

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:INTL:Br3-PLR-154780-01

Date:

February 27, 2002

Legend

Newco =

Corp B =

Corp C =

Deconsolidated =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

x percent =

y percent =

z percent =

Dear :

This is in response to a letter dated September 25, 2001, requesting a ruling that Newco be permitted to change to the tax book value method of asset valuation for purposes of apportioning interest expense for tax years beginning on or after Date 1, 2002. Additional information was received in a letter dated December 17, 2001.

The ruling contained in this letter is 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

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in support of the request for a ruling, it is subject to verification on examination.

Newco, a domestic holding corporation, is the product of a merger between two domestic corporations, Corp B and Corp C. Corp B merged into Corp C, effective Date 2, 2000. Corp C then changed its name to Newco, and Newco officially began operations on Date 3, 2000. Newco files a consolidated federal income tax return on a calendar year basis.

At the time of the merger between Corp B and Corp C, Corp B was using the fair market value method of asset valuation, as described in Temp. Treas. Reg. § 1.861-9T(h) for purposes of apportioning interest expense. Corp B had used the fair market value method since 1997. In anticipation of the merger, the Corp C consolidated group elected in 1999 to apportion interest expense based on the fair market value method.

Prior to the merger, Deconsolidated was a domestic corporation wholly owned by Corp C and was a member of the Corp C consolidated group. Thus, when the Corp C consolidated group elected in 1999 to apportion interest expense based on the fair market value method, Deconsolidated also changed to the fair market value method. As a result of two public stock offerings that occurred on Date 4, 2000, and Date 5, 2001, approximately x percent of the voting power and y percent of the value of Deconsolidated were sold to the public. Newco currently owns the remaining shares of Deconsolidated. The sales of Deconsolidated stock to the public resulted in Deconsolidated becoming ineligible for inclusion in Newco's consolidated group. Newco and Deconsolidated, however, remain affiliated corporations for purposes of apportioning interest expense pursuant to Temp. Treas. Reg. § 1.861-11T(d)(6)(i) because Newco still owns approximately z percent of the voting power of Deconsolidated. Accordingly, they are treated as related parties within the meaning of Temp. Treas. Reg. § 1.861-8T(c)(2), and Deconsolidated cannot change to the tax book value method unless Newco's request is granted and vice versa. Deconsolidated has submitted a concurrent request to change to the tax book value method.

Section 864(e)(2) of the Internal Revenue Code provides that all allocations and apportionments of interest expense shall be made on the basis of assets rather than gross income.

Temp. Treas. Reg. § 1.861-9T sets forth the rules specific to the apportionment of interest expense. Temp. Treas. Reg. § 1.861-9T(g)(1)(ii) provides that a taxpayer may elect to determine the value of its assets on the basis of either the tax book value method or the fair market value of its assets. Temp. Treas. Reg. § 1.861-8T(c)(2) provides that once a taxpayer uses the fair market value method, the taxpayer and all related persons must continue to use such method unless expressly authorized by the Commissioner to change methods.

Temp. Treas. Reg. § 1.861-9T(g)(1)(iii) provides that if the taxpayer elects the fair market value method of asset valuation, the taxpayer must establish the fair market value of its assets to the satisfaction of the Commissioner. Otherwise, the

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Commissioner may determine the appropriate values or require the taxpayer to use the tax book value method of apportionment. Temp. Treas. Reg. § 1.861-9T(h) sets forth the rules for determining the fair market value of taxpayer's assets under the fair market value method.

Newco requests, pursuant to Temp. Treas. Reg. §§ 1.861-8T(c)(2) and 1.861-9T(g)(1)(ii), that it be permitted to use the tax book value method of asset valuation for tax years beginning on or after Date 1, 2002. Newco's ruling request states that it desires to use the tax book value method because that method: (1) decreases complexity and avoids potential disagreements with the Service with respect to the fair market value of assets; (2) avoids the cost of having fair market value studies performed; and (3) provides greater certainty of tax results to both the taxpayer and the Service.

Based solely upon the information submitted, the representations made, and the reasons given for this request, Newco may change from the fair market value method of asset valuation for purposes of apportioning interest expense to the tax book value method, pursuant to Temp. Treas. Reg. §§ 1.861-8T(c)(2) and 1.861-9T(g)(1)(ii), for the tax year beginning on or after Date 1, 2002.

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.

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.

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

Sincerely,
Anne O'Connell Devereaux
Senior Technical Reviewer, Branch 3
Office of the Associate Chief Counsel
(International)