

Internal Revenue Service

Department of the Treasury

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Date:
December 21, 2001

LEGEND

Company =

Exchange =

State X =

A =

B =

C =

Date 1 =

Year X =

Year Z =

q =

Dear :

This is in reply to a letter dated August 24, 2001 in which rulings were requested as to the federal income tax consequences of a proposed transaction. The information in that request and in subsequent correspondence is summarized below.

Company, a State X corporation, is an accrual method taxpayer with a taxable year ending Date 1. Company has only one class of stock, which is widely held and publicly traded on the Exchange. Company is an independent supplier of A, which include B and C. From its inception in Year X through Year Y, Company's principal business was its B business. Company had faced increasingly tight competition in the B market and shifted its efforts towards its C business. Over the past several years,

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Company has redirected its business strategy to the licensing of its patented B technology and has sharply cut its work force. Company is currently asserting purported claims against third parties for infringing any one or more of its patents (the "Claims").

Company's management has determined that it is in the best interests of Company and its shareholders to cease all operations pursuant to a plan of complete liquidation (the "Plan"), as well as to continue pursuing the Claims. Because of the continuing litigation over the Claims, it is not possible to liquidate Company completely within 1 year from the date the Plan is adopted. Accordingly, the following transaction is proposed:

- (i) Company's board of directors will adopt the Plan that will authorize Company to cease the active conduct of its business operations.
- (ii) Company will transfer \$q in cash, Company's patents, and other intellectual property (collectively, the "Trust Property") to an entity that is intended to qualify as a liquidating trust under § 301.7701-4(d) of the Procedure and Administration Regulations (the "Liquidating Trust"). The Trust Property will be deemed to be distributed to Company's shareholders and then contributed by them to the Liquidating Trust.
- (iii) Company will distribute its remaining assets to its shareholders.
- (iv) After all of its assets have been distributed according to the Plan, Company will dissolve and abandon its corporate charter.

In connection with the proposed transaction, the taxpayer represents as follows:

- (a) No formal or informal plan of liquidation has ever been adopted by Company, except for the present plan, which will be adopted as soon as practicable.
- (b) The liquidation of Company will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation of any business or assets of Company, if persons holding more than 20 percent in value of Company stock also hold more than 20 percent in value of the stock of such recipient corporation. For purposes of this representation, ownership has been determined by application of the constructive ownership rules of § 318 of the Internal Revenue Code, as amended, as modified by § 304(c)(3).
- (c) All assets of Company will be distributed in complete liquidation of Company within 3 years from the adoption of the plan of liquidation.

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- (d) Except for consideration that may be distributed to option holders, no part of the consideration to be received by any shareholder of Company will be received by the shareholder as a creditor, employee, or in some capacity other than that of a shareholder of Company.
- (e) Pursuant to the Plan, Company will cease to be a going concern and its activities will be limited to the winding up of its affairs, paying its debts, and distributing any balance of its assets to its shareholders.
- (f) The status of the liquidation will exist at the time of the first liquidating distribution and will continue until the final liquidating distribution is made.
- (g) The fair market value of Company's assets will exceed its liabilities on the date of adoption of the plan of liquidation and at the time the first liquidating distribution is made.
- (h) Company will not distribute any assets representing earned but unreported income to its shareholders in the liquidation.
- (i) Company does maintain a reserve for bad debts, which it adjusts at the end of every quarter.
- (j) The liquidating distributions described in this ruling request are isolated transactions and are not related to any other past or future transactions.

The following representations are made with respect to the Liquidating Trust:

- (k) The trust is being organized for the primary purpose of liquidating the assets transferred to it, with no objective to continue or engage in the conduct of a business.
- (l) The trustees will be selected by the shareholders of record or by a court of competent jurisdiction.
- (m) Due notice will be given to any unlocated shareholders in accordance with local law.
- (n) The trustees will take all necessary steps to ensure that the Liquidating Trust will not receive transfers of any listed stocks or securities, any readily-marketable assets, or any operating assets of a going business. In the event such assets are received, the trustees will distribute such assets as soon as practicable.

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- (o) The Liquidating Trust may receive but will not retain cash in excess of a reasonable amount to meet claims and contingent liabilities.
- (p) The trustees will take all necessary steps to ensure that the Liquidating Trust will not receive transfers of any unlisted stock of a single issuer that represents 80 percent or more of the stock of such issuer and will not receive transfers of any general or limited partnership interests. In the event such assets are received, the trustees will distribute such assets as soon as practicable.
- (q) The trustees will make continuing efforts to dispose of the Trust Property, make timely distributions, and not unduly prolong the duration of the Liquidating Trust.

Based on the information submitted and on the representations set forth above, it is held as follows:

- (1) The actual and deemed distributions by Company to its shareholders as described in steps (ii) and (iii) of the proposed transaction will be treated as a series of distributions in complete liquidation of Company within the meaning of § 346(a).
- (2) Company's shareholders will recognize gain or loss upon the receipt of any property distributed by Company in steps (ii) and (iii) of the proposed transaction as payment in exchange for their Company stock under § 331(a) and §1001.
- (3) Company will recognize gain or loss on the distribution of any property distributed in complete liquidation as if Company's assets were sold to its shareholders at their fair market value pursuant to § 336(a).
- (4) No gain or loss will be recognized by Company's shareholders upon the deemed contribution of the Trust Property to the Liquidating Trust under § 1.1001-2(c).
- (5) For federal income tax purposes, the Liquidating Trust will be classified as a liquidating trust under § 301.7701-4(d).

No opinion is expressed as to the tax treatment of the proposed transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above ruling.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of

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the Code provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file in this office, we have sent a copy of this letter to the taxpayer's representatives.

Sincerely,
Debra Carlisle
Chief, Branch 5
Office of Associate Chief Counsel
(Corporate)

cc: