

Placement A =

Person A =

Person B =

Other Persons =

Person C =

Person D =

Person E =

Company A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11

Date 12 =

Date 13 =

Date 14 =

Date 15 =

Date 16 =

Date 17 =

Date 18 =

Date 19 =

Date 20 =

Date 21 =

Date 22 =

Date 23 =

Date 24 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

i =

k =

l =

m =

n =

o =

p =

q =

r =

s =

t =

u =

v =

w =

x =

y =

z =

aa =

bb =

cc =

dd =

ee =

ff =

gg =

hh =

Dear :

This letter responds to your letter dated July 22, 2009, requesting rulings on the application of section 382(l)(3)(C) to Taxpayer. Additional information was received in letters dated August 12, 2009, August 18, 2009, August 28, 2009, September 8, 2009, September 14, 2009, and September 26, 2009. The material information submitted for consideration is summarized below.

Summary of Facts

Taxpayer is a publicly-traded State A corporation and the common parent of an affiliated group whose includible corporations join in the filing of a consolidated federal income tax return ("Taxpayer Group").

As of Date 1, Taxpayer had outstanding a single class of common stock ("Common Stock") and multiple classes of preferred stock described in section 1504(a)(4) of the Code. As of Date 1, excluding public groups, Taxpayer did not have a 5-percent shareholder. On Date 1, Taxpayer had a shares of Common Stock issued including b shares of Common Stock held by Taxpayer as treasury stock.

Taxpayer has identified the following transactions occurring between Date 2 and Date 24 (the "Relevant Period") as relevant to the application of section 382. During the Relevant Period, Taxpayer issued instruments treated as stock or options for purposes of section 382. Common Stock and other instruments issued by Taxpayer that are cognizable under section 382 are referred to hereinafter as "Taxpayer Stock." Additionally during the Relevant Period, the Common Stock declined in value relative to the value of other instruments treated as stock for purposes of section 382.

During the Relevant Period, Taxpayer regularly issued shares of Common Stock, some of which were previously held as treasury stock, and acquired shares of Common Stock from a combination of purchases in the open market pursuant to Taxpayer's share repurchase program and from shares transferred to Taxpayer in satisfaction of tax withholding requirements. No issuances or purchases were to, or from, persons (excluding public groups) who owned 5-percent of Taxpayer Stock.

On Date 3, Taxpayer issued \$c of Issue A in Placement A. Issue A consists of d series of trust preferred securities and e series of forward purchase contracts to acquire Common Stock.

On Date 4, Taxpayer completed a \$f private offering of Series 1 preferred stock by issuing g corresponding depository shares. The investors in this private offering were Person A, Person B and Other Persons (collectively, "Group A"). Taxpayer treats both Person A and Person B as first tier entities within the meaning of §1.382-2T(f)(9) as of Date 4.

On Date 5, the conversion price for the Series 1 preferred stock was reset (the "Reset"). In connection with the Reset, on Date 6, Taxpayer exchanged shares of the original issued Series 1 preferred stock for an equal number of shares of new Series 1 preferred stock with identical terms and conditions, except for the aforementioned Reset conversion price and conversion rate (\$h and i, respectively).

On Date 7 and Date 8, Taxpayer issued \$j in Series 2 preferred stock by issuing a total of k depository shares to persons (excluding public groups) who at no time owned 5-percent of Taxpayer Stock. The Series 1 preferred stock and the Series 2 preferred stock are referred to hereinafter collectively as the "Regarded Preferred Stock."

On Date 9, Taxpayer issued \$l in Series 3 preferred stock.

On Date 10, Taxpayer issued m shares of Common Stock to complete the acquisition of Company A.

On Date 11, Taxpayer issued \$n in Series 4 preferred stock.

On Date 12 and Date 13, Taxpayer issued \$o in Series 5 preferred stock. The Series 2 preferred stock, Series 3 preferred stock, Series 4 preferred stock, and Series 5 preferred stock are referred to herein collectively as the "Depository Shares" and the holders of the Depository Shares as "Group B". Group B also includes holders of certain trust preferred securities.

On Date 14, Taxpayer issued \$p in Series 6 preferred stock to Person C. In addition, Taxpayer issued a warrant to Person C to acquire approximately q shares of Common Stock at a strike price of \$r.

On Date 15, Taxpayer issued \$s Series 7 preferred stock to Person C. In addition, Taxpayer issued a warrant to Person C to acquire approximately t shares of Common Stock at a strike price of \$u.

On Date 16, Taxpayer entered into an agreement with Person C, Person D, and Person E. As consideration for the agreement, Taxpayer issued Series 8 preferred stock to Person C and Person D, in the amount of \$v and \$w, respectively. In addition, Taxpayer issued a warrant to Person C to purchase x shares of Common Stock at a strike price of \$y.

On Date 17, Taxpayer's board of directors declared a dividend of one preferred stock purchase right of nominal value (a "Purchase Right") for each outstanding share of Common Stock and each Security A. Shares of Common Stock and Security A issued after Date 17 would also receive a Purchase Right.

On Date 18, Taxpayer issued Security A and a warrant to acquire shares of Common Stock at \$z per share in exchange for \$aa of Series 1 preferred stock held by Group A (the "Group A Exchange"). Security A generally has the same voting rights as Common Stock. Taxpayer treated the Group A Exchange as a reorganization within the meaning of section 368(a)(1)(E).

On Date 19, Taxpayer issued Common Stock in exchange for the Depository Shares and certain preferred trust securities held by Group B (the "Group B Exchange"). Taxpayer treated the Group B Exchange as a reorganization within the meaning of section 368(a)(1)(E).

On Date 20 and Date 21, Taxpayer issued Security A and a warrant to acquire shares of Common Stock at \$bb per share in exchange for \$cc of Series 6 preferred stock held by Person C (the "Person C Exchange"). Security A generally has the same voting rights as Common Stock. Taxpayer treated the Person C Exchange as a reorganization within the meaning of section 368(a)(1)(E).

The warrants issued in the Group A Exchange and the Person C Exchange were, in the aggregate, exercisable for dd shares of common stock.

On Date 22, Taxpayer issued Security B to Person C in exchange for all the Series 7 preferred stock. Also on Date 22, Taxpayer issued Security B to Person C and Person D for all the Series 8 preferred stock held by each, respectively. Taxpayer treated these exchanges as taxable exchanges.

On Date 23, the holders of a majority of the shares of Common Stock outstanding consented to increase the number of authorized Common Stock. As a result of this consent each warrant issued in connection with Security A held by Group A and Person C, respectively, were cancelled.

On Date 24, Security A held by Group A converted into ee shares of Common Stock and Security A held by Person C converted into ff shares of Common Stock (collectively, the "Conversion"). The conversion feature reflected the conversion price in

the Group A Exchange and the Person C Exchange. Taxpayer treated the Conversion as a reorganization within the meaning of section 368(a)(1)(E).

The Group A Exchange, Group B Exchange, Person C Exchange and the Conversion are referred to herein collectively as the "Transactions."

Representations

The following representations have been made with respect to the equity ownership of Taxpayer:

1. Taxpayer has not had a section 382 ownership change during the three-year period prior to Date 2 applying either (i) the methodology set forth in §1.382-2T(c)(1) without applying the Hold Constant Principle described below or (ii) the Hold Constant Principle described below.
2. To the best of the Taxpayer's knowledge, the amount of tax liability on any of Taxpayer's federal income tax returns filed to date would not be affected by whether or not Taxpayer takes into account the effect of fluctuations in the relative values of different classes of stock for purposes of determining owner shifts and ownership changes under section 382.
3. For the three year period prior to Date 2, Taxpayer's only class of outstanding stock that constituted stock within the meaning of section 382(k)(6) was Common Stock. In addition, during such period no new public groups were created other than those created and eliminated as a result of redemptions, except for a potential de minimis public group. During the Relevant Period, Taxpayer's only outstanding classes of stock that constitute stock within the meaning of section 382(k)(6) are Common Stock, the Regarded Preferred Stock, and Security A while outstanding.
4. Since Date 2, Taxpayer has not made any distributions to its shareholders or security holders of the stock and/or securities of any subsidiary corporation and there have been no distributions to the shareholders or security holders other than the Purchase Rights (having a nominal value) and regular dividends.
5. The amount of the Security A received in the Group A Exchange and the amount of Common Stock received in the Group B Exchange were determined, in the case of the Group A Exchange, based on arm's length negotiations, and in the case of the Group B Exchange, based on exchange ratios derived from the Group A Exchange, and hence the

