

Internal Revenue Service

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CC:CORP:B04

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Legend:

Corporation =

Business =

Shareholder 1 =

Shareholder 2 =

Minority
Shareholders =

State A =

a =
b =
c =
d =
e =
f =
g =
h =
i =

Dear

This letter responds to your October 22, 2009 request for rulings as to the Federal income tax consequences of a proposed transaction. The information submitted for consideration is summarized below.

Corporation is a State A corporation engaged in Business. Corporation currently has issued and outstanding a shares of class A common stock, b shares of class B common stock, and c shares of several series of preferred stock. The class A common stock and each series of preferred stock have voting rights, while the class B common stock is nonvoting. Corporation also has outstanding restricted stock and options to purchase stock of Corporation, all of which are held by the Minority Shareholders. Together, the common and preferred stock, the restricted stock, and the unexercised options represent all of the outstanding shares of Corporation (a total of d shares).

Shareholder 1 and Shareholder 2 own e percent and f percent, respectively, of the total shares of Corporation. The Minority Shareholders own the remaining g percent of the total shares of Corporation stock in the form of class A common shares and class B common shares.

In order to increase the operational flexibility of Corporation, and to reduce costs and eliminate administrative burdens associated with Minority Shareholders, Shareholder 1, Shareholder 2, and Corporation propose the following transaction:

- (i) Shareholder 1 and Shareholder 2 will form a new corporation under the laws of State A (“Newco”), solely for the purpose of effecting this transaction.
- (ii) Shareholder 1 and Shareholder 2 will contribute all of their common and preferred shares of Corporation to Newco in exchange for an equal number of shares of common and preferred stock of Newco (the “Contribution”). In addition, Shareholder 1 will contribute cash to Newco in exchange for h additional shares of Newco class A common stock (the “Stock Acquisition”).
- (iii) Newco will merge into Corporation with Corporation surviving. In connection with the merger, the Minority Shareholders will receive a specified cash amount per share in exchange for their Corporation stock, and such stock will be cancelled. Minority Shareholders who dissent to the proposed transaction and perfect their appraisal rights will receive an amount per share as determined through the appraisal process and the shares will be cancelled. Also in connection with the Merger, the Newco shares owned by Shareholder 1 and Shareholder 2 will be cancelled and each will receive the same number, class and series of shares of Corporation stock as it held in Newco in exchange for its previously held Newco stock (the “Share Exchange”).

In addition, under the terms of the Corporation stock option plan, all unvested options will become vested and exercisable 30 days prior to the merger and to the extent unexercised, will expire as of the merger. Holders of expiring options who do not exercise their options will be entitled to receive payments equal to the difference between the exercise price and the per share consideration amount. The outstanding Corporation restricted stock will be converted into cash upon the merger and none will remain outstanding.

After the completion of the proposed transaction, Shareholder 1 will hold a number of shares equal to what Shareholder 1 held immediately before the proposed transaction (and with the same rights, preferences and privileges), plus the h shares of class A common stock of Corporation that Shareholder 1 acquired in the Stock Purchase, thereby increasing Shareholder 1’s ownership in Corporation to i percent. After the completion of the proposed transaction, Shareholder 2 will hold the same number of shares of Corporation stock (and with the same rights, preferences and privileges) that Shareholder 2 held in Corporation immediately before the proposed transaction.

Based solely on the information submitted, we rule as follows:

- (1) The creation of Newco followed by the merger of Newco into Corporation will be disregarded for Federal income tax purposes (Rev. Rul. 78-250, 1978-1 C.B. 83). The Stock Acquisition will be treated as if Shareholder 1 contributed cash to Corporation in exchange for additional shares of class A common stock of Corporation.
- (2) The proposed transaction will be treated as if Shareholder 1 and Shareholder 2 never transferred their Corporation stock for Federal income tax purposes and thus Shareholder 1 and Shareholder 2 will not recognize any gain or loss in the Contribution and the Share Exchange (Rev. Rul. 78-250, 1978-1 C.B. 83).
- (3) No gain or loss will be recognized by Corporation in the Stock Acquisition (§1032(a)).
- (4) The cash received by the Minority Shareholders for such holders' class A common stock and class B common stock will be treated as having been received by each such shareholder as a distribution in redemption of such holder's stock, subject to the provisions and limitations of section 302 of the Code (Rev. Rul. 78-250, 1978-1 C.B. 83).

No opinion is expressed about the tax treatment of the proposed transaction 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 transaction that are not specifically covered by the above rulings.

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

A copy of this letter must be attached to the taxpayer's federal income tax return for the taxable year in which the transaction is consummated. 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 this letter.

Sincerely,

Lewis K Brickates
Chief, Branch 4
Office of Associate Chief Counsel (Corporate)