Internal Revenue Service

Number: **200425003**
Release Date: 6/18/04
Index Number: 7518.00-00

Department of the Treasury
Washington, DC 20224

Person To Contact:

Telephone Number:

Refer Reply To:
CC:PSI:5 – PLR-109776-04
Date:
February 27, 2004

In Re:

LEGEND

Taxpayer =

Company B =

Company C =

State D =

Corporation E =

Corporation F =

CCF Agreement G=

a =

b =

c =

Dear :

This letter is in response to your letter dated May 29, 2003, requesting a private letter ruling on behalf of Taxpayer, as common parent and agent for its affiliated group of corporations filing a consolidated return, including Company B, and Company C regarding the proposed transfer of certain funds held on deposit in a merchant marine capital construction fund ("CCF") in a transfer expected to qualify for nonrecognition treatment under § 351 of the Internal Revenue Code.

Taxpayer, a State D corporation, acting through subsidiaries, Taxpayer also is engaged in the container shipping business through subsidiaries. Taxpayer owns 100 percent of the stock of Company B and 100 percent of the stock of Company C. Taxpayer, Company B, and Company C, are each state law corporations treated as domestic corporations for federal income tax purposes.

Company B formerly owned all of the membership interests in Corporation E, an entity engaged in the container shipping business, and which is now called Corporation F, a joint venture in which Company B and related and unrelated corporations hold membership interests.

Taxpayer has entered into a CCF on behalf of its consolidated group with the Maritime Administration of the Department of Transportation, established pursuant to CCF Agreement G. Company B owns investments totaling a in bank deposits permitted under the CCF provisions of section 607(c) of the Merchant Marine Act of 1936, as amended. Company C (through disregarded entities) owns various CCF related shipping assets, including refrigerated shipping containers and related container refrigeration units ("Shipping Containers") and leasehold interests in b U.S. flag vessels ("Vessels"). Company B has incurred indebtedness to an unrelated person in respect of which the shipping containers act as collateral. The shipping containers and vessels are leased (or subleased) to Corporation F or to an unrelated person.

Taxpayer intends to retain its interest in the CCF investments, shipping containers, and vessels. However, it is possible that, at some time in the future, Taxpayer may wish to dispose of the stock of Company B. Taxpayer desires that all of the CCF related assets (and associated liabilities) be directly or indirectly owned by Company C. Consequently, Taxpayer intends to cause Company B to transfer its CCF Investments to Company C in exchange for newly issued Company C stock (and the assumption by Company C of certain liabilities of Company B). This transfer is intended to be a transfer of property to a corporation in exchange for stock in which no gain or

loss is recognized by reason of § 351(a) of the Code. The necessary approval for the transfer of the CCF investments to Company C has been obtained from the Maritime Administration of the Department of Transportation on c.

Taxpayer requests a ruling that if: 1) the proposed exchange of the CCF investments by Company B for the stock of Company C (and the assumption by Company C of certain liabilities of Company B) qualifies under the provisions of § 351 of the Code; 2) the transfer of Company B's CCF investments to, and the maintenance of such CCF investments by Company C has been approved by the Secretary of Transportation; and (3) a closing agreement is entered into, then the provisions of such closing agreement shall determine the CCF tax consequences resulting from the exchange, specifically:

1) Company B's basis in the stock received in the exchange from Company C;

2) The tax attributes of the CCF and property in the CCF in the hands of Company C;

3) All other consequences of the proposed exchange, including that the proposed exchange will not be treated as a nonqualified withdrawal from the Taxpayer's CCF under § 7518(g) of the Code.

Based on the information submitted and the foregoing representations, the Service will enter into a closing agreement concerning the above-mentioned tax consequences of the transaction. It is held that the closing agreement shall determine the capital construction fund consequences resulting from the exchange. No opinion is expressed as to whether the transfer of Company B's CCF investments in exchange for Company C stock qualifies under the provisions of § 351(a) of the Code.

The closing agreement is enclosed. The closing agreement may not be cited or relied upon by any person or entity whatsoever as precedent in the disposition of any other case. The closing agreement may be reopened in the event of fraud, malfeasance, or misrepresentation of material fact; it is subject to Internal Revenue Code sections that expressly provide that effect be given to their provisions (including any stated exception for Code § 7122) notwithstanding any other law or rule of law; and if it relates to a tax period ending after the effective date of this closing agreement, it is subject to any law, enacted after the effective date of this closing agreement, that applies to that tax period.

The original, duplicate, triplicate, and quadruplicate copies of the enclosed closing agreement should be signed and dated by each authorized representative of each corporation. Please return the originals and all copies to this office, to the attention of CC:PSI:5 within 30 days of the date of this letter. If the signed original and

copies of the closing agreement are not received by this office within 30 days, we will assume you no longer desire to enter into the closing agreement and we will close our files in regard to this matter.

All determinations and holdings contained in this letter are contingent on the mutual execution of the closing agreement. If either the Taxpayer or the Commissioner of the Internal Revenue Service fails to execute the agreements such determinations and holdings will be null and void for Federal income tax purposes.

This ruling does not cover the applicability of any section of the Code or regulations to the facts submitted other than the sections discussed above. This ruling is directed only to the taxpayer who requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Walter H. Woo
Senior Technician Reviewer
Branch 5

cc: copy for 6110 purposes
closing agreement

CLOSING AGREEMENT ON FINAL DETERMINATION
COVERING SPECIFIC MATTERS

This closing agreement made in quadruplicate under section 7121 of the Internal Revenue Code of 1986, as amended (the "Code") by and between

, as common parent and agent for its affiliated group of corporations filing a consolidated return, (hereinafter "Transferor"), (hereinafter "Transferee"), and Commissioner of Internal Revenue ("Commissioner").

Whereas, Transferor proposes to transfer bank deposits in the specific amount of held in a capital construction fund as described in Treasury Regulations 26 CFR § 3.1(a) (hereinafter "Fund")) to Transferee for stock and the assumption of certain liabilities of the Transferor by the Transferee;

Whereas the transfer of the Fund to, and maintenance of the Fund by, Transferee was approved by the Secretary of Transportation on

Whereas, , the Transferor, Transferee, and the Commissioner desire to finally determine the effect, of such proposed exchange, under section 607 of the Merchant Marine Act of 1936, the Treasury Regulations thereunder (26 CFR Part 3), and the Internal Revenue Code of 1986, as amended (hereinafter "Code");

Whereas, , on behalf of the Transferor and the Transferee, has requested a private letter ruling in conjunction with this closing agreement and has made certain representations with respect to the request; and

Whereas, if the proposed exchange qualifies under the provisions of section 351(a) of the Code and the representations made under penalties of perjury in the private letter ruling by n behalf of the Transferor and Transferee are correct; then

It has been determined for Federal income tax purposes that the provisions of Proposed Treasury Regulations 26 CFR § 3.8, as published on January 29, 1976, in 41 Fed. Reg. 4280, shall apply for purposes of determining–

1. The Transferor's basis in the stock received in the exchange from the Transferee, except that Proposed Treasury Regulation § 3.8(b)(3)(iv)(b) shall not apply, and, instead, the Transferor's basis in such stock shall be reduced by the entire amount (if any) in the capital gain account;

2. The tax attributes of the Fund and property in the Fund in the hands of the Transferee, and

3. All other consequences of the proposed exchange.

Now, this closing agreement witnesseth, that said Transferor, said Transferee, and said Commissioner hereby mutually agree that this Agreement is final and conclusive except that:

1) The matters to which it relates may be reopened in the event of fraud, malfeasance, or misrepresentation of material fact,

2) It is subject to the Internal Revenue Code sections that expressly provide that effect be given to their provisions (including any stated exception for section 7122) nothwithstanding any other rule of law, and

3) If it relates to a tax period ending after the effective date of this Agreement, it is subject to any law, enacted after the effective date of this Agreement that applies to that tax period.

This Agreement shall be effective as of the date four fully executed original copies of this Agreement are executed by the Commissioner. This Agreement may not be cited or relied upon by any person or entity whatsoever as precedent in the disposition of any other case.

By signing, the above parties certify that they have read and agreed to the terms of this Agreement.

By:_____ Date:
Title:

By: _____ Date:

Title:

By: _____ Date:

Title:

COMMISSIONER OF INTERNAL REVENUE

By: _____ Date:

Associate Chief Counsel (Passthroughs and Special Industries)