Group A Exchange and the Group B Exchange, each constituted a value-for-value exchange.

6. The amount of Series 1 preferred stock received in the Reset was determined based on the terms of the Series 1 preferred stock, and hence constituted a value-for-value exchange.
7. The amount of Common Stock received in the Conversion was determined based on the terms of Security A, and hence the Conversion constituted a value-for-value exchange.
8. Applying the methodology set forth in §1.382-2T(c)(1) without applying the Hold Constant Principle described below and based on the events and assumptions described in the above facts, Taxpayer had an ownership shift of approximately gg% as of the completion of the Transactions.
9. Applying the Hold Constant Principle described below and based on the events and assumptions described in the above facts, Taxpayer had an ownership shift of approximately hh% as of the completion of the Transactions.
10. The Transactions are each treated as a recapitalization within the meaning of section 368(a)(1)(E).

Rulings

For purposes of this ruling, the Hold Constant Principle is defined as follows:

On any testing date, in determining the ownership percentage of any 5-percent shareholder, the value of such shareholder's stock, relative to the value of all other stock of the Taxpayer, shall be considered to remain constant since Date 4, or if acquired thereafter such later date (the later of such dates being referred to hereinafter as the "Acquisition Date"); and the value of such shareholder's stock relative to the value of all other stock of the Taxpayer issued subsequent to the Acquisition Date shall also be considered to remain constant since that subsequent date.

Based solely on the information submitted and representations made, we hold as follows:

1. For purposes of factoring out changes in proportionate ownership of Taxpayer's stock that are attributable solely to fluctuations in the relative fair market values of different classes of stock under section 382(l)(3)(C), Taxpayer

may apply a method employing the Hold Constant Principle to determine the increase in percentage ownership of each of its 5-percent shareholders on each of its testing dates on or after Date 4 (and to identify which such testing dates are change dates for purposes of section 382), provided that Taxpayer employs that method continuously for all testing dates beginning with Date 4 through the testing date on which that method first results in an ownership change. Thereafter, Taxpayer may continue to apply the same method, under the same terms and conditions.

2. In applying the Hold Constant Principle, a value-for-value recapitalization or conversion of stock of Taxpayer into other stock of Taxpayer shall be disregarded, and the exchanging shareholder shall be considered to have acquired such newly issued stock as of the date it acquired the stock exchanged therefor.

Caveats

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. In particular, no opinion is expressed as to whether or not—(i) Taxpayer had a testing date on any given date, (ii) Taxpayer had an ownership change on any testing date, (iii) any stock issued before, on, or after Date 2 should be treated as stock for purposes of section 382, (iv) any warrants or options should have been treated as exercised under §1.382-4(d), or (v) any exchange of Taxpayer stock pursuant to a recapitalization or a conversion constituted a value-for-value exchange. One or more rulings given in this letter deal with issues that may be addressed in subsequent published guidance. See section 11 of Rev. Proc. 2009-1, 2009-1 I.R.B. 1, 47-51, regarding the circumstances, including published guidance, which may result in the revocation or modification of a letter ruling.

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.

Procedural Statements

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.

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 of the letter ruling.

Under the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Douglas C. Bates

Douglas C. Bates
Assistant Branch Chief, Branch 5
Office of Associate Chief Counsel
(Corporate)