

Internal Revenue Service

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Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

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CC:CORP:B03

PLR-150225-05

Date:

December 16, 2005

LLC 1 =

Owner 1 =

Owner 2 =

Date A =

Date B =

State Z =

Corporation =

Dear :

We respond to your letter dated September 30, 2005, submitted on behalf of LLC 1 and Corporation, requesting rulings concerning the federal income taxation of two related transactions. Additional information was submitted in letters dated December 6 and December 16, 2005. The information submitted is summarized below.

Effective on Date A, LLC 1, a State Z limited liability company (treated for federal tax purposes as a partnership), converted into Corporation (an entity taxable under subchapter C of the Internal Revenue Code) by filing a certificate of conversion and a certificate of incorporation with State Z. As a result, Owner 1 and Owner 2, the sole owners of LLC 1, became the sole shareholders of Corporation. This conversion from

LLC 1 into Corporation is referred to below as the "Incorporation Transaction." The Incorporation Transaction was conducted pursuant to a contract previously entered into among Owner 1, Owner 2, and LLC 1. The certificate of incorporation may also have constituted a contract between Owner 1, Owner 2, and LLC 1.

Since Date A, Corporation has made certain redemptions of its outstanding stock as a result of the death or separation from service of members of its management team. Separately, since Date A, Corporation has made to Owner 1 and Owner 2 an LLC Tax Distribution Payment to which they were entitled for the period through Date A.

The Incorporation Transaction was effected in anticipation of making an initial public offering ("IPO") of stock of Corporation. As a result of a "precipitous and unexpected deterioration in market conditions following" the Incorporation Transaction, however, the IPO was canceled shortly thereafter as of Date B. No plan exists to attempt another public offering "in the near future."

As Corporation will not make a public offering of its stock, the parties desire that Corporation convert back into an LLC taxable as a partnership (referred to below as LLC 2) before the end of Corporation's taxable year that includes the original conversion, so that it and Owner 1 and Owner 2 together again will be subject to only a single level of federal income taxation. The proposed conversion back into an LLC is referred to below as the "Rescission Transaction" and would be conducted pursuant to a Rescission Agreement that the parties would enter into beforehand. The Rescission Transaction would be effected by filing a certificate of conversion with State Z.

The Taxpayer (meaning LLC 1 and Corporation together) represents that the Incorporation Transaction constituted a transaction qualifying under § 351 of the Internal Revenue Code and that the current taxable years of Owner 1, Owner 2, and the Taxpayer all end on December 31, . Date A falls within the current taxable year of each party that ends on December 31, . Additionally, the Taxpayer represents as follows:

- (a) Prior to the Incorporation Transaction, the Taxpayer was a limited liability company taxable as a partnership for federal income tax purposes.
- (b) The Taxpayer has no current intention or plan to make an election pursuant to § 301.7701-3 of the Income Tax Regulations to be classified as an association after converting back into an LLC.
- (c) Other than the redemptions made as a result of the death or separation from service of certain members of the Taxpayer's management team and the LLC Tax Distribution Payment, the Taxpayer has not made any distributions to its equity holders since the date of the Incorporation Transaction.

- (d) Since Date A, the Taxpayer has not taken any actions with respect to, or engaged in any transactions with, Owner 1 or Owner 2 that are inconsistent with the actions and transactions the Taxpayer would have undertaken had it remained a partnership for federal income tax purposes at all relevant times, except that the Taxpayer has not distributed certain amounts to Owner 1 and Owner 2 with respect to each member's share of allocated net income since Date A (i.e., tax distributions) that it would have distributed had the Taxpayer remained a partnership for federal income tax purposes. If the Rescission Transaction is effectuated, the Taxpayer will make these tax distributions to Owner 1 and Owner 2 in accordance with the operating agreement that governed the relationship among Owner 1, Owner 2, and LLC 1.
- (e) If the Rescission Transaction is effectuated, the Taxpayer will file its federal income tax return as if it was a partnership during all of calendar year , and each of Owner 1 and Owner 2 will include in income its allocable share of the Taxpayer's items of income, deduction, gain, and loss for . Each of Owner 1 and Owner 2 will report the amounts received in the redemptions described in representation (c) consistently with the Taxpayer's having been an LLC taxable as a partnership during all of taxable year .
- (f) Upon the effectiveness of the Rescission Transaction, the relationship among Owner 1, Owner 2, and LLC 2 will be governed by the same operating agreement that governed the relationship among Owner 1, Owner 2, and LLC 1 (although the agreement will be re-executed).
- (g) The Rescission Agreement is intended to restore the legal and financial arrangements between the owners and the Taxpayer as would have existed had the Taxpayer not converted from a limited liability company taxable as a partnership into a corporation taxable under subchapter C of the Code.
- (h) The effect of the Rescission Agreement is to cause the legal and financial arrangements between the owners and the Taxpayer to be identical in all material respects, from the date immediately before the conversion, to such arrangements as would have existed had the conversion not occurred.
- (i) Neither the Owners nor the Taxpayer have taken or will take any material position inconsistent with the position that would have existed had the conversion not occurred.

Based solely on the facts submitted, the representations made, and the parties' restoration, by December 31, , of the relative positions they would have occupied if

the Incorporation Transaction had not occurred (Rev. Rul. 80-58, 1980-1 C.B. 181), we rule that, for federal income tax purposes:

- (1) the Taxpayer will be treated as a partnership at all times during calendar year ;
- (2) Owner 1 and Owner 2 will be treated as partners of the Taxpayer during such period; and
- (3) the conversion of the Taxpayer from a corporation into a limited liability company taxable as a partnership pursuant to the Rescission Transaction will not be treated as a liquidation of Corporation for purposes of determining the taxable income of the Taxpayer, Owner 1, or Owner 2.

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.

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(s) requesting it. Section 6110(k)(3) of the Code 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 representatives.

Sincerely,

Filiz A. Serbes
Chief, Branch 3
Office of Associate Chief Counsel (Corporate)

cc: