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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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PLR-104042-08

Date:

May 29, 2008

Legend

OldCo =

NewCo =

StateA =

BusinessA =

ShareholderA =

ShareholderB =

Year1 =

Year2 =

Year3 =

Date1 =

Date2 =

Dear :

This letter responds to your letter, dated January 8, 2008, requesting various rulings under the Internal Revenue Code (“the Code”). Additional information was submitted in subsequent correspondence.

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. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether either OldCo or NewCo does in fact qualify as a small business corporation under § 1361 of the Code.

FACTS

OldCo was incorporated in StateA in Year1. OldCo was administratively dissolved in Year2 after its registration to do business in StateA had expired. However, OldCo continued to file Form 1120 with the Internal Revenue Service and to pay all Federal income taxes as they came due. OldCo is a cash method taxpayer which made an S election and adopted a calendar year on Date1. OldCo has outstanding common stock which stock is held 50 percent by ShareholderA and 50 percent by ShareholderB (the “Shareholders”).

NewCo is a StateA corporation that will use the cash method of accounting and a calendar year and that will have outstanding common stock. Although NewCo was formed in Year3, it has not issued any stock or conducted any business.

In order to reincorporate under StateA law, OldCo will merge (“The Merger”) into NewCo in accord with applicable StateA law. NewCo will receive all the assets and liabilities of OldCo, except for assets used to pay transaction costs and the Shareholders will receive NewCo stock, 50 percent each, in exchange for their OldCo stock.

REPRESENTATIONS

(a) In every year since its organization and continuing until The Merger, OldCo has done business as a corporation.

(b) For every tax year from Year1 up to the current tax year, OldCo has filed with the Service a Form 1120.

(c) At the time of The Merger, OldCo and NewCo will each have outstanding solely a single class of common stock. Neither OldCo nor NewCo will have outstanding any convertible securities, warrants or options, or any other type of right or instrument, pursuant to which any person could acquire an equity interest in OldCo or NewCo.

(d) The Shareholders will receive solely NewCo stock in The Merger.

(e) Following The Merger, the Shareholders will own all the outstanding stock in NewCo and will own such stock solely by reason of their ownership of the stock in OldCo immediately prior to The Merger.

(f) Following The Merger, each of the Shareholders will hold the same percentage of stock in NewCo as the percentage of stock such shareholder previously held in OldCo.

(g) The fair market value of the NewCo stock received by each OldCo shareholder will be approximately equal to the fair market value of the OldCo stock surrendered in the exchange.

(h) OldCo, NewCo and each of the Shareholders will each pay his, her, or its own expenses incurred in connection with The Merger.

(i) With regard to the assets transferred from OldCo to NewCo, both (i) the total adjusted basis of the assets and (ii) the fair market value of the assets will each equal or exceed the sum of the liabilities (as determined under § 357(d)) assumed by NewCo.

(j) All liabilities to which the OldCo assets are subject at the time of The Merger, and all liabilities of OldCo that are properly treated as being assumed by NewCo in The Merger (as determined under § 357(d)), are liabilities that were incurred in the ordinary course of business and are associated with assets transferred from OldCo to NewCo.

(k) At all times prior to acquiring the assets of OldCo in The Merger: (i) NewCo will have been engaged in no business activity; (ii) NewCo will have had no Federal income tax attributes (attributes described in § 381(c)); and (iii) NewCo will have held no assets (except for holding a minimal amount of assets if such assets are required for the purpose of paying NewCo's incidental expenses or required in order to maintain NewCo's status as a corporation in accord with StateA law).

(l) Immediately after The Merger, NewCo will hold all the assets held by OldCo immediately prior to The Merger, except for assets used to pay expenses in connection with The Merger. These assets used to pay expenses will be less than one

percent (1%) of the fair market value of the net assets of OldCo immediately prior to The Merger.

(m) OldCo is not under the jurisdiction of a court in a title 11 or similar case within the meaning of § 368(a)(3)(A).

(n) Following The Merger, NewCo will continue to be engaged in BusinessA.

LAW AND ANALYSIS

Section 1361(a)(1) provides that the term "S corporation," means, with respect to a taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1.1368-2(d)(2) of the Income Tax Regulations provides that an S corporation acquiring the assets of another S corporation in a transaction to which § 381(a) applies will succeed to and merge its "accumulated adjustment account" (whether positive or negative) with the AAA (whether positive or negative) of the distributor or transferor S corporation as of the close of the date of distribution or transfer. Thus, the AAA of the acquiring corporation after the transaction is the sum of the AAAs of the corporations prior to the transaction.

Rev. Rul. 64-250, 1964-2 C.B. 333, concludes that when an S corporation merges into a newly formed corporation in a transaction qualifying as a reorganization under § 368(a)(1)(F), and the newly formed surviving corporation also meets the requirements of an S corporation, the reorganization does not terminate the S election. Thus, the S election remains in effect for the new corporation.

The core test of corporate existence for purposes of Federal income taxation is always a matter of Federal law. Whether an organization is to be taxed as a corporation under the Code is determined by Federal, not state law. If the conduct of the affairs of a corporation continues after the expiration of its charter, or the termination of its existence, it becomes an association. See Ochs v. United States, 158 Ct. Cl. 115, 305 F.2d 844, 847 (1962). A corporation is subject to Federal corporate income tax liability as long as it continues to do business in a corporate manner, despite the fact that its recognized legal status under state law is terminated. See Messer v. Comm'r, 438 F.2d 774 (3d Cir. 1971).

Rev. Rul. 73-526, 1973-2 C.B. 404, concludes that the identifying number previously assigned to the transferor corporation should be used by the surviving corporation in a statutory merger qualifying as a reorganization under § 368(a)(1)(F).

RULINGS

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

Rulings with regard to the administrative dissolution of OldCo under StateA law.

(1) OldCo's status as a corporation for Federal tax purposes was not terminated by reason of the administrative dissolution under StateA law.

(2) Provided that OldCo qualified as a small business corporation under § 1361(b), OldCo's status as a small business corporation is not terminated by the fact that it had been dissolved under state law.

(3) The administrative dissolution of OldCo under StateA law (and its subsequent reincorporation under state law as NewCo) did not and will not, by itself, result in a distribution or transfer of property for purposes of §§ 301(a), 311(a)(2), 331(a), 336(a), or 351.

(4) OldCo's administrative dissolution under StateA law did not affect OldCo's previously assigned identifying number (EIN) and OldCo will continue to use the EIN assigned prior to the state law dissolution.

Rulings with regard to The Merger

(5) The Merger, as described above, will be 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).

(6) No gain or loss will be recognized by OldCo upon the transfer of assets to NewCo in exchange for stock in NewCo and the assumption of liabilities of OldCo by NewCo in The Merger (§§ 361(a) and 357(a)).

(7) No gain or loss will be recognized by NewCo on the receipt of OldCo assets in exchange for NewCo stock (§ 1032(a)).

(8) 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 Merger (§ 362(b)).

(9) 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)).

(10) No gain or loss will be recognized by OldCo upon the distribution to the Shareholders of the NewCo stock (§ 361(c)(1)).

(11) No gain or loss will be recognized by the Shareholders upon their receipt of NewCo stock in exchange for their OldCo stock (§ 354(a)(1)).

(12) For each of the Shareholders, immediately after The Merger, the Shareholder's basis in the NewCo stock received will be the same as the basis of the OldCo stock surrendered by such Shareholder in the exchange (§ 358(a)(1)).

(13) For each of the Shareholders, the holding period of the NewCo stock received will include the holding period of the OldCo stock exchanged, provided that the OldCo stock is held as a capital asset in the hands of the Shareholder on the date of the exchange (§ 1223(1)).

(14) The Merger 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).

(15) As provided by § 381(a), NewCo will succeed to and take into account, as of the date The Merger is consummated, all the items of OldCo described in § 381(c), including any OldCo earnings and profits or any deficit therein.

Rulings with regard to subchapter S matters relating to NewCo

(16) The Merger will not result in a termination of OldCo's subchapter S election (within the meaning of § 1362) and, provided that NewCo meets the requirements of an S corporation under § 1361, the "S" election will remain in effect for NewCo. See Rev. Rul. 64-250.

(17) OldCo's "accumulated adjustment account" (as defined in § 1368(e)(1)) immediately prior to The Merger will become the accumulated adjustment account of NewCo immediately after The Merger (§ 1.1368-2(d)(2)).

(18) 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.

(19) NewCo, as the successor to OldCo in the "F" reorganization, will retain OldCo's previously assigned identifying number (EIN). See Rev. Rul. 73-526, 1973-2 C.B. 404.

CAVEATS

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 transactions [or of any other matter] 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 transactions not specifically covered by the above rulings. In particular (as provided above), no opinion is expressed as to whether OldCo or NewCo does, in fact, qualify as a small business corporation.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that this private letter ruling 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. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number [PLR-104042-08] of this letter ruling.

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

Sincerely

Debra L. Carlisle

Debra L. Carlisle
Chief, Branch 5
Office of Associate Chief Counsel
(Corporate)

cc: