

**Internal Revenue Service**

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**Department of the Treasury****P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044****Person to Contact:****Telephone Number:****Refer Reply To:****CC:DOM:CORP:2 - PLR-111780-98****Date: November 6, 1998**

In re:

**LEGEND:**

Parent =

Sub 1 =

Sub 2 =

Date A =

Date B =

X =

Dear

This letter responds to your letter dated May 27, 1998, requesting a ruling, on behalf of the above-referenced taxpayer, as to the federal income tax consequences of a transaction. The information submitted for consideration is substantially as set forth below.

Sub 1, in the information submitted, was the common parent of an affiliated group of corporations that filed a consolidated federal income tax return prior to Date B. Its wholly-owned subsidiary, Sub 2, joined in the filing of that consolidated return. On Date B, X percent of the stock of Sub 1 was exchanged for all of the stock of Parent, a newly-formed entity. Parent has represented that this transaction qualified as a reverse acquisition under § 1.1502-75(d)(3) of the Income Tax Regulations. At the time Sub 1 ceased to be the common parent, it had a deficit in its earnings and profits account. Since Date B, the former Sub 1 group has continued to file a consolidated return on a fiscal-year basis ending on Date A with Parent as the common parent. Since its inception, Parent has not made any distributions to its shareholders.

In a proposed transaction, Parent will be acquired by a real estate investment trust ("REIT") in a transaction subject to § 381 of the Internal Revenue Code. According to the taxpayer, it is necessary for the REIT to distribute any non-REIT earnings and profits to which it succeeds by reason of a merger.

Section 1.1502-33(f) provides that if a corporation succeeds another corporation under the principles of § 1.1502-75(d)(3) as the common parent of a consolidated group, the earnings and profits of the new common parent corporation are adjusted immediately after such corporation becomes the new common parent to reflect the earnings and profits of the former common parent immediately before the former common parent ceases to be the common parent.

Section 1.1502-33(j)(3) provides that § 1.1502-33(f) only applies to group structure changes occurring in consolidated return years beginning on or after January 1, 1995.

Section 1.1502-31T(a), effective prior to the publication of T.D. 8560, applied to transactions in which the common parent of a consolidated group ceased to be the common parent but that the group remained in existence under § 1.1502-75(d)(3), and the stockholders of the common parent immediately before the transaction owned, immediately after the transaction, 80 percent or more of the fair market value of the outstanding stock of the new common parent.

Section 1.1502-33T(a)(1), effective prior to the publication of T.D. 8560, provided that following a group structure change to which § 1.1502-31T(a) applied, the earnings and profits of the new common parent were to be adjusted to reflect the earnings and profits of the former common parent at the time of the change.

In connection with the proposed transaction, and based solely on the information and representations submitted, we hereby rule that:

- (1) Provided that the transaction on Date B is described in § 1.1502-31T, X percent of Sub 1's deficit in earnings and profits on Date B should have been reflected, under § 1.1502-33T(a)(1), in Parent's earnings and profits account immediately after Parent became the common parent on Date B.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent. A copy of this letter should be attached to the federal income tax return of the taxpayer involved for the taxable year in which the transaction covered by this ruling is consummated.

The ruling contained in this letter is predicated upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by the appropriate party. This office has not verified any of the material submitted in support of the ruling request. Verification of the factual information and other data may be required as part of the audit process.

Sincerely,  
Assistant Chief Counsel (Corporate)

By \_\_\_\_\_  
Lewis K Brickates  
Assistant to the Branch Chief

Enclosures:

Copy of this letter  
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