

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200725012**
Release Date: 6/22/2007

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 368.06-00, 1361.05-00,
1374.00-00, 1368.01-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-138975-06

Date:
March 19, 2007

LEGEND

Oldco =

Newco =

StateA =

Year1 =

MonthM =

BusinessA =

Dear :

This letter responds to a letter dated August 11, 2006, and subsequent correspondence, written on behalf of Oldco by its authorized representative, requesting rulings as to the federal income tax consequences of a proposed transaction.

FACTS

The information submitted provides that Oldco is a StateA corporation that uses the accrual method of accounting and a fiscal year ending on the 31st of MonthM. Oldco elected S corporation status in Year1. Prior to Year1, Oldco was a C corporation.

Oldco is engaged in BusinessA which has four distinct business units (the “Four Businesses”). Oldco has outstanding two classes of common stock which are identical in all respects, except for voting rights. Oldco has 15 shareholders (“Oldco Shareholders”) who hold all the outstanding stock in Oldco.

Oldco has determined that it is desirable to operate in a holding company structure, with Oldco being a subsidiary of Newco, a new StateA corporation. Furthermore, it is contemplated that either presently existing single member limited liability companies (“OldLLCs”) already wholly owned by Oldco or newly formed single-member limited liability companies (“NewLLCs”) may be utilized in conjunction with the operation of some or all of the Four Businesses. Newco and Oldco are each intended to be recognized as a separate corporate entity under StateA law. However, for federal income tax purposes, Oldco desires to have all of the entities involved [that is, Oldco, Newco, and any wholly-owned limited liability company (LLC)] treated as a single entity.

Newco will have outstanding solely common stock. Prior to the Contribution (described below), Newco will have no assets or liabilities [or possibly a minimal amount of assets and liabilities as described in representation (c), below] and will not have engaged in any activities.

Similarly, prior to Step (III) below, each of any NewLLCs will have no assets or liabilities [or possibly a minimal amount of assets and liabilities as described in representation (c) below] and will not have engaged in any activities.

To achieve its objectives, Oldco plans to undertake a transaction (“Transaction”) through three steps (“Steps”). Steps (I) and (II) will be undertaken together. It has not yet been decided when Step (III) will be taken. Step (III) will be undertaken as conditions warrant. The Steps are as follows:

- Step (I) Oldco Shareholders will transfer all the outstanding stock in Oldco to Newco (“the Contribution”) in exchange for all the outstanding stock in Newco. Thus, Oldco will be a wholly owned subsidiary of Newco and Newco will be wholly owned by Oldco Shareholders.
- Step (II) Newco will elect (the “QSub Election”) to have Oldco treated as a qualified subchapter S subsidiary (QSub).
- Step (III) Some of the assets and liabilities of Oldco and/or Newco (including membership interests in LLCs) will be transferred among Oldco, Newco, and one or more of the OldLLCs and NewLLCs.

REPRESENTATIONS

Oldco and Newco have made the following representations in connection with the proposed transaction:

- (a) At the first possible opportunity, Newco will elect to treat Oldco as a QSub. There will be no delay between the Contribution and this QSub Election and the election will be made in a manner such that it is effective as of the date of the Contribution (see § 1.1361-3(a)(4) of the Income Tax Regulations).
- (b) With respect to any OldLLC at all times throughout the transaction, and with regard to any NewLLC beginning with the time when a NewLLC receives any Oldco assets or liabilities, each such LLC will be a single member LLC wholly owned by Newco or Oldco and this LLC will be treated as a disregarded entity for federal income tax purposes.
- (c) Immediately prior to the Transaction, Newco will be engaged in no activity and will have no assets or liabilities except as further described in this representation (c). Similarly, with regard to each of the NewLLCs, at no time prior to Step (III) will any of these entities be engaged in any activity or have any assets or liabilities except as further described in this representation (c). Prior to Step (I) Newco -- and prior to Step (III) each of the NewLLCs -- may have minimal assets if the assets are required for (i) paying such company's incidental expenses; and/or (ii) maintaining such company's status as a corporation or LLC in accord with StateA law.
- (d) Immediately following Step (II), Newco together with its QSub, Oldco, will hold all the assets held by Oldco immediately prior to the Transaction except as further described in this representation (d). [If any part of Step (III) occurs before or with Step (II), then, for purposes of this representation, any assets held by a Step (III) NewLLC are included in the assets held by Newco.] The only change in assets occurring from the Transaction will be as a result of Oldco, Newco, the OldLLCs and/or the NewLLCs incurring filing, accounting, legal fees, and/or other expenses incident to the Transaction including the cost of obtaining governmental approvals for the Transaction. The total of all these Transaction costs will be less than one percent (1%) of the fair market value of Oldco's net assets immediately prior to the Transaction.
- (e) All liabilities to which the Oldco assets are subject at the time of the Transaction, and all liabilities of Oldco that are properly treated as being assumed by Newco in the Transaction (see § 357(d) of the Internal Revenue Code), are liabilities that were incurred in the ordinary course of business and are associated with the assets held by Oldco at the time of the Transaction.

