

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:4-PLR-104026-03

Date:

July 11, 2003

LEGEND:

Corporation =

Business A =

Business B =

Business C =

Date 1 =

Date 2 =

Date 3 =

a =

b =

c =

d =

e =

D Assets =

E Assets =

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Family A =

Dear .

This letter responds to your January 15, 2003 request for rulings on certain federal income tax consequences of a proposed transaction. The information submitted in that request and in subsequent correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Summary of Facts

Corporation is a closely held corporation that has two classes of common stock outstanding. Family A owns all of the outstanding common stock. Each class of common stock has identical rights, except that only Class A common shareholders may vote. There are no outstanding options, warrants, or other rights to acquire any shares of any class of stock.

Corporation has directly operated Business A and Business B, and indirectly operated Business C. On Date 1, Corporation sold the assets of Business A for approximately \$a and distributed \$b to shareholders in partial liquidation of Corporation (the "Date 1 distribution"). On Date 2, Corporation sold the D Assets of Business B for approximately \$c. Shortly after the sale, Corporation invested the D Assets proceeds (the "D Asset Proceeds") in a money market account. By Date 3, Corporation expects to sell the E Assets of Business B for approximately \$d (the "E Asset Proceeds"). Corporation will continue to operate Business C.

Proposed Transaction

Corporation has proposed the following series of steps to facilitate the distribution of proceeds from the sale of Business B assets (collectively, the "Proposed Transaction"):

(i) Corporation will adopt a plan of partial liquidation (the "Plan") providing for Corporation to distribute to its shareholders all of the D Asset Proceeds immediately and the E Asset Proceeds after completion of the E Asset sale (together, the D Asset Proceeds and the E Asset Proceeds, the "Proceeds"). The Proceeds will be reduced by federal and state income taxes due as a result of such sales, reduced by amounts required to pay off an outstanding loan secured by one of the assets sold, and reduced by all expenses associated with such sales.

(ii) Corporation will distribute all of the Proceeds to its shareholders as described

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above (the "Distribution") in the year that Corporation adopts the Plan, or in the subsequent year, pursuant to the Plan. Corporation estimates the amount of the Distribution to be approximately \$e.

Representations

The taxpayer has made the following representations concerning the Proposed Transaction:

(a) The Proceeds to be distributed are proceeds from the sale of business assets that Corporation actively used in Business B and are not attributable to an expansion reserve, a mere business decline, or a mere decrease in working capital. None of the Proceeds are proceeds from the sale of assets that, directly or indirectly, are or were idle, passive or investment assets.

(b) The Distribution will be consummated during the taxable year in which the Plan is adopted or in the succeeding taxable year.

(c) Following the Distribution, Corporation will not retain any portion of the Proceeds attributable to Business B.

(d) The Distribution will be made with cash coming solely from the Proceeds. Corporation will not use any of the cash that it will distribute pursuant to the Distribution in any manner, except for the reduction of a loan that was secured by one of the assets disposed, the payment of selling expenses associated with the sale, and the payment of federal and state income taxes assessed as a result of such sale. Corporation will not distribute any assets representing income earned on the Proceeds pursuant to the Distribution. Corporation has not used any of the Proceeds in any of its remaining business activities. Corporation will not distribute any substituted assets.

(e) Corporation will distribute the Proceeds pro rata to its shareholders.

(f) There are no declared but unpaid dividends on the stock to be redeemed by Corporation.

(g) There is no plan or intent to completely liquidate Corporation.

(h) Corporation has no plan or intention to reenter Business B or to expand its continuing business operations other than through normal internal growth.

(i) Corporation shareholders have no plan or intention to reinvest any of the amount distributed in the Distribution in Corporation.

(j) The Distribution will not be preceded or followed by the reincorporation or transfer of such cash to a recipient corporation where persons holding more than 20 percent in value of the stock of Corporation also hold more than 20 percent in value of

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the stock of recipient corporation. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of § 318 of the Code as modified by § 304(c)(3).

(k) None of the amounts distributed by Corporation in the Distribution will be received by a Corporation shareholder as a debtor, creditor, or employee, or in any capacity other than that of a Corporation shareholder.

Rulings

Based solely on the information submitted and on the representations set forth above, it is held as follows:

(1) The Distribution will be treated as a distribution in partial liquidation under § 302(e)(1) (§ 1.346-1(a)(2) of the Income Tax Regulations), provided the Distribution is made in the taxable year in which the plan is adopted or in the succeeding year.

(2) The maximum amount of cash considered to be distributed in the Distribution will equal the sales proceeds received by Corporation relating to Business B, reduced by all liabilities (including taxes and selling expenses) of Corporation incurred in connection with the sale and the Distribution. This amount will not include any earned or accrued investment earnings on the Proceeds (See Rev. Rul. 60-232, 1960-2 C.B. 115; Rev. Rul. 71-250, 1971-1 C.B. 112; Rev. Rul. 76-279, 1976-2 C.B. 99; Rev. Rul. 76-289, 1976-2 C.B. 100).

(3) If the amount distributed to Corporation shareholders in the Distribution exceeds the maximum amount considered distributed in the partial liquidation (see ruling 2 above), each shareholder of Corporation or each person considered to hold Corporation stock under § 302(e)(5), as relevant, will be treated as receiving the same ratio of that maximum amount and any excess. Such excess distribution will be treated as a distribution of property under §§ 301(c) and 316.

(4) In the case of noncorporate shareholders, distributions made pursuant to the Plan to the extent indicated in ruling (2) above will be treated as in full payment in exchange for the stock constructively redeemed (§ 302(a)). Such shareholders will recognize gain or loss to the extent of the difference between the amount distributed in partial liquidation and the adjusted basis of the shares deemed surrendered, as provided in ruling (5) below, in exchange therefor. Provided that the stock is a capital asset in the hands of an exchanging shareholder and that § 341(a) is not applicable, gain or loss, if any, will be considered capital gain or loss subject to the provisions and limitations of Subchapter P of Chapter 1 of the Code.

(5) For purposes of ruling (1) above, the number of shares that will be considered to have been redeemed regardless of the number of shares actually surrendered for the purposes of determining gain or loss will be determined in accordance with the principles set forth in Rev. Rul. 77-245, 1977-2, C.B. 105. To the

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extent that the fair market value of the distributions in partial liquidation received by a shareholder exceeds the fair market value of Corporation stock deemed surrendered in exchange therefor, the additional shares considered redeemed pursuant to Rev. Rul. 77-245 will be determined in accordance with the principles set forth in Rev. Rul. 68-348, 1968-2, C.B. 141 and Rev. Rul. 85-48, 1985-1 C.B. 126.

(6) Corporation will recognize no gain or loss on the Distribution (§ 311(a)).

Caveats

We express no opinion about the tax treatment of the Proposed Transaction under any provision of the Code or regulations, or the tax treatment of any condition existing at the time of, or effect resulting from, the Proposed Transaction that is not specifically covered by the above rulings. In particular, no opinion was requested and none is expressed regarding the Date 1 distribution.

Procedural Statements

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

Each taxpayer affected by the Proposed Transaction should attach a copy of this ruling letter to the taxpayer's federal income tax return for the taxable year in which the Proposed Transaction covered by this letter is completed.

Under a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Richard K. Passales
Senior Counsel, Branch 4
Office of Associate Chief Counsel
Corporate