

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200935002**

Release Date: 8/28/2009

Index Number: 351.00-00, 368.02-00, 368.05-00

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B03

PLR-103852-09

Date:

May 27, 2009

Legend

Mutual Holding Company =

Stock Holding Company =

Company =

Sub 1 =

Sub 2 =

Sub 3 =

LLC =

State A =

State B =

Dear :

This letter responds to your letter dated January 6, 2009, and supplemental correspondence, regarding the federal income tax consequences of a proposed transaction. The information submitted for review is summarized below.

Company, a State A mutual property and casualty insurance company, is the common parent of an affiliated group of corporations that files a consolidated return for Federal income tax purposes. Company is a property and casualty insurance company taxable under §831 of the Code and is an accrual basis calendar year taxpayer. Company owns all of the stock of Sub 1, a State A corporation. Sub 1 owns all of the stock of Sub 2 and Sub 3, also State A corporations. Company also owns all of the interests in LLC, an entity that is disregarded as separate from its owner for Federal tax purposes. LLC is organized under the laws of State B.

As a mutual property and casualty insurance company, Company has no capital stock. It is indicated that the policyholders of Company ("Company Members") have membership interests in Company conferred by State A law and Company's articles of incorporation and by-laws ("Company Membership Interests"). The Company Membership Interests include the right to vote on significant corporate actions, the right to elect directors, the right to receive distributions of Company's surplus in the event of the dissolution or liquidation of Company, and certain other rights conferred by State A law or the articles of incorporation or by-laws.

Mutual Holding Company will be a State A corporation. Membership interests in Mutual Holding Company ("Mutual Holding Company Interests") will be comparable to the Company Membership Interests that Company Members currently hold in Company. The Mutual Holding Company Interests include certain rights to vote for directors of Mutual Holding Company, distributions of assets upon any liquidation or dissolution of Mutual Holding Company, and other rights as provided by State A law or the Articles of Incorporation and By-laws..

Stock Holding Company will be a State A corporation formed by Mutual Holding Company. Stock Holding Company will be authorized to issue one class of voting common stock.

For what is represented to be valid business reasons, Company proposes to convert from a mutual property and casualty insurance company to a stock property and

casualty insurance company controlled indirectly by Mutual Holding Company. Accordingly, Parent proposes the following series of transactions which will occur pursuant to an overall plan of reorganization (the "Reorganization"):

- (i) Company will form Mutual Holding Company.
- (ii) Pursuant to State A law, Company will convert into a stock property and casualty insurance company by amending and restating its articles of incorporation and by-laws to authorize the issuance of capital. Pursuant to State A law, the Company Members will become members of Mutual Holding Company, their Company Membership Interests will become Mutual Holding Company Interests, and their Company Membership Interests will be extinguished. Company Members will receive no consideration other than Mutual Holding Company Membership Interests. Existing Company insurance policies will not change. There will not be an increase or decrease in premiums, policy benefits, policy values, policy guarantees, or other obligations of Company Members. Company will remain fully obligated under all of its policies, will continue its existence under State A law, and will continue its insurance business.
- (iii) Company will issue all of the stock of Company to Mutual Holding Company.
- (iv) Mutual Holding Company will contribute all of the stock of Company to Stock Holding Company in exchange for all of the outstanding voting common stock of Stock Holding Company.
- (v) Company will distribute its entire interest in LLC to Stock Holding Company. The taxpayer has represented that to the extent the distribution results in any gain, such gain will be deferred under §1.1502-13.
- (vi) Sub 1 will terminate its corporate existence by amending its articles of incorporation to cause its corporate charter to expire and will distribute all of its assets, including but not limited to its interests in Sub 2 and Sub 3, to Company as part of the plan of termination. The taxpayer has represented that this distribution will qualify under section 332.

Following the proposed transaction, Company Members will own all the interests in Mutual Holding Company. Mutual Holding Company will own all the stock of Stock Holding Company and Stock Holding Company will own all the stock of Company.

