Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Index Number: 1502.75-00, 1502.13-00, 0301.01-00

Number: **200028011**
Release Date: 7/14/2000

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:CORP:2-PLR-115712-99
Date:
March 11, 2000

LEGEND:

Parent =

Holdco =

Sub 1 =

Sub 2 =

State A =

State B =

c =

Business X =

Business Y =

Business Z =

Year 1 =

Date 1 =

This letter responds to your authorized representative's letter dated August 20, 1999, requesting rulings as to certain federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated October 25, 1999, March 3, April 5, and April 10, 2000.

The information submitted indicates that Parent is a State A corporation and the

common parent of a consolidated group (the “P group”). Parent is a closely held corporation and has outstanding a single class of voting common stock. Parent is engaged directly in Business X.

Sub 1 is a State A corporation in the P group engaged in Business Y. Parent acquired all of Sub 1's outstanding stock in Year 1 in what is represented to have been a transaction qualifying under § 351 of the Internal Revenue Code. As of the date of the proposed transaction, Sub 1 will have been engaged in Business Y for a period of less than five years.

Sub 2 is a State B corporation in the P group engaged in Business Z. All of Sub 2's outstanding stock is owned by Parent.

For valid business reasons, the following transaction is proposed:

(i) The Parent shareholders incorporated Holdco as a shell corporation under State A law on Date 1. The Parent shareholders will contribute sufficient property to capitalize Holdco, and will receive in exchange therefor 100 percent of the stock of Holdco.

(ii) Pursuant to an agreement and plan of reorganization, the Parent shareholders will exchange their Parent stock for stock in Holdco, receiving one share of Holdco voting common stock for each outstanding share of Parent voting common stock (the “Exchange”).

(iii) Following the Exchange described in step (ii), Parent will distribute to Holdco $c in cash and 100 percent of the stock of Sub 1 (together, the “Distributions”).

The following representations have been made with respect to the proposed transaction:

(a) The Parent shareholders will personally provide all property necessary to capitalize Holdco; Parent will not provide any of the property necessary to capitalize Holdco.

(b) The Parent shareholders immediately before the Exchange, as a result of owning Parent stock, will own more than 50 percent of the fair market value of the outstanding stock of Holdco immediately after the Exchange.

(c) The transfer to Holdco, pursuant to the Exchange, by the Parent shareholders of all of their Parent stock solely in exchange for Holdco stock will constitute a reorganization described in § 368(a)(1)(B).

(d) Parent does not have an excess loss account in its Sub 1 stock.

The representations submitted form a material basis for the issuance of our rulings. Based solely on the information submitted and representations, we rule as follows:

(1) The Exchange described in step (ii) above will constitute a reverse acquisition within the meaning of § 1.1502-75(d)(3) of the Income Tax Regulations. As a result, the P group will remain in existence with Holdco becoming the common parent of such group. The consolidated return to be filed by Holdco will use as its taxable year the taxable year of Parent.

(2) For purposes of §§ 1.1502-31 and 1.1502-33, the proposed transaction will qualify as a "group structure change" (under § 1.1502-75(d)(3)). Holdco's basis in Parent's stock immediately after the group structure change will be Parent's net asset basis as determined under § 1.1502-31(c), subject to the adjustments described in § 1.1502-31(d) (§ 1.1502-31(b)(2)). The earnings and profits of Holdco will be adjusted immediately after Holdco becomes the new common parent to reflect the earnings and profits of Parent immediately before Parent ceases to be the common parent (§ 1.1502-33(f)(1)).

(3) Provided that all taxable years of Parent prior to the Exchange were not treated as "separate return limitations years," as defined in § 1.1502-1(f), all taxable years of Parent and each of the members of the P group ending on or before the date of the Exchange will not be treated as separate return limitation years.

(4) The Distributions will constitute intercompany distributions to which §§ 301 and 311 apply, subject to the provisions of § 1.1502-13(f)(2) and §§ 1.1502-32(b)(2)(iv) and (b)(3)(v).

(5) The Distributions will not be included in the gross income of Holdco. However, Holdco is required to make a corresponding negative adjustment in the amount of the Distributions to its basis in the Parent stock under § 1.1502-32 (§ 1.1502-13(f)(2)(ii)).

(6) Parent's gain or loss from the distribution of the Sub 1 stock will not be currently taken into account and will not be currently included in gross income. Instead, such gain or loss will be taken into account under the matching rule of § 1.1502-13(c) if such property is subsequently sold to a nonmember (§ 1.1502-13(f)(2)(iii) and Example (1) of § 1.1502-13(f)(7)).

(7) Holdco's basis in the Sub 1 stock will be the fair market value of such stock (§ 301(d) and Example (1) of § 1.1502-13(f)(7)).

(8) The holding period of the Sub 1 stock in the hands of Holdco will include the holding period of Parent in such stock (§ 1.1502-13(c)(1)(ii)).

No opinion is expressed about the tax treatment of the proposed transactions 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 transactions that are not directly covered by the above rulings. In particular, no opinion is expressed under § 351 or § 368(a)(1)(B).

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) 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 corporations involved for the taxable year in which the proposed transaction is completed.

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

Sincerely,
Assistant Chief Counsel (Corporate)
By: Edward S. Cohen
Chief, Branch 2