

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:CORP:1-PLR-115966-98

Date:

December 18, 1998

Re:

Legend

Corporation A

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Corporation B

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State E

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Agency

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P

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Q

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Date X

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Date Z

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R

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Dear Mr :

This letter replies to your letter dated August 3, 1998, requesting a ruling concerning the federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated June 30, 1998, October, 9, 1998, and December 15, 1998. The information submitted is summarized as follows.

Agency is a State E governmental agency.

Corporation A is a non-profit public benefit corporation incorporated under the laws of State E which is exempt from federal income tax as an organization described in §501(c)(3) and §509(a)(1). Corporation A is not controlled by Agency or any other governmental agency. Corporation A is governed by a self-perpetuating Board of Directors. The Bylaws and the Articles do not impose any requirement that the Board members be appointed by any governmental entity. None of the current or past members of Corporation A have been appointed by any governmental agency. All vacancies on the Corporation A Board of Directors are filled through election by the members of the Corporation A Board then in office. In general, Corporation A is devoted to the preservation of land, natural resources, and biological communities for public enjoyment.

Corporation B is a closely held for-profit sub-chapter C corporation incorporated under the laws of State E. Corporation B owns approximately P acres of land. Corporation B is financially autonomous and is not subject to the control of Agency or any other governmental agency.

The parties have completed or propose to complete the following steps (the "Transaction"):

- 1) On Date X, Corporation A became the optionee under a stock option agreement to purchase all of Corporation B's stock for a total cost of \$R. State E, through Agency, will provide \$S to Corporation A which amount will be used to fund part of the purchase price for Corporation B. The remaining portion of the purchase price will be funded through donations by public and private organizations and individuals, none of which are governmental entities.
- 2) On Date Y, Corporation A exercised the option and on Date Z, the closing date, the purchase was completed. After the purchase, Corporation A will have control of Corporation B and will ensure preservation of its real property as a natural, agricultural, open space, and recreational resource.
- 3) After Date Z, Corporation A will cause Corporation B to amend its Articles of Incorporation to state that (a) it is organized for charitable purposes, (b) its

activities shall be conducted exclusively for those purposes, (c) no part of its net earnings shall inure to the benefit of or be distributable to any private individuals, and (d) upon liquidation, all of its remaining assets shall be distributed to Corporation A (if it is then an organization described in § 501(c)(3) or to other organizations so described if Corporation A is not).

4) Thereafter, all of the Corporation B stock will be canceled and Corporation B will adopt substantially all of the provisions of the State E Public Benefit Corporations Code applicable to non-member corporations to become a non-profit public benefit corporation.

5) Corporation B will then apply to the Internal Revenue Service for exempt status as a charitable organization described in §501(c)(3) and §509(a)(3).

Corporation A represents that it is not acting as an agent of any entity or person. The Board of Directors of Corporation A will appoint all of the Board of directors of Corporation B. A management plan will be formulated by Corporation A in consultation with private consultants and other experts, and interested parties in government agencies and educational institutions, and with input from members of the general public, which plan will outline the use of Corporation B's real property. Under the management plan, Corporation A may cause Corporation B to convey a conservation easement over all of the real property in favor of a qualified organization or organizations other than Corporation A. Additionally, Corporation A expects to cause Corporation B to donate a total of Q Acres to one or more governmental agencies and/or non-profit organizations as necessary for the long term stewardship of the land. Any such transfers of the real property will be determined after the acquisition by Corporation A of the stock of corporation B. The balance of the real property will remain in Corporation B.

To the extent that Corporation B does not generate funds sufficient to cover operating expenses, Corporation A will either provide funding to Corporation B or obtain grants from private funding sources. In any case, Corporation A will not seek operating funds for Corporation B from any governmental agency.

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

The Transaction will not result in the recognition of gain or loss under § 336, § 337, or any other provision of the Code.

No opinion is expressed about the tax treatment of the 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 rulings.

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

A copy of this letter should be attached to the federal income tax returns of the taxpayers involved for the taxable year in which the transaction covered by this ruling letter is consummated.

Sincerely Yours,
Assistant Chief Counsel (Corporate)

By: _____
Mark S. Jennings
Senior Technician Reviewer, Branch 1