

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:
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Refer Reply To:
CC:CORP:BR5 - PLR-168488-01
Date:
March 20, 2002

In Re:

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

FSub 4 =

FSub 5 =

FSub 6 =

FSub 7 =

FSub 8 =

FSub 9 =

Acquiring =

Target =

Newco 2 =

Date B =

Date C =

Date D =

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Date E =

Country A =

W =Z =a =b =c =d =e =f =

Dear

This is in reply to your letter dated December 17, 2001, requesting that we rule on certain federal income tax consequences of a transaction. The information submitted in that request and in subsequent correspondence is substantially as set forth below.

Publicly traded Parent is a diversified industrial corporation that is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Parent indirectly owns all of the stock of Sub 1. Sub 1 owns all of the stock of Sub 2 and FSub 7. Sub 1 also indirectly owns (through its ownership of all of the stock of a Parent group subsidiary) all of the stock of Sub 3. Sub 2 owns a percent of the stock of FSub 4 and Sub 3 owns b percent of the stock of FSub 4. Sub 2 owns all of the stock of FSub 5, FSub 6, Target, and Acquiring. Target and Acquiring are entities formed in Country A and taxed as corporations for federal income tax purposes. Target owns all of the stock of FSub 8 and FSub 9.

All entities designated as "FSub" are formed in Country A. Unless otherwise noted, each such entity is taxed as a corporation for federal income tax purposes.

(i) Sub 1 will transfer all of the stock in FSub 7 to Sub 2. In exchange for such stock, Sub 1 will receive consideration consisting solely of an amount of newly issued shares of common stock in Sub 2 having approximately the same fair market value. It is represented that this step will qualify as a transaction described in § 351 of the Internal Revenue Code.

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(ii) Acquiring will create a newly formed Country A entity ("Newco 1"). Acquiring will contribute cash to Newco 1 in exchange for all the outstanding Zs of Newco. Newco 1 will elect to be disregarded as an entity separate from its owner, Acquiring, for U.S. federal income tax purposes.

(iii) Sub 2 and Sub 3 will transfer all of the stock in FSub 4, FSub 5, FSub 6, and FSub 7 to Acquiring pursuant to a share exchange agreement. In exchange for the stock of FSub 4, FSub 5, FSub 6, and FSub 7, Sub 2 and Sub 3 will receive consideration consisting solely of newly issued shares of common stock in Acquiring having approximately the same fair market value. It is represented that this step will qualify as a transaction described in § 351(a) and that the consideration received by Sub 2 and Sub 3, respectively, will be proportionate to the relative value of the exchanged stock.

(iv) Sub 2, Acquiring, Target, and Newco 1 will enter into an irrevocable escrow agreement. Pursuant to the terms of the agreement, Sub 2 will deposit cash (the "Transitory Cash") in an amount intended to equal the fair market value of its Target stock with the escrow agent, to be an unrelated commercial bank. The escrow agent will be unconditionally obligated to transfer the Transitory Cash to Acquiring in exchange for Acquiring common stock with a fair market value intended to equal the amount of the Transitory Cash (and therefore also to be equal to the fair market value of the assets of Target less the amount of the liabilities of Target). Upon receipt of the Acquiring common stock, the escrow agent will be unconditionally obligated to transfer the Acquiring common stock to Sub 2. Additionally, pursuant to the escrow agreement, all of the Transitory Zs (defined in step (v) 5 below) issued pursuant to the Merger (defined and described in step (v) below) will be deposited with the escrow agent which will hold the Transitory Zs on behalf of Sub 2. Acquiring will be unconditionally obligated to use the Transitory Cash it receives to purchase the Transitory Zs. Upon receipt of the Transitory Cash in exchange for the Transitory Zs, the escrow agent will be unconditionally obligated to return the Transitory Cash to Sub 2, and the escrow will be terminated.

(v) Target and Newco 1 will enter into an agreement of merger. Pursuant to the agreement, Target will agree to merge with and into Newco 1, and Newco 1 will succeed to all the assets and liabilities of Target (the "Merger"). In consideration for its stock in Target, Sub 2 will receive consideration consisting solely of newly issued Zs in Newco 1 (the "Transitory Zs"), which Zs will be directly and irrevocably deposited in the escrow described above in step (iv).

(vi) Upon satisfaction of all conditions to closing, the Merger will be completed. Pursuant to the terms of the merger agreement and the escrow agreement, Sub 2 will surrender all of its stock in Target, and Newco 1 will transfer the Transitory Zs directly to the escrow agent. There will be no dissenters in the Merger, and Sub 2 will not receive any consideration other than the constructive receipt of the Transitory Zs to be directly deposited with the escrow agent pursuant to the escrow agreement. After the Merger, Newco 1 will change its name to Newco 2

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(vii) Pursuant to the escrow agreement, Sub 2 will deposit the Transitory Cash in the escrow, which will then be transferred by the escrow agent to Acquiring in exchange for Acquiring common stock.

(viii) Upon receipt of the Acquiring common stock, the escrow agent will immediately transfer the Acquiring common stock to Sub 2.

(ix) With the Transitory Cash, Acquiring will purchase the Transitory Zs deposited in the escrow, and the escrow agent will return the Transitory Cash to Sub 2.

(x) Acquiring will surrender the Transitory Zs to Newco 2 for cancellation without additional consideration.

(xi) Newco 2 will transfer certain real estate assets (i.e., buildings and leaseholds) to Acquiring or another of the Country A affiliates in exchange for cash.

It is anticipated that Newco 2 and FSub 9 will be combined with FSub 5 some time in the future.

The following representations have been made in connection with the transaction:

- (a) The fair market value of the Acquiring stock received by Sub 2, in its capacity as the sole shareholder of Target, will be approximately equal to the fair market value of the Target stock surrendered in the exchange.
- (b) Acquiring will receive all of the assets of Target and, thus, will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by Target immediately prior to the transaction. For purposes of this representation, amounts paid by Target to dissenters, amounts used by Target to pay its reorganization expenses, amounts paid by Target to shareholders who receive cash or other property, and all redemptions and distributions (except for regular, normal dividends) made by Target immediately preceding the transfer are included as assets of Target held immediately prior to the transaction.
- (c) During the 5-year period beginning on the date of the transaction, there is no plan or intention for Acquiring, or any person related (as defined in § 1.368-1(e)(3)) to Acquiring, to acquire, with consideration other than Acquiring voting stock, Acquiring voting stock furnished in exchange for a proprietary interest in Target in the transaction, either directly or through any transaction, agreement, or arrangement with any other person.
- (d) During the 5-year period ending on the date of the transaction, (i) neither Acquiring, nor any person related (as defined in § 1.368-1(e)(3)) to

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Acquiring, will have acquired Target stock with consideration other than Acquiring voting stock (excluding exchanges by Acquiring of Target stock for a direct interest in the Target enterprise); and (ii) no distributions will have been made with respect to Target stock (other than ordinary, normal, regular, dividend distributions made pursuant to Target's historic dividend paying practice), either directly or through any transaction, agreement, or arrangement with any other person except for (A) c shares of common stock of Target issued to Sub 2 in exchange for cash in Date B to finance, in part, an asset acquisition by Target (B) d share of W of Target issued to Sub 2 in exchange for cash on Date C, (C) e shares of common stock of Target issued to Sub 2 as a result of the merger of Target with another corporation in Date D, and (D) f shares of common stock of Target issued to Sub 2 as a result of the acquisition of FSub 9 by Target in Date E.

- (e) The aggregate value of the acquisitions described in paragraph (d) will not exceed 50 percent of the value (without giving effect to the acquisitions) of the proprietary interests in Target on the effective date of the proposed transaction.
- (f) Acquiring has no plan or intention to sell or otherwise dispose of any of the assets of Target acquired in the transaction, except for dispositions made in the ordinary course of business and except that Newco 2 might merge into FSub 5 some time in the future.
- (g) Target will be deemed to distribute the stock of Acquiring it receives in the Merger in pursuance of the plan of reorganization.
- (h) The liabilities of Target assumed (as determined under § 357(d)) by Acquiring and the liabilities to which the transferred assets were subject were incurred by Target (or its predecessors) in the ordinary course of its business.
- (i) Following the transaction, Acquiring will continue the historic business of Target, except that Newco 2 may merge into FSub 5 some time in the future.
- (j) Acquiring, Target, and Sub 2 will pay their respective expenses, if any, incurred in connection with the transaction.
- (k) There is no intercorporate indebtedness existing between Acquiring and Target that was issued, acquired, or settled at a discount.
- (l) Neither Target nor Acquiring is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).
- (m) The fair market value of the assets of Target transferred to Acquiring will

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equal or exceed the sum of the liabilities assumed by Acquiring, plus the amount of liabilities, if any, to which the transferred assets are subject.

- (n) The total adjusted basis of the assets of Target transferred to Acquiring will equal or exceed the sum of the liabilities assumed (as determined under § 357(d)) by Acquiring, plus the amount of liabilities, if any, to which the transferred assets are subject.
- (o) After the transaction, Sub 2, Target's sole shareholder, will be in control of Acquiring within the meaning of § 368(a)(2)(H).
- (p) At the time of the transaction, Acquiring will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Acquiring that, if exercised or converted, would affect Sub 2's acquisition or retention of control of Acquiring, as defined in § 368(a)(2)(H).
- (q) Target is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).
- (r) The transfer of the Target assets by Target to Acquiring in exchange for Acquiring stock is a reorganization to which § 1.367(b)-4(a) of the Income Tax Regulations applies.
- (s) Target and Acquiring are corporations for purposes of the Merger (§ 1.367(b)-1(a) and (b)).
- (t) The notice requirements of § 1.367(b)-1(c)(1) will be met with regard to the Merger.
- (u) Each of Target and Acquiring will be a controlled foreign corporation ("CFC") (within the meaning of § 957(a)) before and immediately after the Merger.
- (v) With respect to Target, Sub 2 is a § 1248 shareholder (within the meaning of § 1.367(b)-2(b)) and will be a § 1248 shareholder on the date immediately preceding the Merger.
- (w) After the Merger, Sub 2 will be a § 1248 shareholder (within the meaning of § 1.367(b)-2(b)) of Acquiring.

