

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:1-PLR-137170-02

Date:

December 20, 2002

Re:

Dear :

This letter is in reference to a letter dated July 2, 2002, requesting rulings under section 355, and other sections, of the Internal Revenue Code, with respect to proposed transactions involving the taxpayer ("Taxpayer") and certain related corporations.

As we have indicated in discussions over the last several months, we have been concerned with a number of questions in this matter, including issues regarding: (i) the business purpose for the proposed transactions; (ii) the existence and extent of active businesses engaged in by certain of Taxpayer's purported subsidiaries ("Related Corporations"); and (iii) whether the Taxpayer's stock ("Tracking Stock") actually represents stock in the Taxpayer as opposed to stock in the Related Corporations.

As we indicated in our telephone conversations on December 12, 17, and 19, 2002, of particular concern to us is the proper characterization of the Tracking Stock. This Tracking Stock appears to give to the Taxpayer's purported shareholders ("Shareholders") substantial rights in the Related Corporations, and thus raises the question whether Taxpayer is in control, or whether the Shareholders are in control, of the Related Corporations.

The question here of how to characterize the relationships between the Shareholders, the Taxpayer, and the Related Corporations to some extent involves not only an analysis of the written terms of documents, but, also, a consideration of other factors which show how this relationship is actually handled in practice. Consideration of these other factors, however, presents factual questions which are not properly handled in private letter rulings. See section 4.02(1) of the "no-rule" revenue procedure, Rev. Proc. 2002-3, 2002-1 I.R.B. 117, 124. In addition, the question at issue here -- the correct classification of instruments such as the "tracking stock" in this case -- is specifically identified as an area where letter rulings will not be issued. See section 3.01(57) of the no-rule revenue procedure. Furthermore, taking into account all

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the factors involved, we believe that, in this case, it is inappropriate to deal with this tracking stock issue by means of a taxpayer representation.

Since we can not resolve this tracking stock question and, therefore, can not determine if Taxpayer is in control of the Related Corporations, this office is unable to rule on the proposed transactions. Accordingly, this case is hereby closed and no further action will be taken by this office with respect thereto.

Pursuant to section 15.10(2) of Rev. Proc. 2002-1, the user fee is being reimbursed and will be processed by a separate office. Reimbursement can take as long as 6 to 8 weeks.

In accordance with the power of attorney on file in this office, a copy of this letter is being sent to the taxpayer.

Sincerely yours,
Associate Chief Counsel (Corporate)

By _____
Mark S. Jennings
Chief, Branch 1