

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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Telephone Number:

Refer Reply To:

CC:CORP:B06

PLR-131113-05

Date:

October 06, 2005

Legend

Target =

Parent =

Holdco =

State =

S1 =

S2 =

Shareholder A =

Shareholder B =

Shareholder C	=
Shareholder D	=
Shareholder E	=
Shareholder F	=
Shareholder G	=
Shareholder H	=
x	=
y	=

Dear

This is in response to your representative's letter dated May 18, 2005 requesting rulings concerning the Federal tax consequences of a proposed series of transactions. Additional information was submitted in an e-mail dated September 30 and a letter dated October 3. The material information submitted for consideration is summarized below.

Target is a State corporation and the common parent of an affiliated group of corporations. Target owns all of the stock of S1 and S2, which join with Target in filing a consolidated return. Through S2, Target owns indirectly all the stock of 2 foreign corporations.

Target has two classes of stock outstanding: non-voting common stock (Class A) and voting common stock (Class B). Parent owns x% of the Class A shares, with Shareholders B, C, D, E, F, G and H owning, in the aggregate, the remaining y%. The Class B stock is 100% owned by Shareholder A.

Parent is a State S corporation. Parent has two classes of stock authorized and issued: voting common stock (Class A) and non-voting common stock (Class B). The Class A stock is 100% owned by Shareholder A. The Class B shares are owned by Shareholders B, C, D, E, F, G and H. In addition to the Target stock, Parent owns four single-member limited liability companies.

For business reasons, the taxpayer has proposed the following series of transactions:

- (i) The shareholders of Target, other than Parent, will transfer their Target voting and non-voting stock to Parent in exchange for voting and non-voting stock (in the same proportions as the stock exchanged) in Parent. Thus, Parent will own 100% of both the voting and non-voting stock of Target.
- (ii) Parent will form Holdco, a State corporation.
- (iii) Holdco will acquire 100% of Target from Parent in exchange for Holdco stock. After the Exchange, Parent will own 100% of all of the outstanding stock of Holdco and Holdco will own 100% of all of the voting and non-voting stock of Target.
- (iv) Parent will contribute all of the assets and liabilities of some or all of its four wholly-owned LLC entities to Holdco. Parent will remain an S corporation after the proposed transaction.

In addition to the information above, the following representations have been made:

- (a) The transfer of Target shares to Parent in exchange for stock of Parent will constitute a transfer qualifying under § 351.
- (b) Target will remain in existence as a separate corporate entity controlled by Holdco.
- (c) The acquisition of Target from Parent by Holdco in exchange for Holdco voting common stock will constitute a reorganization within the meaning of § 368(a)(1)(B) or a transfer qualifying under § 351.
- (d) The shareholders of Target (immediately before its acquisition by Holdco), as a result of their ownership of Target stock, will own (immediately after the transaction) more than 50 percent of the fair market value of the outstanding stock of Holdco.

The information submitted and the representations made form a material basis upon which these rulings are issued. In particular, the representation that the shareholders of Target (immediately before its acquisition by Holdco), as a result of their ownership of Target stock, will own (immediately after the transaction) more than 50 percent of the fair market value of the outstanding stock of Holdco, is a material representation that is being relied upon in the formulation of these rulings. If the

representation is found to be incorrect, the rulings issued here shall have no force or effect, retroactive to the date of issuance.

Based solely on the information and representations set forth herein, we rule as follows:

- (1) The acquisition of Target by Holdco, described in step (iii) above, will qualify as a “reverse acquisition” within the meaning of § 1.1502-75(d)(3) of the Income Tax Regulations. As a result, the Target group will remain in existence with Holdco becoming the common parent of such group. (§ 1.1502-75(d)(3)(i)). The consolidated return for the first taxable year ending after the date of acquisition filed by Holdco will use as its taxable year the taxable year of Target. (§ 1.1502-75(d)(3)(v)(a)).
- (2) The tax attributes of Target will survive for consolidated return purposes.
- (3) The prior taxable years of Target or any member of the affiliated group of which Target is the common parent prior to the proposed transaction, will not be considered “separate return limitation years,” as defined in § 1.1502-1(f), unless they were so treated immediately before the transaction.
- (4) Provided the affiliated group existing after the acquisition files a consolidated return for the first taxable year ending after the date of the acquisition, the net operating loss carryovers of Target and the members of its affiliated group as constituted immediately prior to the date of the transaction shall be included in computing the consolidated net operating loss deduction of the affiliated group existing after the date of the transaction to the same extent as if Target had remained as common parent. (§§ 1.1502-1(f)(3) and 1.1502-21).
- (5) For purposes of §§ 1.1502-31 and 1.1502-33, the proposed transaction will qualify as a “group structure change.” (§ 1.1502-33(f)(1)). Holdco’s basis in Target stock immediately after the group structure change will be Target’s net asset basis as determined under § 1.1502-31(c), subject to the adjustments described in § 1.1502-31(d). (§ 1.1502-31(b)(2)).
- (6) The earnings and profits of Holdco will be adjusted immediately after Holdco becomes the new common parent to reflect the earnings and profits of Target immediately before Target ceases to be the common parent (§ 1.1502-33(f)(1)).

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.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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.

A copy of this letter must be attached to any income tax return to which it is relevant.

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,

George R. Johnson

George R. Johnson
Acting Assistant to the Chief, Branch 6
Office of Associate Chief Counsel
(Corporate)