Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Number: **200111032**
Release Date: 3/16/2001
Index Number: 0302-00.00

Person to Contact:

Telephone Number:

Refer Reply To:
CC:CORP:2-PLR-112568-00
Date:
December 14, 2000

LEGEND:

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

State X =

Business A =

Date Y =

Date Z =

Dear:

This responds to your letter dated June 13, 2000, on behalf of the above referenced corporation, requesting rulings as to certain federal income tax consequences of a proposed transaction. Additional information was received on November 13 and November 29, 2000. The information submitted for consideration is summarized below.

Parent, a State X corporation, is the common parent of a group of corporations that join in the filing of a consolidated income tax return. Sub 1, which engaged in Business A, was a wholly-owned subsidiary of Parent. Sub 2 was a wholly-owned subsidiary of Sub 1.

Due to changes in the business climate related to Business A, management decided to actively market the assets of Sub 1 to unrelated industry participants. Subsequently, on Date Y, Sub 1 entered into an asset purchase agreement in which it sold substantially all of its assets (the “Asset Sale”). Sub 1 ceased to conduct all

business activities. Parent has invested the Asset Sale proceeds in a segregated investment account.

Subsequent to the Asset Sale, Sub 2 was organized to operate the remaining Sub 1 assets (all associated with Business A). In addition, Sub 3 was formed as a single member LLC (Parent being the sole member) that is disregarded for federal tax purposes. Shortly thereafter, Sub 2 merged with and into Sub 1, followed by the merger of Sub 1 with and into Sub 3. The taxpayer has represented that the merger of Sub 2 with and into Sub 1 is a complete liquidation pursuant to § 332. The taxpayer has also represented that the merger of Sub 1 with and into Sub 3 should be treated as a complete liquidation of Sub 2 into Parent pursuant to § 332.

Parent now proposes to distribute the proceeds from the Asset Sale in a transaction that it believes qualifies as a partial liquidation under §§ 302(a), 302(b)(4), and 302(e) of the Code.

In connection with the Asset Sale and the planned distribution, Parent makes the following representations:

(a) Parent, on the date of the plan of complete liquidation of Sub 1, was the owner of at least 80 percent of the outstanding stock of Sub 1.

(b) No shares of Sub 1 were redeemed during the three years preceding the adoption of the plan of liquidation of Sub 1.

(c) Pursuant to the plan of merger of Sub 1 into Parent (the “merger”) and the State X Business Corporation Act (the “Act”), Sub 1 was completely liquidated into Parent on Date Z, the effective date of the merger, and therefore, all distributions from Sub 1 to Parent pursuant to the plan of complete liquidation were made within a single taxable year of Sub 1.

(d) Pursuant to the plan of merger and the Act, as of Date Z, the stock of Sub 1 was canceled, the legal existence of Sub 1 was terminated and Sub 1 ceased to be a going concern.

(e) Pursuant to the plan of merger and the Act, Sub 1 retained no assets following the merger.

(f) Sub 1 did not acquire assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years prior to the date of the adoption of the plan of liquidation. Substantially all of the assets of Sub 1 were disposed of pursuant to the Asset Sale, a genuine corporate contraction on Date Y.

(g) The liquidation of Sub 1 will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation of any of the businesses or assets of Sub 1, if

persons holding, directly or indirectly, more than 20 percent in value of Sub 1's stock also hold, directly or indirectly, more than 20 percent in value of the stock of the recipient corporation.

(h) Prior to the adoption of the plan of merger, no assets of Sub 1 were distributed in kind, transferred, or sold to Parent, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years prior to the adoption of the plan of liquidation. Because Sub 1 will file a consolidated return with Parent for the year ended 1999, and because Parent was the sole shareholder of Sub 1 prior to the merger, all earned income will be reported.

(i) The fair market value of the assets of Sub 1 will exceed its liabilities both at the date of the adoption of the plan of merger and immediately prior to the time the first liquidating distribution is made.

(j) There was no intercorporate debt existing between Parent and Sub 1 on the effective date of the merger and none had been canceled, forgiven, or discounted, except for transactions that occurred more than three years prior to the date of adoption of the plan of liquidation.

(k) Parent is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.

(l) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the liquidation of Sub 1 have been fully disclosed.

(m) There is no plan or intention to completely liquidate Parent.

(n) Parent has no plan to expand its continuing business operations other than through normal internal growth.

(o) The partial liquidation of Parent will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation of any of the businesses or assets of Parent, if persons holding directly or indirectly, more than 20 percent in value of Parent's stock also hold, directly or indirectly, more than 20 percent in value of the stock of the recipient corporation.

(p) Parent will adopt a plan of partial liquidation upon the receipt of a favorable ruling. All distributions made pursuant to the plan will be made within the taxable year in which the plan is adopted, or within the succeeding taxable year.

(q) No part of the consideration from Parent will be received by a shareholder as a debtor, creditor, employee, or in some capacity other than that of a shareholder of Parent.

(r) There are no declared but unpaid dividends on any of the stock to be redeemed.

(s) The proposed transaction will result in a reduction of more than 20 percent in (i) the net fair market value of Parent's assets, (ii) the gross revenue of Parent and (iii) Parent's employees.

(t) The proceeds from the Asset Sale are not attributable to expansion reserve, a mere business decline, a decrease in working capital, the sale of a nominal business or a loss business.

(u) Parent will retain none of the Asset Sale proceeds.

(v) The Asset Sale proceeds have been held on a temporary basis in a segregated account which invests in short term liquid assets.

Based solely on the information submitted and the representations set forth above and provided that (1) the proposed distribution is made in the taxable year in which the plan of partial liquidation is adopted or in the succeeding taxable year, (2) the merger of Sub 2 with and into Sub 1 is a complete liquidation pursuant to § 332, and (3) for federal income tax purposes, the merger of Sub 1 with into Sub 3 is a complete liquidation of Sub 1 into Parent pursuant to § 332, we rule as follows:

(1) The pro rata distribution by Parent to its noncorporate shareholders of the net proceeds of the sale of substantially all of the assets of Sub 1 will constitute a partial liquidation pursuant to §§ 302(b)(4) and 302(e). Such distribution shall be treated as a distribution in part or full payment in exchange for stock pursuant to § 302(a) regardless of whether there is an actual redemption of the stock.

(2) The maximum amount considered distributed by Parent in partial liquidation will equal the Asset Sale proceeds received by Sub 1 reduced by all liabilities (including all taxes and expenses) of Sub 1 incurred in connection with the Asset Sale. This amount will not include any earned or accrued investment earnings or any amount allocable to a covenant not to compete. (Rev. Rul. 71-250, 1971-1 C.B. 112).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

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

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.

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

Sincerely,
Assistant Chief Counsel (Corporate)
By: Lewis K Brickates
Assistant to Chief, Branch 2