

## Internal Revenue Service

## Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:B03-PLR-133095-02

Date:

October 4, 2002

Re:

### Legend

Parent =

Subsidiary =

State X =

Exchange =

Parent Plan =

Subsidiary Plan =

Business Y =

Date 1 =

Date 2 =

s =

t =

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u =v =w =x =y =z =

Dear :

We respond to a letter dated June 14, 2002, requesting rulings on the Federal income tax consequences of a transaction concerning § 1504 of the Internal Revenue Code. Additional information was received in a letter dated August 26, 2002. The material information submitted for consideration is summarized below.

Parent is a State X corporation that serves as a holding company for several lines of business conducted through numerous domestic and foreign subsidiaries. Parent has one class of common stock which is widely held and publicly traded on Exchange. Parent is the common parent of an affiliated group of entities that files a consolidated Federal income tax return on an accrual method, calendar year basis.

Subsidiary is a State X corporation and is a member of Parent's consolidated group. Subsidiary primarily conducts Business Y through numerous domestic and foreign subsidiaries. Subsidiary has two classes of voting common stock outstanding, Class A and Class B. Between Parent's holdings of Subsidiary's Class A and Class B shares, Parent controls approximately s percent of the vote and t percent of the value of Subsidiary.

on Date 1, Subsidiary granted to certain employees of Subsidiary and its subsidiaries non-qualified stock options with respect to u Class A shares in Subsidiary pursuant to the Subsidiary Plan. Subsidiary intends to grant additional options under the Subsidiary Plan, which authorizes Subsidiary to grant options on up to v Class A shares. Subsidiary also granted options on w Class A shares in Subsidiary to non-employee members of its Board of Directors and intends to grant additional options to such directors in the future.

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Also , Parent granted to certain employees of Parent and its subsidiaries non-qualified stock options with respect to x Class A shares in Subsidiary pursuant to the Parent Plan, of which options on y Class A shares were actually granted.

The Subsidiary Plan provides, in part, that the stock options granted (i) are exercisable on and after the vesting date as set forth in the Subsidiary Plan (generally Date 2 ), except that vesting may be accelerated by death, disability, or retirement; (ii) generally have a term of z years, and expire earlier if the option holder dies, terminates his or her employment, or is terminated by Subsidiary or an affiliate without cause; (iii) are not transferable (except in the case of death); and (iv) can be exchanged for a cash payment in lieu of shares on the date of exercise solely at the discretion of Subsidiary.

Options granted under the Parent Plan contain terms identical to those of the Subsidiary Plan that are not “performance accelerated” except that Parent has the right to substitute options to buy Parent stock or to require surrender of options to buy Subsidiary stock in exchange for cash or Subsidiary Class A stock or a combination of both in the event of a transaction in which Parent ceases to own a controlling interest in Subsidiary.

Section 1.1504-4(d)(2)(v)(A) of the Income Tax Regulations provides that if stock appreciation rights, warrants, stock options, phantom stock or other similar instruments provided to employees, directors, or independent contractors in connection with the performance of services for the corporation or a related corporation (and that is not excessive by reference to the services performed) and which (1) are nontransferable within the meaning of § 1.83-3(d); and (2) do not have a readily ascertainable fair market value as defined in § 1.83-7(b) on the measurement date will not be treated as options in determining whether a corporation is a member of an affiliated group.

Section 1.1504-4(d)(2)(v)(B) provides that § 1.1504-4(d)(2)(v)(A) does not apply to options issued or transferred with a principal purpose of avoiding the application of § 1504 and § 1.1504-4 nor to options that become transferable.

The taxpayer has represented that the stock options issued under the Parent Plan and Subsidiary Plan do not have a readily ascertainable fair market value, as defined in § 1.83-7(b), on the measurement date, as defined in § 1.1504-4(c)(4), and are not excessive in relation to the services performed.

The taxpayer has also submitted facts that demonstrate that the stock options issued under the Parent Plan and Subsidiary Plan are not transferable within the meaning of § 1.83-3(d) and are not issued with a principal purpose of avoiding § 1504 of the Code and § 1.1504-4 of the regulations.

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Based solely on the information submitted and on the representations set forth above, we hold as follows:

- (1) Options issued under the Parent Plan will not be taken into account for purposes of determining whether Parent and Subsidiary are members of an affiliated group within the meaning of § 1504(a).
- (2) Options issued under the Subsidiary Plan will not be taken into account for purposes of determining whether Parent and Subsidiary are members of an affiliated group within the meaning of § 1504(a).

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

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

*Ken Cohen*

Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel  
(Corporate)