Based solely on the information submitted and on the representations made by the taxpayer, it is held as follows:

- (1) For federal income tax purposes, steps (iv) through (x) of the transaction described above will be treated as the transfer by Target of substantially

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all of its assets to Acquiring solely in exchange for Acquiring voting stock and the assumption of the liabilities of Target, followed by the distribution by Target of the Acquiring voting stock to its shareholder in complete liquidation.

- (2) The acquisition by Acquiring of substantially all of the assets of Target in exchange for Acquiring voting stock and the assumption by Acquiring of the liabilities of Target followed by Target's distribution of the Acquiring voting common stock in liquidation constitutes a "reorganization" within the meaning of § 368(a). For purposes of this ruling, "substantially all" means at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets of Target. Target and Acquiring are each a "party to a reorganization" within the meaning of § 368(b).
- (3) No gain or loss will be recognized by Target on the transfer of substantially all of its assets to Acquiring solely in exchange for shares of Acquiring voting stock and the assumption by Acquiring of the liabilities of Target or on the distribution of the Acquiring voting stock to Target's shareholder (§§ 357(a), 361(a), and 361(c)).
- (4) No gain or loss will be recognized by Acquiring on the receipt of Target's assets solely in exchange for shares of Acquiring voting stock (§ 1032(a)).
- (5) The basis of the assets of Target in the hands of Acquiring will be the same as the basis of those assets in the hands of Target immediately prior to the transaction (§ 362(b)).
- (6) The holding period for the assets of Target in the hands of Acquiring will include the period during which those assets were held by Target (§ 1223(2)).
- (7) No gain or loss will be recognized by Target's shareholder on the exchange of its stock in Target for shares of Acquiring voting stock (§ 354(a)(1)).
- (8) The basis of the Acquiring voting stock received by Target's shareholder is the same as the basis of the Target stock surrendered in exchange therefor (§ 358(a)(1)).
- (9) The holding period of the Acquiring voting stock received by Target's shareholder includes the holding period of the Target stock surrendered in exchange therefor, provided the Target stock was held as a capital asset on the date of the exchange (§ 1223(1)).

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- (10) Sub 2 will enter a 5-year gain recognition agreement as provided in § 1.367(a)-8 treating steps (iv) through (x) above and the anticipated combination of Newco 2 and FSub 9 with FSub 5 some time in the future as an indirect transfer of stock under § 1.367(a)-3(d)(1)(v).
- (11) Sub 2 will enter a 5-year gain recognition agreement as provided in § 1.367(a)-8 with respect to the transfer of the FSub 4 stock in step (iii) above.
- (12) Sub 2 will enter a 5-year gain recognition agreement as provided in § 1.367(a)-8 with respect to the transfer of the FSub 5 stock in step (iii) above.
- (13) Sub 2 will enter a 5-year gain recognition agreement as provided in § 1.367(a)-8 with respect to the transfer of its FSub 6 stock in step (iii) above.
- (14) Sub 2 will enter a 5-year gain recognition agreement as provided in § 1.367(a)-8 with respect to the transfer of the FSub 7 stock in step (iii) above.
- (15) Sub 3 will enter a 5-year gain recognition agreement as provided in § 1.367(a)-8 with respect to the transfer of its FSub 4 stock in step (iii) above.

No opinion is expressed about the tax treatment of the proposed 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 proposed transaction that are not specifically covered by the above rulings. Specifically, no opinion is expressed whether any or all of the above-referenced foreign corporations are passive foreign investment companies (within the meaning of § 1297(a) of the Code and regulations to be promulgated thereunder). If it is determined that any or all of the above-referenced corporations are passive foreign investment companies, no opinion is expressed with respect to the application of §§ 1291 through 1298 to the proposed transactions. In particular, in a transaction in which gain is not otherwise recognized, regulations under § 1291(f) may require gain recognition notwithstanding any other provision of the Code.

This ruling offers no opinion as to the application of § 367 to any of the transactions described above.

This ruling letter is directed only to the taxpayers 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 taxpayers involved for the taxable year in which the transaction covered by this ruling letter is consummated.

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

Sincerely yours,

By: Debra Carlisle
Debra Carlisle
Chief, Branch 5
Office of Associate Chief Counsel
(Corporate)

cc: