

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:B01-PLR-114646-00  
Date:  
October 25, 2000

X =  
State =  
Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =  
a =  
Receiver =

:

This responds to your letter dated June 30, 2000, and subsequent correspondence, written on behalf of X, requesting a ruling that an Arbitration Award (the "Award"), and subsequent payments made pursuant to that Award, did not create a second class of stock under section 1361(b)(1)(D) of the Internal Revenue Code.

**FACTS**

The information submitted discloses that X is a corporation organized under the laws of State on Date 1. X elected to be treated as an S corporation effective Date 2. On Date 3 the Award was issued directing Receiver to dissolve X and distribute the corporate assets to X's shareholders.

X represents that as of Date 4, equal distributions of \$a have been made to each of X's shareholders and that as Receiver continues the process of liquidating X, all future distributions will be made to the shareholders equally. X further represents that the Award was rendered by an independent arbitration panel and that the parties to the arbitration had no control over the terms and conditions imposed.

**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.

PLR-114646-00

Section 1.1361-1(l)(1) of the Income Tax Regulations provides that, except as provided in section 1.1361-1(l)(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.

Section 1.1361-1(l)(2)(i) provides that the determination of whether all outstanding shares of stock confer identical rights to distribution and liquidation proceeds is made based on the corporate charter, articles of incorporation, bylaws, applicable state law, and binding agreements relating to distribution and liquidation proceeds (collectively, the governing provisions). A commercial contractual agreement, such as a lease, employment agreement, or loan agreement, is not a binding agreement relating to distribution and liquidation proceeds and, thus, is not a governing provision unless a principal purpose of the agreement is to circumvent the one class of stock requirement of section 1361(b)(1)(D). Further, section 1.1361-1(l)(2)(i) provides that distributions (including actual, constructive, or deemed distributions) that differ in timing or amount are to be given appropriate tax effect in accordance with the facts and circumstances.

Based solely on the facts as represented by X we rule that the Award did not create a second class of stock.

Except for the specific ruling above, no opinion is expressed or implied concerning the federal income tax consequences of the facts of this case under any other provision of the Code. In particular, no opinion is expressed on whether X meets the other requirements of section 1361.

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.

Pursuant to a Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer and the second listed authorized representative.

Sincerely,  
David R. Haglund  
Senior Technician Reviewer, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for § 6110 purposes