareholder =

State =

Date 1 =

Date 2 =

Date 3 =

Dear :

This letter responds to your letter dated December 26, 2006, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

FACTS

Company incorporated under State law on Date 1. Shareholder, Company's sole shareholder, intended for Company to be an S corporation effective Date 1. However, through no fault of Company or Shareholder, Form 2553, Election by a Small Business Corporation, was not timely filed for Company. On Date 2, State administratively dissolved Company because Company's agent failed to file an annual report. Upon discovery of the administrative dissolution, Shareholder reincorporated Company in

State on Date 3. For all relevant tax years, Company and Shareholder filed federal tax returns consistent with Company's intended status as an S corporation.

LAW AND ANALYSIS

Section 1362(a) provides, in general, that a small business corporation may elect to be an S corporation.

Section 1362(b)(1) provides that an election under § 1362(a) may be made by a small business corporation for any taxable year (A) at any time during the preceding taxable year, or (B) at any time during the taxable year and on or before the 15th day of the third month of the taxable year.

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 the election for that 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 the election, the Secretary may treat such an election as timely made for that 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. See § 301.7701-1 of the Procedure and Administration Regulations. 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. 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. Messer v. Commissioner, 438 F.2d 774 (3d Cir. 1971).

CONCLUSION

Based solely on the facts and representations submitted, we conclude that Company has established reasonable cause for failing to make a timely election to be an S corporation effective Date 1. Accordingly, provided that Company 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. Company's administrative dissolution and subsequent reincorporation did not cause Company 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 Company was or is a small business corporation under § 1361(b).

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

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

/s/

Tara P. Volungis
Senior Technician Reviewer
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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