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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:6
PLR-147303-10
Date:

January 05, 2011

Legend

OldCo =

NewCo =

State =

Date1 =

Date2 =

BusinessA =

Dear :

This letter responds to a letter dated November 18, 2010, and subsequent correspondence, on behalf of Oldco by its authorized representative, requesting rulings as to the Federal income tax consequences of a proposed transaction.

FACTS

Oldco was incorporated in State on Date1. OldCo has one class of common stock, all of which is held by one shareholder ("Shareholder"), who is a United States citizen. OldCo made an election to be an S corporation effective Date2, and has had an S election in effect at all times thereafter, which the taxpayer believes is valid. OldCo is engaged in BusinessA.

Shareholder would like to simplify OldCo's business activities. OldCo has had preliminary discussions with a potential purchaser of some of its operations (the "Target Assets"). For business purposes that the taxpayer represents to be valid, OldCo proposes to enter into a transaction that will allow it to transfer the assets it wishes to retain (the "Retained Assets") to a new corporation owned by Shareholder and have its (OldCo) stock sold to the purchaser. More specifically, the transaction (the "Proposed Transaction") would be structured as follows:

1. Shareholder (as the sole shareholder of OldCo) will create a new wholly owned corporation ("NewCo") under the laws of State.
2. Shareholder will transfer all the stock of OldCo to NewCo in exchange for all of the stock of NewCo (the "Contribution"). Thus, OldCo will be a wholly owned subsidiary of NewCo and NewCo will be wholly owned by Shareholder.
3. NewCo will make a QSub election for OldCo.
4. OldCo will distribute to Newco the Retained Assets.

NewCo intends to sell the stock of OldCo following the Proposed Transaction, effectively conveying all of the Target Assets (the "Sale"). The Target Assets and Retained Assets will not be identified until OldCo enters into a contract for the Sale. The taxpayer does not intend to file a Federal tax return for NewCo for any period preceding the Proposed Transaction.

REPRESENTATIONS

OldCo makes the following representations in connection with the Proposed Transaction:

- (a) NewCo will elect to treat OldCo as a QSub upon Shareholder's contribution of all of its OldCo stock to NewCo, 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)).

(b) Immediately before the Proposed Transaction, NewCo will be engaged in no activity and will hold no assets (other than a minimal amount of assets to pay NewCo's incidental expenses and to maintain NewCo's status as a corporation in accordance with State law).

(c) Immediately following the Proposed Transaction, NewCo together with its QSub, OldCo, will hold all the assets held by OldCo immediately before the Proposed Transaction, except as further described in this representation (c). The only change in assets occurring from the Proposed Transaction will be as a result of OldCo or NewCo 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 the net assets of OldCo immediately before the transaction.

(d) 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)), 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.

(e) At the time of the transaction, neither OldCo nor NewCo 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 in OldCo or NewCo, or where pursuant to such right or instrument any person could acquire an equity interest in OldCo or NewCo.

(f) There is no plan or intention for either OldCo or NewCo to issue any stock in conjunction with or subsequent to the transaction, except for the stock in NewCo being issued to Shareholder upon the formation of NewCo and in exchange for OldCo stock.

(g) Shareholder will receive solely NewCo common stock in the Proposed Transaction.

(h) The NewCo shares received by Shareholder will be identical in all respects to the OldCo stock for which they are exchanged.

(i) Shareholder will pay his own, and the corporations will pay their own, expenses incurred in connection with the transaction.

(j) OldCo is an S corporation within the meaning of §1361(a).

(k) There is no plan or intention to revoke or terminate the S corporation election of NewCo or OldCo (other than OldCo's change to a QSub in the Proposed Transaction).

(l) There is no plan or intention of NewCo to terminate the QSub election for OldCo (other than the termination of the QSub election upon a sale of the OldCo stock). It is the intent of OldCo, NewCo, and Shareholder that, following the Proposed Transaction (*i.e.*, the transfer

of OldCo's stock to NewCo) and before the Sale (*i.e.*, transfer of OldCo stock to the purchaser), OldCo will at no time be treated as a separate corporation, but, rather, it is intended that, at all times while NewCo owns the OldCo stock, NewCo and OldCo will be treated as a single entity for Federal income tax purposes.

(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).

RULINGS

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

(1) The Contribution followed by the QSub election for OldCo is a reorganization within the meaning of § 368(a)(1)(F), with NewCo as the surviving corporation. OldCo and NewCo will each be a "party to a reorganization" within the meaning of § 368(b).

(2) NewCo will be eligible to be treated as an S corporation within the meaning of § 1361.

(3) The Proposed Transaction 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 (Rev. Rul. 2008-18, 2008-1 C.B..674).

(4) As soon as NewCo acquires all the stock of OldCo in the Contribution, OldCo will be eligible to be a QSub.

(5) Upon the filing of a timely QSub election with respect to OldCo, then solely for Federal income tax purposes (and not State corporate or liability purposes), NewCo and OldCo will be treated as a single entity that is an S corporation. (See § 1361(b)(3)(A) providing 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.)

(6) No gain or loss will be recognized by OldCo upon the transfer of assets to NewCo in exchange for NewCo stock (§§ 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 before the Proposed Transaction (§ 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 Shareholder of the NewCo stock (§ 361(c)(1)).
- (11) No gain or loss will be recognized by Shareholder upon receipt of NewCo stock in exchange for his OldCo stock (§ 354(a)(1)).
- (12) Shareholder's basis in the NewCo stock received will be equal to his basis in the OldCo stock surrendered in exchange therefor (§ 358(a)(1)).
- (13) Shareholder's holding period for the NewCo stock received will include the period during which Shareholder held the OldCo stock exchanged therefor, provided that the OldCo stock is held as a capital asset in the hands of Shareholder on the date of the exchange (§ 1223(1)).
- (14) The Proposed Transaction will not result in a closing of the tax year (§ 381(b) and § 1.381(b)-1(a)(2)).
- (15) NewCo will succeed to and take into account, as of the effective date of OldCo's election to be a QSub, all the items of OldCo described in § 381(c).
- (16) NewCo will succeed to OldCo's "accumulated adjustments account" as defined in § 1368(e)(1) (§ 1.1368-2(d)(2)).
- (17) The distribution of the Retained Assets by OldCo to NewCo will not cause OldCo, NewCo or Shareholder to recognize any gain or loss. (See § 1361(b)(3)(A) providing 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.)
- (18) The Sale will not affect the treatment of the Proposed Transaction as an F reorganization (Rev. Rul. 96-29, 1996-1 C.B. 50).
- (19) The Sale (which will take the form of a sale of the OldCo stock) will be treated as a sale of the Target Assets by NewCo for Federal income tax purposes (§ 1.1361-5(b)(3), Ex. 9).

CAVEATS

No opinion is expressed or implied about the tax treatment of any other aspect of any transaction or item discussed or referenced in this letter, or about the tax treatment of any condition existing at the time of, or effects resulting from, any transaction or item that is not specifically covered by the above rulings.

PROCEDURAL STATEMENTS

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties 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 ruling, it is subject to verification on examination.

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

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, if the taxpayer files its returns electronically, this requirement may be satisfied by attaching a statement to the return that provides the date and control number of this letter ruling (PLR-147303-10).

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,

Lawrence M. Axelrod
Special Counsel to the Associate Chief Counsel
(Corporate)