

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:CORP:1-PLR-102377-03
Date:
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Legend

Parent =

Subsidiary =

Trust =

Fund =

Fiduciary =

Business =

Class 1 Preferred Stock =

Class 2 Preferred Stock =

Series X Preferred Stock =

Year A =

Year B =

Date 1 =

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Date 2 =

Date 3 =

a =b =c =d =e =f =g =

Dear :

This letter responds to your January 9, 2003, request for rulings on certain federal income tax consequences of proposed and completed transactions. The information provided in that request and in later correspondence is summarized below.

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.

Summary of Facts

Parent is a widely held, publicly owned holding company and the common parent of an affiliated group of corporations that files a consolidated tax return. Parent represents that the group of which Parent is the common parent is a loss group as defined in § 1.1502-91(c) of the Income Tax Regulations, and, treating the net operating losses as net operating losses of the common parent, Parent is a loss corporation as defined in § 382(k)(1). By the end of Year A, Parent expects to have a net operating loss of approximately \$a. Parent is currently under the jurisdiction of a court in a Title 11 case. Subsidiary is Parent's principal operating subsidiary and is engaged in Business.

Parent has outstanding four classes of stock with economic rights: common stock, Class 1 Preferred Stock, Class 2 Preferred Stock, and Series X Preferred Stock. Each share of Class 1 Preferred Stock and Class 2 Preferred Stock is convertible into

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four shares of common stock at the holder's option. In addition, Parent has outstanding several classes of preferred stock that have specified voting rights but carry only de minimis economic rights.

Trust, a qualified trust described in § 401(a) of the Internal Revenue Code, first acquired parent stock in Year B (more than three years ago). Within the past three years, the maximum amount of Parent stock held by Trust constituted b percent (at least 5 percent) by value of the total outstanding Parent stock. Within the past three years, no beneficiary of Trust owned, directly and indirectly, as much as five percent of Parent. On or about Date 1, Fiduciary determined that allowing Trust to continue to hold Parent stock was inconsistent with its duties under the Employee Retirement Income Security Act of 1974, as amended (ERISA). Fiduciary therefore directed that all the Parent stock held by Trust be sold. Sales of Parent stock by Trust on Date 2 caused a reduction in Trust's ownership interest in Parent stock from c percent (a percentage at least five percent) at the open of Date 2 to d percent (a percentage less than five percent) at the close of Date 2. As of that date, Trust and Fiduciary had no agreement with any third party to sell any additional shares of Parent stock. At no point following Date 2 has Trust owned as much as five percent of Parent.

Within the past three years, the maximum amount of Parent stock held by Fund, a mutual fund, constituted e percent (at least 5 percent) by value of the total outstanding Parent stock. Within the past three years, no owner of an interest in Fund owned, directly and indirectly, as much as five percent of Parent. Sales of Parent stock by Fund on Date 3 caused a reduction in Fund's ownership interest in Parent stock from f percent (a percentage at least five percent) at the open of Date 3 to g percent (a percentage less than five percent) at the close of Date 3. At no point following Date 3 has Fund owned as much as five percent of Parent.

Rulings

Based solely on the information and representations submitted, we rule as follows:

- (1) Trust is a 5-percent shareholder within the meaning of § 1.382-2T(g)(1)(i).
- (2) Date 2 is a testing date within the meaning of § 1.382-2(a)(4)(i).
- (3) For purposes of § 1.382-2T, Parent may presume, for each testing date subsequent to Date 2 having a testing period that includes Date 2, that Trust owned d percent of the stock of Parent as long as Trust continues to own less than five percent of the stock of Parent. § 1.382-2T(g)(5)(i)(B).
- (4) Solely for purposes of any acquisition of Parent stock described in § 1.382-2T(j)(2)(vi), d percent of Parent stock shall be treated as owned by a separate public group. § 1.382-2T(g)(5)(i)(B).

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(5) Fund is a first tier entity within the meaning of § 1.382-2T(f)(9); the public group of Fund is a 5-percent shareholder within the meaning of § 1.382-2T(g)(1)(ii).

(6) Date 3 is a testing date within the meaning of § 1.382-2(a)(4)(i).

(7) For purposes of § 1.382-2T, Parent may presume, for each testing date subsequent to Date 3 having a testing period that includes Date 3, that the public group of Fund owned g percent of the stock of Parent as long as that public group continues to own less than five percent of the stock of Parent. § 1.382-2T(g)(5)(i)(B).

(8) Solely for purposes of any acquisition of Parent stock described in § 1.382-2T(j)(2)(vi), g percent of Parent stock shall be treated as owned by a separate public group. § 1.382-2T(g)(5)(i)(B).

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.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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

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,

Mark S. Jennings
Chief, Branch 1
Office of Associate Chief Counsel
(Corporate)