- (f) At the time of the Transaction, neither Oldco, Newco, nor any of the OldLLCs or NewLLCs will have outstanding any debt or convertible securities, warrants or options, or any other type of right or instrument, where such right or instrument constitutes an equity interest or membership interest in Oldco, Newco, or any of the LLCs, or where pursuant to such right or instrument any person could acquire an equity interest or membership interest in either Oldco, Newco, or any of the LLCs.
- (g) There is no plan or intention for either Oldco, Newco, or any of the OldLLCs or NewLLCs to issue any stock, or equity interest, or membership interest in conjunction with or subsequent to the Transaction, except for the stock in Newco being issued to Oldco Shareholders as described in Step (I), and except for the membership interest in the LLCs issued to Newco or Oldco.
- (h) Oldco Shareholders will receive solely Newco common stock in the Transaction.
- (i) The exchange ratio of Oldco stock for Newco stock will be one-for-one. Thus, following the Transaction, each of the Oldco Shareholders will hold the same number of shares of stock in Newco that such shareholder previously held in Oldco.
- (j) The Newco shares received by Oldco Shareholders will be identical in all respects to the Oldco stock for which they are exchanged.
- (k) Each of the Oldco Shareholders will pay her/his own, and the corporations will pay their own, expenses incurred in connection with the Transaction.
- (l) Oldco is an S corporation (within the meaning of § 1361(a)) and there is no plan or intention to revoke or otherwise terminate the S corporation election of either Oldco or Newco.
- (m) There is no plan or intent to terminate the QSub election for Oldco. There is no plan or intent to terminate the disregarded entity status of any of the OldLLCs or NewLLCs. It is the intent of Oldco, Newco, and the Oldco Shareholders that, following the Transaction, Oldco and each of any LLCs will at no time be treated as a separate entity for federal income tax purposes. Rather, it is intended that, beginning at the time of Step (I) Oldco and any OldLLCs will at all times, and beginning at the time of Step (III) each of any NewLLCs will at all times, be treated as a part of Newco for federal income tax purposes.

- (n) Oldco is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

RULINGS

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

- (1) Provided that Newco is a corporation that meets the requirements to be a small business corporation under § 1361(b)(1), Newco will be eligible to be treated as an S corporation within the meaning of § 1361.
- (2) Provided that Oldco is not an ineligible corporation as defined in § 1362(b)(2), as soon as Newco acquires all the stock of Oldco in the Contribution, Oldco will be eligible to be a QSub.
- (3) Provided that a QSub election is made so that Oldco becomes a QSub of Newco as of the date of Step (I), and provided further that each OldLLC at all times throughout the transaction, and that each of any NewLLCs constitutes a disregarded entity beginning with the time such LLC acquires any assets or liabilities of Oldco or Newco, then, for federal income tax purposes: (A) Newco and its subsidiary, Oldco, and each of such LLCs, will be treated as a single entity that is an S corporation; and (B) the change in the form and identity of the corporation (from Oldco into Newco) in the Transaction will be treated as an asset acquisition in which there is a transfer by Oldco of all its assets to Newco in exchange for Newco stock and the assumption by Newco of Oldco liabilities followed by a distribution of the Newco stock by Oldco to its shareholders. Furthermore, any transfer of assets and/or liabilities from Oldco and/or Newco to each other or to any of the LLCs, pursuant to Step (III) will be disregarded for federal income tax purposes as being merely a shifting of assets and liabilities within a single taxable entity, and, thus, will have no federal income tax consequences. (See § 1361(b)(3)(A) which provides that a corporation that is a QSub is not treated as a separate corporation but, rather, all the assets, liabilities, and items of income, deduction and credit of a QSub will be treated as those of the S corporation.)
- (4) The Contribution accompanied by the QSub Election for Oldco is a reorganization within the meaning of § 368(a)(1)(F). Oldco and Newco will each be a "party to a reorganization" within the meaning of § 368(b).

