

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:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B04

PLR-123422-04

Date:

July 20, 2004

Legend

Parent =

Acquiring =

Target =

State =

Date A =

Facility =

Business A =

Business B =

a =

Dear _____ :

This letter responds to your April 21, 2004 request for rulings regarding certain federal income tax consequences of a series of proposed transactions (collectively, the "Proposed Transaction"). The information submitted in that request and in later correspondence is summarized below.

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.

Statement of Facts

Target and Acquiring are each domestic corporations that are wholly owned by Parent, a publicly traded foreign corporation. Acquiring is the common parent of a consolidated group that files a federal consolidated income tax return. Acquiring conducts Business A for Parent's U.S. operations. Target conducts Business B in the U.S. for Parent. On Date A, Target sold Facility to an unrelated third party for \$a.

Proposed Transaction

For what has been represented as valid business reasons, the taxpayer has proposed the following steps be undertaken:

- (i) Parent will contribute all of its Target stock to Acquiring in exchange for Acquiring stock (the "Contribution").
- (ii) Acquiring will form a limited liability company ("LLC") by contributing the minimum capital required under State law. Acquiring will wholly own LLC.
- (iii) Immediately after the Contribution, Target will merge with and into LLC pursuant to State law (the "Merger").

Representatives

The taxpayers have made the following representations in connection with the above Proposed Transaction:

- (a) The fair market value of Acquiring stock received by Parent will be approximately equal to the fair market value of the Target stock surrendered in the exchange.
- (b) At least 50 percent of the proprietary interest in Target will be exchanged for Acquiring's stock and will be preserved within the meaning of § 1.368-1(e).
- (c) Acquiring will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by Target immediately prior to the Proposed Transaction. For purposes of this representation, amounts paid by Target to dissenters, amounts paid by Target to shareholders who receive cash or other property, amounts used by Target to pay its reorganization expenses, and all redemptions and distributions (except for regular, normal dividends) made by Target immediately preceding the transfer will be included as assets of Target held immediately prior to the Proposed Transaction. In addition, any proceeds received from the sale of assets by Target (including any proceeds from the sale of Facility) will be included, in lieu of the assets sold, as assets of Target for purposes of making this determination.
- (d) After the transaction, Parent will be in control of Acquiring within the meaning of § 368(a)(2)(H)(i).
- (e) Acquiring has no plan or intention to reacquire any of its stock issued in the transaction.
- (f) Acquiring has no plan or intention to sell or otherwise dispose of any of the assets of Target acquired in the Proposed Transaction, except for dispositions made in the ordinary course of business.
- (g) The liabilities of Target assumed (within the meaning of § 357(d)) by Acquiring were incurred by Target in the ordinary course of its business and are associated with the assets transferred.
- (h) Following the Proposed Transaction, Acquiring will continue the historic business of Target or use a significant portion of Target's historic business assets in a business.
- (i) At the time of the Proposed Transaction, Acquiring will not have any outstanding warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Acquiring that, if exercised or converted, could affect Parent's acquisition or retention of control of Acquiring, as defined in § 368(a)(2)(H)(i).
- (j) Acquiring, Target, and Parent will each pay their respective expenses, if any, incurred in connection with the Proposed Transaction.

- (k) There is no intercorporate indebtedness existing between Acquiring and Target that was issued, acquired, or will be settled at a discount.
- (l) No two parties to the transaction are investment companies as defined in §§ 368(a)(2)(F)(iii) and (iv).
- (m) The fair market value of the assets of Target transferred to Acquiring will equal or exceed the sum of the liabilities assumed (within the meaning of § 357(d)) by Acquiring.
- (n) The total adjusted basis of the assets of Target transferred to Acquiring will equal or exceed the sum of the liabilities assumed (within the meaning of § 357(d)) by Acquiring.
- (o) Target is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).
- (p) Parent's U.S. tax basis in the Target shares is currently, and will be on the date of the Proposed Transaction, greater than the fair market value of the Target shares.
- (q) The Proposed Transaction is being undertaken for valid business reasons.

Rulings

Based solely on the information submitted and the representations made, we rule as follows:

- (1) The Contribution and the Merger will be treated as if (i) Target transferred all of its assets directly to Acquiring in exchange for Acquiring stock and the assumption by Acquiring of the Target liabilities, and then (ii) Target dissolved, transferring the Acquiring stock it received in step (i) above to Parent.
- (2) The transfer by Target of all of its assets solely in exchange for Acquiring stock and the assumption by Acquiring of the Target liabilities followed by the distribution to Parent in liquidation of Target will be a reorganization within the meaning of § 368(a)(1)(D). Acquiring and Target will each be "a party to a reorganization" within the meaning of § 368(b).
- (3) No gain or loss will be recognized by Target upon the transfer of all of its assets to Acquiring in exchange for Acquiring stock and the assumption by Acquiring of Target liabilities (§§ 361(a) and 357(a)).

- (4) No gain or loss will be recognized by Target upon the distribution of Acquiring stock to Parent (§ 361(c)(1)).
- (5) No gain or loss will be recognized by Acquiring upon the receipt of Target assets in exchange for Acquiring stock (§ 1032(a)).
- (6) The basis of Target assets in the hands of Acquiring will be the same as the basis of those assets in the hands of Target immediately before the transfer (§ 362(b)).
- (7) The holding period of the Target assets in the hands of Acquiring will include the period during which those assets were held by Target (§ 1223(2)).
- (8) No gain or loss will be recognized by Parent upon the receipt of Acquiring stock in exchange for its Target stock (§ 354(a)(1)).
- (9) The basis of the shares of Acquiring received by Parent will be the same as the basis of the Target stock surrendered in the exchange therefor (§ 358(a)(1)).
- (10) The holding period of the Acquiring stock received by Parent will include the period during which Parent held the Target stock surrendered in the exchange therefor pursuant to § 1223(1), provided the Target stock is held as a capital asset on the date of the Merger.
- (11) Acquiring should succeed to and take into account, as of the date of the Merger, the items of Target described in § 381(c) (as defined in § 1.381(b)-1(b)), subject to applicable conditions and limitations, including those specified in §§ 381(b) and (c), 382, 383, and 384. See § 381(a).

Caveats

We express no opinion about the tax treatment of the Proposed Transaction under other provisions of the Internal Revenue Code or regulations thereunder or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, no opinion is given regarding; (i) the tax consequences of the formation of LLC, (ii) whether Parent's tax basis in its Target shares currently is, or will be on the date of the Proposed Transaction, greater than the fair market value of such shares, and (iii) the application of §§ 897 and 1445 to Parent's exchange of its Target shares for Acquiring's shares in the Proposed Transaction.

Procedural Statements

This ruling letter 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,

Richard K. Passales
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Corporate)

cc: