

## Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

March 13, 2001

### Legend:

X =

State =

D1 =

D2 =

D3 =

D4 =

This responds to your letter dated November 13, 2000, submitted on behalf of X requesting rulings under the Internal Revenue Code.

### **FACTS**

X was incorporated under State law, and elected to be treated as a subchapter S corporation, effective D1. In D3, X discovered that State had administratively dissolved X on D2 for failure to file its annual report. From D2 to D3, X was unaware of the dissolution and continued to file Form 1120S. Upon learning of the dissolution, X immediately reincorporated in State, effective D4.

### **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. 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

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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).

### CONCLUSIONS

Based solely on the facts submitted and the representations made, we conclude the following: (1) provided that X qualified as a small business corporation under § 1361(b) prior to the administrative dissolution under state 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); and (2) X is not required to apply for a new employer identification number and can continue to use the number assigned prior to the state law dissolution.

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) 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.

Sincerely,  
David R. Haglund  
Senior Technician Reviewer, Branch 1  
Associate Chief Counsel  
(Passthroughs and Special Industries)

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