You have requested a ruling that, for Federal income tax purposes, the Reorganization be treated as if: (i) Company converted to a stock insurance company with the Company Members exchanging their Company Membership Interests for all of the

voting stock in Company (the “Conversion”); (ii) the Company Members contributed their stock of Company to Mutual Holding Company in exchange for Mutual Holding Company Interests (the “First Exchange”); and (iii) Mutual Holding Company contributed its Company stock to Stock Holding Company in exchange for all of the outstanding stock of Stock Holding Company (the “Second Exchange”).

The taxpayer has made the following representations with respect to the Conversion:

- (a) The purposes of the Reorganization, in whole or substantial part, are: (i) to preserve the mutual ownership structure and Company’s business in future years; (ii) to provide additional operational and financial flexibility for raising capital; and (iii) to enhance Company’s competitiveness.
- (b) The transfers and exchanges contemplated in the proposed transaction will occur prior to or on the effective date of the Reorganization.
- (c) Following the Conversion, Company will continue as a stock company the same business that it had conducted prior to the Conversion.
- (d) No property other than voting common stock will be involved in the Conversion. The Company Members will surrender their Membership Interests in exchange for voting common stock of Company.
- (e) The fair market value of the Company stock received by each Company Member in the Conversion will be equal to the fair market value of the Company Membership Interests surrendered in the constructive exchange.
- (f) Immediately after the transaction, Mutual Holding Company and its direct and indirect subsidiaries (Company) will continue to own substantially all of the assets and liabilities that were held by Company and its direct and indirect subsidiaries prior to the transaction.
- (g) After the Conversion,, Company will be treated under State A law as the same entity that previously existed as a mutual company.
- (h) Company shall pay or reimburse all expenses and costs incurred by it or its subsidiaries and affiliates, including Mutual Holding Company and Stock Holding Company, related solely and directly to the Reorganization, but shall not pay or reimburse any costs or expenses incurred by the Company Members.
- (i) None of the stock to be transferred in the Conversion will be “§ 306 stock” within the meaning of §306(c) of the Code.

- (j) No fractional shares or interests in Company will be issued or exchanged in the Reorganization.

The taxpayer has made the following representations with respect to First Exchange:

- (k) No stock or securities will be issued for services rendered to or for the benefit of Mutual Holding Company in connection with the proposed transaction, and (ii) no stock or securities will be issued for the indebtedness of Mutual Holding Company.
- (l) None of the stock to be transferred pursuant to the First Exchange will be “§306 stock” within the meaning of §306(c) of the Code.
- (m) The transfer is not the result of the solicitation by a promoter, broker or investment house.
- (n) The Company Members will not retain any rights in the property transferred to Mutual Holding Company.
- (o) The stock of Company transferred to Mutual Holding Company in connection with First Exchange is not subject to any liabilities, nor are any liabilities of the Company Members being assumed by Mutual Holding Company.
- (p) The adjusted basis and the fair market value of the assets transferred by the transferors to Mutual Holding Company will, in each instance, be equal to or exceed the sum of the liabilities to be assumed by Mutual Holding Company plus any liabilities to which the transferred assets are subject. No liabilities will be assumed by Mutual Holding Company.
- (q) No liabilities of the Company Members will be assumed by Mutual Holding Company.
- (r) There is no indebtedness between Mutual Holding Company and Company Members and there will be no indebtedness created in favor of the transferors as a result of the transaction.
- (s) The transfers and exchanges contemplated in the proposed transaction will occur on the effective date of the proposed transaction.
- (t) Mutual Holding Company has no plan or intention to redeem or otherwise reacquire any of its membership interests or indebtedness to be issued in the proposed transaction.

- (u) Taking into account any issuance of additional shares of Mutual Holding Company stock; any issuance of stock for services; the exercise of any Mutual Holding Company stock rights, warrants, or subscriptions; a public offering of transferee stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of the transferee to be received in the exchange, the transferors will be in “control” of Mutual Holding Company within the meaning of §368(c).
- (v) Each Company Member will receive stock approximately equal to the fair market value of the Company stock transferred to Mutual Holding Company.
- (w) Mutual Holding Company will remain in existence and retain and use the property transferred to it in a trade or business.
- (x) There is no plan or intention by Mutual Holding Company to sell or otherwise dispose of the transferred property other than in the normal course of business operations or transfers described in §§368(a)(2)(C) or 1.368-2(k).
- (y) Company shall pay or reimburse all expenses and costs incurred by it or its subsidiaries and affiliates, including Mutual Holding Company and Stock Holding Company, related solely and directly to the proposed transaction, but shall not pay or reimburse any costs or expenses incurred by the Company Members.
- (z) Mutual Holding Company will not be an investment company within the meaning of §351(e)(1) of the Code and §1.351-1(c)(1)(ii).
- (aa) The transferors, Company Members, are not under the jurisdiction of a court in a Title 11 or similar case within the meaning of §368(a)(3)(A) and the stock received in the exchange will not be used to satisfy the indebtedness of such debtor.
- (bb) Mutual Holding Company will not be a personal service corporation within the meaning of §269A.
- (cc) The combined fair market value of the assets to be transferred by Company Members to Mutual Holding Company will equal or exceed the sum of the basis of such assets. Section 362(e)(2).
- (dd) The fair market value of the Mutual Holding Company Interests received by each Company Member will be approximately equal to the fair market value of the Company stock surrendered in the exchange.

- (ee) Company has no plan or intention to issue additional shares of its stock that would result in Mutual Holding Company losing control of Company within the meaning of §368(c)(1) of the Code.
- (ff) Mutual Holding Company has no plan or intention to liquidate Company, merge Company into another corporation, or cause Company to sell or otherwise dispose of any Company assets other than in the ordinary course of business, or to sell any Company Stock except for transfers described in §368(a)(2)(C).
- (gg) Mutual Holding Company has no plan or intention to reacquire any of its Membership Interests issued in the First Exchange.
- (hh) Mutual Holding Company will acquire Company stock solely in exchange for Mutual Holding Company interests. No Company stock will be redeemed for cash or other property. Further, no liabilities of Company or Company Members will be assumed by Mutual Holding Company, nor will any of the Company stock be subject to any liabilities.
- (ii) At the time of the transaction, Company will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Company that, if exercised or converted, would affect Mutual Holding Company's acquisition or retention of control of Company, as defined in §368(c)(1) of the Code.
- (jj) Mutual Holding Company does not own, directly or indirectly, nor has it owned during the past five years, directly or indirectly, any stock of Company.
- (kk) No two parties to the transaction are investment companies as defined in §368(a)(2)(F)(iii) and (iv) of the Code.
- (ll) There will be no dissenters to the transaction.
- (mm) On the date of the transaction, the fair market value of the assets of Company will exceed the sum of its liabilities plus the liabilities, if any, to which the assets are subject.

The taxpayer has made the following representations with respect to the Second Exchange:

- (nn) No stock or securities will be issued for services rendered to or for the benefit of Stock Holding Company in connection with the transaction, and no stock or securities will be issued for indebtedness of Stock Holding Company.

- (oo) None of the stock to be transferred pursuant to the Second Exchange will be “§306 stock” within the meaning of §306(c) of the Code.
- (pp) All of the Company stock is being transferred to Stock Holding Company. The stock is not being transferred subject to any liabilities and no liabilities are being assumed in connection with the transfer of the stock.
- (qq) The transfer is not the result of the solicitation by a promoter, broker, or investment house.
- (rr) Mutual Holding Company will not retain any rights in the Company stock transferred to Stock Holding Company.
- (ss) The stock of Company transferred to Stock Holding Company is not subject to any liabilities, nor are any liabilities of the Company Members being assumed by Stock Holding Company.
- (tt) The adjusted basis and the fair market value of the assets to be transferred by Mutual Holding Company to Stock Holding Company will, in each instance, be equal to or exceed the sum of the liabilities to be assumed by Stock Holding Company plus any liabilities to which the transferred assets are subject. No liabilities will be assumed by Stock Holding Company.
- (uu) There is no indebtedness between Stock Holding Company and Mutual Holding Company and there will be no indebtedness created in favor of Mutual Holding Company as a result of the transaction.
- (vv) The transfers and exchanges contemplated in the proposed transaction will occur on the effective date of the proposed transaction.
- (ww) There is no plan or intention on the part of Stock Holding Company to redeem or otherwise reacquire any stock or indebtedness to be issued in the transaction.
- (xx) Taking into account any issuance of additional shares of Stock Holding Company stock; any issuance of stock for services; the exercise of any Stock Holding Company stock rights, warrants, or subscriptions; a public offering of Stock Holding Company stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of Stock Holding Company to be received in the exchange, the transferor Mutual Holding Company will be in “control” of Stock Holding Company within the meaning of §368(c) of the Code.

- (yy) Mutual Holding Company will receive stock approximately equal to the fair market value of the property transferred to Stock Holding Company.
- (zz) Stock Holding Company will remain in existence and retain and use the property transferred to it in a trade or business.
- (aaa) There is no plan or intention by Stock Holding Company to sell or otherwise dispose of the transferred property other than in the normal course of business operations or transfers described in §368(a)(2)(C) or §1.368-2(k).
- (bbb) Stock Holding Company will not be an investment company within the meaning of §§351(e)(1) and 1.351-1(c)(1)(ii).
- (ccc) Mutual Holding Company, the transferor, is not under the jurisdiction of a court in title 11 or similar case (within the meaning of §368(a)(3)(A) and the stock or securities received in the exchange will not be used to satisfy the indebtedness of Mutual Holding Company.
- (ddd) Stock Holding Company will not be a “personal service corporation” within the meaning of §269A of the Code.
- (eee) No indebtedness is being issued or assumed as part of the transaction.
- (fff) The fair market value of the Stock Holding Company stock received by Mutual Holding Company will be approximately equal to the fair market value of the Company stock surrendered in the exchange.
- (ggg) Company has no plan or intention to issue additional shares of its stock that would result in Stock Holding Company losing control of Company within the meaning of §368(c) of the Code.
- (hhh) Stock Holding Company has no plan or intention to liquidate Company; to merge Company into another corporation; to cause Company to sell or otherwise dispose of any of its assets, except for dispositions made in the ordinary course of business; or to sell or to otherwise dispose of any of the converted Company stock acquired in the transaction, except for transfers described in §368(a)(2)(C) of the Code.
- (iii) Stock Holding Company has no plan or intention to reacquire any of its stock issued in the transaction.
- (jjj) Stock Holding Company will acquire Company stock solely in exchange for Stock Holding Company stock. No Company stock will be redeemed for cash or other property. Further no liabilities of Company or Mutual Holding

Company will be assumed by Stock Holding Company, nor will any of the Company stock be subject to any liabilities.

(kkk) Stock Holding Company does not own, directly or indirectly, nor has it owned during the past five years, directly or indirectly, any stock of Company.

(III) No two parties to the transaction are investment companies as defined in §368(a)(2)(F)(iii) and (iv) of the Code.

(mmm) There will be no dissenters to the transaction.

(nnn) On the date of the transaction, the fair market value of the assets of Company will exceed the sum of its liabilities plus the liabilities, if any, to which the assets are subject.

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

- (1) For federal income tax purposes, the Reorganization will be treated as if:
(i) the Company Members exchanged their Company Membership Interests for all the outstanding stock of Company; (ii) the Company Members contributed their stock of Company to Mutual Holding Company in exchange for voting membership interests in Mutual Holding Company; and (iii) Mutual Holding Company contributed the stock of Company to Stock Holding Company solely in exchange for voting stock of Stock Holding Company.
- (2) The transfer of the Company Membership Interests by the Company Members to Company in exchange for all the outstanding stock of Company will qualify as a reorganization within the meaning of §368(a)(1)(E) of the Code. Company will be a party to the reorganization within the meaning of §368(b) of the Code.
- (3) No gain or loss will be recognized by Company on the issuance of its stock in exchange for Company Membership Interests (§1032(a)).
- (4) No gain or loss will be recognized by Company Members upon their exchange of Company Membership Interests for stock of Company (§354(a)(1)).
- (5) The basis of Company stock received in exchange for the Company Membership Interests will equal the basis of the Company Membership Interest surrendered therefor (§358(a)(1)).

