

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

August 8, 2001

Legend:

X =

D1 =

D2 =

n1 =

This responds to a letter dated March 13, 2001, submitted on behalf of X, requesting a ruling that from D1 to D2 X had only one class of stock within the meaning of section 1361(b)(1)(D) of the Internal Revenue Code.

FACTS

X was incorporated on D1. X elected to be treated as an S corporation for federal tax purposes effective on D1. X's organizing documents provided for Class A and Class B stock. The Class A stock was voting common stock with a right to distributions. The Class B stock was non-voting common stock with no right to distributions.

On D1, X issued n1 shares of Class A stock to each of X's shareholders. No Class B stock was issued on D1, or at any time between D1 and D2. On D2, X eliminated all distribution preferences between the Class A stock and Class B stock.

LAW AND ANALYSIS

Section 1361(a)(1) defines an S corporation as a small business corporation for which an election under section 1362(a) is in effect. Section 1361(b)(1) defines "small business corporation" as a domestic corporation that is not an ineligible corporation and that does not (A) have more than 75 shareholders, (B) have as a shareholder a person (other than an estate, other than a trust described in section 1361(c)(2), and other than an organization described in (c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than one class of stock.

Section 1.1361-1(I)(1) of the Income Tax Regulations provides that, except as provided in section 1.1361-1(I)(4) (relating to instruments, obligations, or arrangements

treated as a second class of stock), a corporation is treated as having only one class of stock if all outstanding shares of stock of the corporation confer identical rights to distribution and liquidation proceeds. Differences in voting rights among shares of stock of a corporation are disregarded in determining whether a corporation has more than one class of stock. There was no Class B stock outstanding from D1 to D2, so for purposes of the one class of stock requirement, it is disregarded.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that from D1 to D2, X had only one class of stock within the meaning of section 1361(b)(1)(D).

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(s) requesting it. Section 6110(k)(3) 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