

Internal Revenue Service

Department of the Treasury

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October 12, 1999

This general information letter is in response to your request for a supplemental ruling letter dated June 10, 1999. According to Rev. Proc. 99-1, 1999-1 I.R.B. 6, 13, Section 2.04, an information letter is advisory only and has no binding effect on the Internal Revenue Service. It is the policy of the Internal Revenue Service to answer the inquiries of individuals and organizations regarding the tax effects of proposed or consummated transactions prior to the filing of returns or reports that are required by the revenue laws. However, due to the factual and procedural nature of the issue involved, the Service cannot issue another supplemental advance ruling letter in this case.

We issued a private ruling letter to the taxpayer on January 7, 1997 (PLR-248798-96). In that letter, the taxpayer represented, as required by Rev. Proc. 90-52, 1990-2 C.B. 626, 634, section 4.02, 4(b)(3)(B)(ii) and (iii), that the sole reason a subsidiary was not dissolved under local law was to isolate the value of its charter and licenses for resale to an unrelated purchaser and that, as soon as reasonably possible, and, in any event within no more than 12 months from the date of the final liquidating distribution, the subsidiary will be dissolved under local law or sold to an unrelated purchaser. On October 28, 1998, the taxpayer sought an extension of time within which to dissolve or sell the subsidiary. On March 3, 1999, we issued a supplemental ruling letter (PLR-120259-98), in which we held that:

... provided Parent sells the stock of Sub within 18 months from the final liquidating distribution on Date 2, the Prior Ruling Letter will remain in full force and effect. If the stock of Sub cannot be sold within this time period, then Sub will be dissolved. No further extensions of time will be granted.

The taxpayer now seeks an additional six-month extension of time within which to sell the stock of the subsidiary. Although we will not issue another supplemental ruling letter in this case, the following general information may be of assistance.

Section 332 of the Internal Revenue Code provides that no gain or loss shall be recognized on the receipt by a corporation of property distributed in complete liquidation of another corporation, provided that (1) the corporation receiving the property is in control, as defined in section 1504(a)(2), of the distributing corporation's stock; (2) there is a complete cancellation or redemption of all of the stock of the distributing corporation; and (3) the transfer of all the property occurs within the taxable year or the distribution is one of a series of distributions in accordance with a plan of liquidation under which the transfer of all the property is completed within three years from the close of the taxable year during which is made the first of the series of distributions under the plan.

Section 1.332-4(a) of the Income Tax Regulations provides that, if a plan of liquidation is consummated by a series of distributions extending over a period of more than one taxable year, the nonrecognition of gain or loss with respect to the distribution in liquidation shall, in addition to the requirements of section 1.332-2, be subject to the following requirements:

(1) In order for the distribution in liquidation to be brought within the exception provided in section 332 to the general rule for computing gain or loss with respect to amounts received in liquidation of a corporation, the entire property of the corporation shall be transferred in accordance with a plan of liquidation, which plan shall include a statement showing the period within which the transfer of the property of the liquidating corporation to the recipient corporation is to be completed. The transfer of all the property under the liquidation must be completed within three years from the close of the taxable year during which is made the first of the series of distributions under the plan.

(2) For each of the taxable years which falls wholly or partly within the period of liquidation, the recipient corporation shall, at the time of filing its return, file with the district director of internal revenue a waiver of the statute of limitations on assessment. The waiver shall be executed on such form as may be prescribed by the Commissioner and shall extend the period of assessment of all income and profits taxes for each such year to a date not earlier than one year after the last date of the period for assessment of such taxes for the last taxable year in which the transfer of the property of such liquidating corporation to the controlling corporation may be completed in accordance with section 332. Such waiver shall also contain such other terms with respect to assessment as may be considered by the Commissioner to be necessary to insure the assessment and collection of the correct tax liability for each year within the period of liquidation.

(3) For each of the taxable years which falls wholly or partly within the period of liquidation, the recipient corporation may be required to file a bond, the amount of which shall be fixed by the district director. The bond shall contain all terms specified by the Commissioner, including provisions unequivocally assuring prompt payment of the excess of income and profits taxes (plus penalty, if any, and interest) as computed by the district director without regard to the provisions of sections 332 and 334(b) over such taxes computed with regard to such provisions, regardless of whether such excess may or may not be made the subject of a notice of deficiency under section 6212 and regardless of whether it may or may not be assessed. Any bond required under section 332 shall have such surety or sureties as the Commissioner may require. However, see 6 U.S.C. 15, providing that where a bond is required by law or regulations, in lieu of surety or sureties there may be deposited bonds or notes of the United States. Only surety companies holding certificates of authority from the Secretary as acceptable sureties on Federal bonds will be approved as sureties. The bonds shall be executed in triplicate so that the Commissioner, the taxpayer, and the surety or the depositary may each have a copy. On and after September 1, 1953, the functions of the Commissioner with respect to such bonds shall be performed by the district director for the internal revenue district in which the return was filed and any bond filed on or after such date shall be filed with such district director.

Section 1.332-4(b) provides that, pending the completion of the liquidation, if there is compliance with paragraph (a) (1), (2), and (3) of section 1.332-4 and section 1.332-2 with respect to the nonrecognition of gain or loss, the income and profits tax liability of the recipient corporation for each of the years covered in whole or in part by the liquidation shall be determined without the recognition of any gain or loss on account of the receipt of the distributions in liquidation. In such determination, the basis of the property or properties received by the recipient corporation shall be determined in accordance with section 334(b). However, if the transfer of the property is not completed within the three-year period allowed by section 332 or if the recipient corporation does not continue qualified with respect to the ownership of stock of the liquidating corporation as required by that section, gain or loss shall be recognized with respect to each distribution and the tax liability for each of the years covered in whole or in part by the liquidation shall be recomputed without regard to the provisions of section 332 or section 334(b) and the amount of any additional tax due upon such recomputation shall be promptly paid.

The taxpayer has represented that, for each of the taxable years 1997, 1998, and 1999, both the subsidiary to be liquidated and its parent will file waivers of the statute of limitations pursuant to section 1.332-4(a)(2) and post bonds if required by the district director pursuant to section 1.332-4(a)(3). The waiver shall extend the period of assessment of all income and profits taxes for each such year to a date three years after the last date of the period for assessment of such taxes for the last taxable year in

which the transfer of the property of such corporation to the controlling corporation may be completed in accordance with section 332.

In accordance with the power of attorney on file with this office, copies of this letter are being sent to the taxpayer and another authorized representative. Steps have been taken to refund the user fee paid by the taxpayer.

Sincerely,

Assistant Chief Counsel (Corporate)

By *Filiz A. Serbes*

Filiz A. Serbes

Assistant to the Chief, Branch 5