

## Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

January 8, 2001

### Legend:

X =

State =

D1 =

D2 =

D3 =

D4 =

D5 =

This responds to your letter dated September 7, 2000, submitted on behalf of X requesting various rulings under the Internal Revenue Code.

### FACTS

X incorporated in State on D1. X elected to be treated as a subchapter S corporation effective D2. On D4, X discovered that it had been administratively dissolved by State on D3 for failure to file its annual corporate report. From D3 to D4, X was unaware of the dissolution and continued to file Form 1120S. Upon learning of the dissolution, Taxpayer immediately reincorporated in State, effective D5.

### LAW AND ANALYSIS

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

Section 1361(b)(1) of the Code 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 75 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

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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*, 158 Ct. Cl. 115, 305 F.2d 844, 847 (1962). 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 (3d Cir. 1971).

### CONCLUSION

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 section 1361(b) of the Code 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 section 1362(a); (2) the administrative dissolution and subsequent reincorporation of X under state law did not, by itself, result in a distribution or contribution of property for purposes of sections 301(a), 311(a)(2), 331(a), 336(a), or 351 of the Code; (3) X's administrative dissolution and subsequent reincorporation will not affect its shareholders' bases and holding periods in X corporation stock; and (4) 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 section 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,  
**/s/ David R. Haglund**  
Senior Technician Reviewer, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2)  
Copy of this letter  
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