

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:1-PLR-140582-02
Date:
January 6, 2003

Legend:

- X =
- State1 =
- State2 =
- D1 =
- D2 =
- D3 =
- Y1 =
- Y2 =
- Y3 =

Dear _____ :

This responds to your letter dated July 22, 2002, and subsequent correspondence, submitted on behalf of X, requesting relief under § 1362(f) of the Internal Revenue Code.

Facts

X was incorporated in State1 on D1 as an S corporation. Thereafter, X moved its principal office to State2. To maintain its existence in State1, X retained a registered agent to file annual reports with the Secretary of State of State1. However, the

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registered agent failed to file the required annual reports for Y1 and Y2. Subsequently, unbeknown to X, the Secretary of State of State1 issued a notice of involuntary dissolution of X effective as of D2.

In Y3, while trying to file an amendment to the Articles of Incorporation, X discovered its involuntary dissolution. X immediately filed a new Articles of Incorporation with the Secretary of State of State1 and received a new Certificate of Incorporation on D3.

It has been represented that despite its involuntary dissolution, X was recognized as organized and existing under the corporate law of State1 during the period between D2 and D3.

Law and Analysis

Section 1361(a)(1) defines an "S corporation" as a small business corporation for which an election under § 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 State1 corporate statute. As long as X remains organized under the State1 corporate statute, X will be classified as a corporation for federal tax purposes. State1 law provides that X continued to remain organized under its corporate statute despite the administrative dissolution. Accordingly, the administrative dissolution did not alter X's classification under § 301.7701-2(b)(1).

Conclusions

Based solely on the facts submitted and the representations made, we conclude that provided that X qualified as a small business corporation under § 1361(b) prior to the administrative dissolution under State1 law, 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).

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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.

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

Sincerely,

/s/ Dan Carmody

Dan Carmody
Senior Counsel, Branch 1
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:

Copy for § 6110 purposes