- (5) No gain or loss will be recognized by Oldco upon the transfer of assets to Newco in exchange for Newco stock and Newco's assumption of liabilities (§§ 361(a) and 357(a)).
- (6) No gain or loss will be recognized by Newco on the receipt of Oldco assets in exchange for Newco stock (§ 1032(a)).
- (7) The basis of each asset received by Newco will be the same as the basis of such asset in the hands of Oldco immediately prior to the Transaction (§ 362(b)).
- (8) The holding period for each of the assets received by Newco will include the period during which such asset was held by Oldco (§ 1223(2)).
- (9) No gain or loss will be recognized by Oldco upon the distribution to the Oldco Shareholders of the Newco stock (§ 361(c)(1)).
- (10) No gain or loss will be recognized by the Oldco Shareholders upon receipt of the Newco stock in exchange for their Oldco stock (§ 354(a)(1)).
- (11) For each Oldco Shareholder, such shareholder's basis in the Newco stock received will be equal to the basis of the Oldco stock surrendered by such shareholder in exchange therefor (§ 358(a)(1)).
- (12) For each Oldco Shareholder, the shareholder's holding period for the Newco stock received will include the period during which such shareholder held the Oldco stock exchanged therefor, provided that the Oldco stock is held as a capital asset in the hands of such shareholder on the date of the exchange (§ 1223(1)).
- (13) The Transaction does not result in a closing of the tax year (§ 381(b) of the Code and § 1.381(b)-1(a)(2) of the regulations).
- (14) As provided by § 381(a), Newco will succeed to and take into account, as of the date Step (I) is consummated, all the Oldco items described in § 381(c), including any Oldco earnings and profits or any deficit therein.
- (15) To the extent that the assets of Oldco are presently subject to the built-in gain provisions of § 1374, they will continue to be subject to the built-in gain provisions of § 1374 in the hands of Newco on the same basis as they were subject to such provisions in the hands of Oldco.
- (16) Oldco's "accumulated adjustments account" (as defined in § 1368(e)(1)) immediately prior to the Transaction will be acquired by Newco

(§ 1.1368-2(d)(2)).

- (17) The Transaction (an “F” reorganization as provided by ruling (4) above) will not result in a termination of Oldco’s “S” election (within the meaning of § 1362). Rather, Oldco’s S election will remain in effect for Newco. See Rev. Rul. 64-250, 1964-2 C.B. 333.

The rulings contained in this letter are based upon facts and representations that were submitted on behalf of the taxpayer and accompanied by a penalties 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.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any matter or item discussed or referenced in this letter. Moreover, no opinion is expressed about the tax treatment of the Transaction under other provisions of the Code or regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the Transaction not specifically covered by the above rulings. In particular, no opinion is expressed regarding the validity of any subchapter S election or QSub election.

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

A copy of this letter should be attached to the federal income tax return of each taxpayer involved for the taxable year in which the transactions covered by this letter are consummated. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching to the return a statement that provides the date and control number (PLR-138975-06) of this ruling letter.

Pursuant to the power of attorney on file in this matter, a copy of this letter is being sent to Oldco's authorized representative.

Sincerely,

/s/

James A. Quinn
Senior Technician Reviewer (Acting) Branch 2
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

A copy of this letter

A copy for § 6110 purposes