Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Number: **200317019**
Release Date: 4/25/2003
Index Number: 368.05-00, 382.07-00, 1502.33-00, 301.01-00

Person to Contact:

Telephone Number:

Refer Reply To:
CC:CORP:B05-PLR-154494-02
Date:
January 22, 2003

LEGEND

Parent =

Sub A =

Sub B =

Sub C =

Sub D =

New Parent =

Holdings =

Entity A =

Entity B =

Date 1 =

Date 2 =

Date 3 =

State A =

State B =

State C =

a =

b =

c =

Dear :

This letter responds to your October 1, 2002 request for rulings on certain federal income tax consequences of a proposed transaction. The information submitted in this request and in subsequent correspondence is summarized below. The rulings in this letter are based on the facts and representations submitted under penalties of perjury in support of the request. Verification of that information may be required as part of the audit process.

Parent is a nonprofit nonstock State A public benefit corporation that is subject to tax under the Internal Revenue Code. Parent is the common parent of an affiliated group that files a consolidated return. Parent uses the accrual method of accounting, with a calendar year end as the basis for maintaining its books of accounts and filing Federal income tax returns.

Sub A, a State B corporation, was incorporated on Date 1 as a wholly-owned, for-profit subsidiary of Parent. Sub A wholly owns Sub B and Sub C, which are State A corporations. Sub B wholly owns Sub D, a State C corporation.

State A legislation, passed Date 2, requires Parent to dedicate a and b percent, respectively, of its value to Entity A and Entity B upon Parent's conversion from a nonprofit nonstock to a for-profit stock corporation (the "Conversion"). Accordingly, Entity A and Entity B will be issued a and b percent, respectively, of the stock of the converted corporation. The legislation requires that Entity A operate as a § 501(c)(3) organization, and that Entity B irrevocably dedicate its value for public purposes.

For what are represented to be valid business reasons, on Date 3, Parent consummated the Conversion to a State A for-profit stock corporation and completed the following other steps (the "Transaction"):

(i) New Parent was organized as a for-profit State B corporation.

(ii) New Parent formed Holdings as a State A corporation, and owns 100 percent of its outstanding stock.

(iii) Entity A and Entity B transferred Parent stock to Holdings in exchange for a and b percent, respectively, of New Parent stock.

(iv) Sub A was liquidated, and Parent received Sub A's assets and liabilities.

(v) Sub B merged into Parent, with Parent surviving, and Parent assuming Sub B's name.

(vi) Parent transferred its assets, liabilities, and c to New Parent.

(vii) Upon State A's approval, New Parent sold its stock in an initial public offering.

In connection with the Conversion, it has been represented that:

(a) The Conversion occurred (under a plan formulated, finalized and approved) before the Transaction.

(b) Other than expenses of Entity A and Entity B that were paid by Parent, New Parent, or were paid from the initial public offering proceeds, each party to the Conversion paid its own expenses, if any, in connection with the Transaction.

(c) Following the Conversion, Parent will continue in the same business it conducted prior to the Conversion.

(d) Immediately after the Conversion, Parent will continue to own the assets it held prior to the Conversion, except for the transfer of assets described in step (vi) above.

(e) Parent is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A) of the Internal Revenue Code.

(f) The fair market value of the Parent stock received by Entity A and Entity B is approximately equal to the fair market value of the beneficial interest deemed surrendered in exchange therefor.

(g) Parent did not transfer § 306 stock, within the meaning of § 306(c), to any person in connection with the Conversion.

(h) Parent is a loss corporation within the meaning of § 382(k)(1).

(i) For purposes of State A law, Parent is the same legal entity both before and after the Conversion.

(j) Following step (iii) of the Transaction, New Parent and Holdings are includible corporations as defined by § 1504(b).

(k) Step (iii) of the Transaction constitutes a reverse acquisition as defined in § 1.1502-75(d)(3) of the Income Tax Regulations.

Based solely on the information submitted and on the representations set forth above, it is held as follows with respect to the Conversion, step (vi), and certain issues raised by step (iii) described above:

(1) The Conversion of Parent from a nonstock nonprofit corporation to a for-profit stock corporation constitutes a reorganization within the meaning of § 368(a)(1)(E). Parent is “a party to a reorganization” within the meaning of § 368(b).

(2) No gain or loss is recognized by Parent. Parent’s basis in its assets, its holding period for its assets, its earnings and profits, its annual accounting period and its accounting methods are not affected by the Conversion.

(3) No gain or loss is recognized by Entity A or Entity B on its receipt of Parent shares in connection with the Conversion (§ 354).

(4) The distribution of Parent stock, pursuant to the Conversion, does not result in an owner shift or an ownership change with regard to Parent (within the meaning of § 382(g) and § 1.382-2T).

(5) Parent and its consolidated group remain in existence following step (iii) of the Transaction with New Parent as the new common parent (§ 1.1502-75(d)(3)).

(6) The Transaction qualifies as a “group structure change” under § 1.1502-33(f), and the earnings and profits of New Parent will be adjusted immediately after New Parent becomes the new common parent to reflect the earnings and profits of Parent immediately before the Parent ceases to be the common parent in the same manner as if § 381(a) applied.

(7) Holdings’s basis in Parent stock immediately after the group structure change is Parent's new asset basis as determined under § 1.1502-31(c), subject to the adjustments described in § 1.1502-31(d).

(8) The distributions from Parent to Holdings and from Holdings to New Parent as described in step (vi) above are governed by the principles of § 301(a) and (c), and § 1.1502-13(f)(2).

Pursuant to § 3.01(30) of Rev. Proc. 2002-3, 2002-1 I.R.B. 117, 119-120, the Service will not provide rulings for the transactions described in steps (i), (ii), (iii) (except as noted), (iv), (v), or (vii).

No opinion was requested and no opinion is expressed or implied concerning whether this transaction involves a material change in the taxpayer's operation or its structure under § 833(c)(2)(C).

No opinion is expressed about the tax consequences 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(k)(3) provides that it may not be used or cited as precedent.

It is important that a copy of this letter be attached to the federal income tax returns of the taxpayer involved for the taxable year in which the transaction covered by this ruling letter is consummated.

Pursuant to the powers of attorney on file in this office, copies of this letter have been sent to the taxpayer and the taxpayer's representative.

Sincerely yours,

Marnie Rapaport

Marnie Rapaport
Senior Counsel, Branch 5
Office of Associate Chief Counsel
(Corporate)