

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:06-PLR 121819-02

Date:

September 23, 2002

LEGEND:

Company =

Business A =

Family X =

Date 1 =

Date 2 =

D =

E =

Dear

This letter responds to your request for rulings initially submitted on April 16, 2002, and supplemented on August 5, 2002, and September 3, 2002, on behalf of Company with respect to a proposed amendment (the "Amendment") to its Certificate of Incorporation (the "Certificate"). You have requested rulings under section 305 of the Internal Revenue Code (the "Code"). The information submitted for our review is summarized below:

Company, incorporated on Date 1, is primarily engaged in Business A. Company uses the accrual method of accounting and files its returns on a calendar year basis. Company has two classes of stock, Class A Common Stock and Class B Common Stock. The Class A Common Stock is publicly traded. The Class B Common Stock, which was issued as a dividend on Date 2, is not publicly traded and its ownership is restricted to members of Family X, trusts established for Family X's benefit, and certain charitable organizations (collectively hereafter the "Permitted

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Transferees”).

The Class A Common Stock and Class B Common Stock are equal with respect to distributions upon liquidation of Company, and have equal dividend rights, except that in the case of dividends or distributions payable in stock, only Class A Common Stock would be distributed with respect to the Class A Common Stock and only Class B Common Stock would be payable with respect to Class B Common Stock. The Class B Common Stock has a higher vote per share than the Class A Common Stock, but the Class A Common Stock shareholders are entitled as a separate class to elect E of the directors standing for election each year.

Under the current Certificate, the Class B Common Stock will automatically convert to Class A Common Stock if the number of Class B Common Stock falls below D (the “Conversion Threshold”). There are three ways the Class B Common Stock can be converted to Class A Common Stock. First, the shareholders of Class B Common Stock may freely convert on a share by share basis their Class B Common Stock to Class A Common Stock. Second, if the Class B Common Stock is transferred to a non Permitted Transferee it will automatically convert to Class A Common Stock. Third, if the number of Class B Common Stock drops below the Conversion Threshold amount, all Class B Common Stock will automatically convert to Class A Common Stock.

Company has proposed the Amendment to its Certificate to remove the Conversion Threshold. Company believes the Amendment would be in the best interest of Company and its shareholders and has provided several business reasons in support of its position. Company has indicated that the proposed Amendment would not result in a physical exchange of shares, but rather may be a deemed exchange of the Class B Common Stock subject to the Conversion Threshold for “new” Class B Common Stock which would not be subject to a Conversion Threshold.

Company has made the following representations regarding the proposed Amendment:

- (a) None of Company’s outstanding stock is “section 306” with the meaning of section 306.
- (b) The terms of the Class B Common Stock following the Amendment to the Certificate would be the same, except that the Amendment to the Certificate would remove the requirement that the Class B Common Stock would convert on a share by share basis to Class A Common Stock once the number of shares outstanding falls below the Conversion Threshold. All other terms of both the Class A Common Stock and Class B Common Stock would remain the same.

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- (c) Company believes the fair market value of the “new” Class B Common Stock deemed to be received by each exchanging shareholder will be equal to the fair market value of the “old” Class B Common Stock surrendered.
- (d) The Class B Common Stock shareholders do not have a plan or intention to dispose of any the Class B Common Stock subsequent to the Amendment except for sales that may be necessary from time to time to diversify the investment portfolios of Family X and their Permitted Transferees, or to settle estates.
- (e) The number of shares and percentage of each class of stock outstanding owned by the shareholders would remain unchanged by the Amendment to the Certificate.
- (f) No securities are to be issued when the Certificate is amended.
- (g) Company will not issue any stock or security for dividend or interest arrearages.
- (h) No convertible preferred stock is to be received pursuant to the Amendment.
- (i) No fractional shares will be issued in conjunction with the Amendment.
- (j) No property or “boot” issuance is involved with the Amendment to the Certificate.
- (k) The Amendment will be a single, isolated transaction and is not pursuant to a Company plan to periodically increase a shareholder's proportionate interest in the assets or earnings and profits of the Company, within the meaning of Treas. Reg. § 1.305-7(c).
- (l) Company would continue to conduct its business operations after the contemplated Amendment.
- (m) Company and its shareholders will each pay their own expenses, if any, incurred with the Amendment and deemed exchange.

Based on the information and representations submitted, we rule as follows:

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The proposed Amendment will not result in, or be treated as, a distribution of property to which section §301 applies by reason of the application of sections 305(b), 305 (c) or Treas. Reg. section 1.305-7(c).

CAVEAT

No opinion is expressed about 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 proposed transaction that are not specifically covered by the above ruling.

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.

PROCEDURAL STATEMENTS

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.

A copy of this letter must be attached to any income tax return to which it is relevant.

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

Sincerely,

Reginald Mombrun

Reginald Mombrun
Assistant to Branch Chief, Branch 6
Office of Associate Chief Counsel (Corporate)