- (6) A Company Member's holding period in the stock of Company received will include the period the Company Member thereof held such Company Membership Interest (§1223(1)).
- (7) The exchange by the Company Members of their Company stock for Mutual Holding Company interests will qualify as a §351 exchange and a reorganization within the meaning of §368(a)(1)(B). Mutual Holding Company and Company will be parties to the reorganization within the meaning of §368(b).
- (8) Company Members will recognize no gain or loss upon the exchange of Company stock for Mutual Holding Company Interests (§§ 351(a) and 354).
- (9) The holding period in the Mutual Holding Company Membership Interest received in the exchange will include the period a Company Member held the stock of Company (§1223(1)).
- (10) Mutual Holding Company will recognize no gain or loss on its receipt of stock of Company solely in exchange for Mutual Holding Company Interests (§1032(a)).
- (11) The basis of the Mutual Holding Company Interests received by a Company Member in exchange for the Company Member's stock of Company will equal the basis of the stock of Company surrendered therefor (§358(a)(1)).
- (12) A Company Member's holding period in the Mutual Holding Company Membership Interest received in the exchange will include the period a Company Member held the stock of Company provided such property was held as a capital asset by the transferor on the date of the exchange (§1223(1)).
- (13) The contribution of the stock of Company by Mutual Holding Company to Stock Holding Company solely in exchange for voting stock of Stock Holding Company will qualify as a §351 exchange and a reorganization within the meaning of §368(a)(1)(B). Company and Stock Holding Company will be parties to the reorganization within the meaning of §368(b).
- (14) Stock Holding Company will recognize no gain or loss upon its receipt of stock of Company in solely in exchange for voting stock of Stock Holding Company (§1032(a)).

- (15) Mutual Holding Company will recognize no gain or loss upon its receipt of stock of Stock Holding Company in exchange for stock of Company (§§ 351(a) and 354).
- (16) The basis of the Stock Holding Company stock received in exchange for stock of Company will equal the basis of the stock of Company surrendered therefor (§358(a)(1)).
- (17) The transfer of Company stock by Mutual Holding Company to Stock Holding Company will not prevent the exchange of Company Stock for Mutual Holding Company Interests from qualifying as a reorganization under §368(a)(1)(B) (§368(a)(2)(C), 1.368-2(k)).
- (18) Company, Stock Holding Company and Mutual Holding Company will constitute a “qualified group” within the meaning of §1.368-1(d)(4)(ii).
- (19) The affiliated group of which Company was the common parent immediately before the Reorganization will remain in existence with Mutual Holding Company as the new common parent (Rev. Rul. 82-152, 1982-2 C.B. 205)).
- (20) For purposes of §§1.1502-31 and 1.1502-33, the Reorganization will qualify as a “group structure change.” Mutual Holding Company’s basis in the stock of Company immediately after the group structure change will be Company’s net asset basis as determined under §1.1502-31(c), subject to the adjustments described in §1.1502-31(d) (§1.1502-31(b)(2)). The earnings and profits of Mutual Holding Company will be adjusted immediately after Mutual Holding Company becomes the new common parent to reflect the earnings and profits of Company immediately before Company ceases to be the common parent (§1.1502-33(f)).

No opinion is expressed about the tax treatment of the Reorganization under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the Reorganization that are not specifically covered by the above rulings. Moreover, no rulings were requested and no opinion is expressed concerning the federal tax consequences under Subchapter L of the Code.

Our ruling that the Conversion constitutes a reorganization within the meaning of §368(a)(1)(E) is conditioned on Company being considered the same entity before and after the Conversion under State A law.

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

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 Weiss
Assistant to the Chief, Branch 1
Office of Associate Chief Counsel (Corporate)

cc: