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The Honorable Lynn Woolsey
Member, U.S. House of Representatives
1101 College Avenue, Suite 200
Santa Rosa, CA 95404

Attention:

Dear Congresswoman Woolsey:

This letter responds to your inquiry dated January 12, 2010, on behalf of your constituent, . asked about increasing the $3,000 limit on capital loss deductions that an individual taxpayer may claim each year, the tax treatment of the distribution of shares of stock in he received from , and dividends paid on foreign stock subject to foreign withholding tax.

The $3,000 limitation on capital losses is a statutory limitation (section 1211(b) of the Internal Revenue Code (the Code)). We do not have the authority to change it. To make the change recommends would require an act of Congress.

Although the law limits the amount deductible per year, it does not completely deny a deduction for a net capital loss greater than the deductible amount. If an individual has a net capital loss that is greater than $3,000 for the tax year, he or she may deduct $3,000 in the year of the loss, then use the excess loss against capital gains in later years (up to the deductible amount) until the entire net capital loss is fully deducted (section 1212(b) of the Code). The enclosed instructions to Form 1040 Schedule D describe these rules.

also wrote about the federal tax treatment of the distribution of shares of stock of by . Generally, a corporation's distribution to its shareholders of stock in another corporation is a taxable dividend under the Code. The law does not require that the distribution must be made in cash to be taxable. However, the law provides an exception to such taxable dividend treatment under section 355 of the Code for distributions made as part of a corporate reorganization known as a “spinoff.” The Code sets forth several requirements that corporations must satisfy for a distribution to qualify under section 355 and obtain tax-free treatment.

We have not independently investigated the taxability of the transaction describes in his letter. However, the tax and securities laws oblige to make its own judgment as to the tax treatment of the distribution and to advise

and the IRS of its conclusion. said that a Form 1099 (presumably a Form 1099-DIV) from reported the distribution of shares of stock in as a taxable dividend.

A prospectus that and filed with the Securities and Exchange Commission (SEC) dated , stated that a merger involving would be effected “in accordance with law.” A “Questions and Answers” section of the prospectus stated that although the “issuance of the new shares to

shareholders will not trigger tax in ”, a “U.S. shareholder that receives shares. . .should be treated as receiving a taxable distribution from .” I have enclosed copies of the relevant pages of the prospectus. The full document is available on the SEC website, www.sec.gov, and has a file/film number .

The Form 1099 (according to ’s letters) and the foregoing prospectus filed with the SEC reflect ’s judgment that the distribution of shares of stock in

constituted a taxable dividend to U.S. shareholders. ’s judgment in the prospectus that the distribution “will not trigger tax in ” is of no consequence to how we treat the distribution in the United States. Each country has its own tax laws, and the United States does not defer to the tax laws in . and his tax advisers should make their own judgment as to whether the distribution satisfies the requirements under section 355, and proceed accordingly.

also wrote about dividends paid on foreign stock that is subject to foreign withholding tax. A taxpayer may choose to claim either an itemized deduction or a direct credit against U.S. tax in the amount of the foreign tax withheld (sections 164(a)(3), 901, and 903 of the Code). Generally, a taxpayer must file Form 1116 with his or her U.S. tax return and compute applicable limitations on the allowable credit to claim the foreign tax credit.

However, a taxpayer may claim the foreign tax credit directly on Form 1040 without filing Form 1116 or computing allowable limitations if:

- His or her foreign source income for the taxable year consists exclusively of qualified passive income such as portfolio dividends on stock;

- The amount of the foreign tax does not exceed $300 ($600 if filing a joint return); and
- The income and tax are reported to the taxpayer on a payee statement such as Form 1099-DIV (section 904(k) of the Code).

I hope this information is helpful. If you have any questions, please contact me or , Identification Number , at .

Sincerely,

Thomas D. Moffitt
Chief, Branch 2
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures (2)