

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:BR2
PLR-140527-11

Date:
December 13, 2011

Corporation =

Seller 1 =

Seller 2 =

Buyer 1 =

Buyer 2 =

Holdco =

Business =

State A =

State B =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

\$ a =

\$ b =

Dear :

We respond to your September 26, 2011 request, supplemented by your letter dated November 18, 2011, for rulings on certain federal income tax consequences of the Original and Proposed Transactions (defined below). The information provided is summarized below. The rulings contained in this letter are based upon information and representations submitted by you 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 rulings, it is subject to verification on examination.

Summary of Facts

Corporation is a State A corporation engaged in Business and has had a valid election to be treated as a Subchapter S corporation since Date 1. Before Date 2, Seller 1 and Seller 2 (collectively known as the Sellers) each owned 50 percent of the issued and outstanding common stock in Corporation.

On Date 2, the Sellers entered into a Stock Purchase Agreement with Buyer 1 and Buyer 2 (collectively known as the Buyers) to sell all of the issued and outstanding stock of 1) Corporation and 2) another State A corporation engaged in business activities similar to those of Corporation (the Additional Shares). Specifically, Seller 1 sold his stock in Corporation and his portion of the Additional Shares to Buyer 1 in exchange for Buyer 1's promissory note totaling \$a, of which \$b represented the price for the Corporation shares, and Seller 2 sold his stock in Corporation and his portion of the Additional Shares to Buyer 2 in exchange for Buyer 2's promissory note totaling \$a, of which \$b represented the price for the Corporation shares (collectively, the Original Transaction). As part of the Original Transaction, the Buyers granted each of the Sellers a security interest in their respective shares of Corporation stock as collateral for their respective promissory notes.

In the Stock Purchase Agreement, Sellers and Buyers agreed to make an election under section 338(h)(10) of the Internal Revenue Code with respect to Buyers' acquisition of the shares of Corporation.

On Date 3, Buyers formed Holdco, a State B corporation, with each of Buyer 1 and Buyer 2 owning 50 percent of the issued and outstanding common stock of Holdco, with the intention that Holdco could act as a holding company for both the Corporation and the Additional Shares.

Following the closing of the Original Transaction, Sellers and Buyers learned they were mistaken in their belief that the section 338(h)(10) election was available for Corporation as part of the Original Transaction.

Proposed Transaction

Therefore, Sellers and Buyers have agreed to enter into an agreement (the Rescission Agreement) to rescind the sale and purchase of the Corporation stock and to confirm that the terms and conditions of the Original Transaction as relates to the sale and purchase of the Additional Shares remain unchanged and in full force and effect (the Proposed Transaction). The following steps will constitute the Proposed Transaction:

- (i) Seller 1 will return the consideration received for the Corporation stock, \$b, by reducing the principal amount of Buyer 1's promissory note by \$b.
- (ii) Seller 1 and Buyers will amend the security agreement to release the Corporation stock as collateral.
- (iii) Buyer 1 will return the Corporation stock to Seller 1.
- (iv) Seller 2 will return the consideration received for the Corporation stock, \$b, by reducing the principal amount of Buyer 2's promissory note by \$b.
- (v) Seller 2 and Buyers will amend the security agreement to release the Corporation stock as collateral.
- (vi) Buyer 2 will return the Corporation stock to Seller 2.
- (vii) Corporation will cancel the stock returned to Sellers and issue and deliver to Sellers the stock certificates representing the shares they formerly held.

After the Proposed Transaction is complete, Sellers and Holdco will enter into an agreement whereby Holdco will purchase the Corporation stock from Sellers (New Purchase Transaction).

Representations

- (a) The Original Transaction and the Proposed Transaction will occur within the same taxable years of Sellers, Buyers, and Corporation.
- (b) The Proposed Transaction will not involve any party that was not involved in the Original Transaction.
- (c) The intent and effect of the Rescission Agreement was, and is, to restore in all material respects the legal and financial arrangements among Sellers, Buyers, and Corporation that would have existed had the Original Transaction with respect to the Corporation stock not occurred.
- (d) There have been no and will be no actual or constructive distributions or contributions of money or property from or to Corporation during the period of time beginning with the effective date of the Original Transaction and ending with the execution of the Rescission Agreement.
- (e) No activity has occurred or will occur with respect to Buyers, Sellers, and/or Corporation that is inconsistent with the Proposed Transaction.
- (f) None of Buyers, Sellers, or Corporation has taken or will take any material position for federal income tax purposes inconsistent with the position that would have existed had the Original Transaction with respect to the Corporation stock not occurred.
- (g) Provided that the rulings requested by this letter are granted (and thus that there is confirmation that the Proposed Transaction is effective to cause the Original Transaction with respect to the Corporation stock to be disregarded for federal income tax purposes), Buyers, Sellers, and Corporation will complete their respective Year 1 federal income tax and information returns in all material respects as if the Original Transaction with respect to the Corporation stock had not occurred.

Rulings

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

- (1) The Original Transaction with respect to the Corporation stock will be disregarded for federal income tax purposes in accordance with Rev. Rul. 80-58, 1980-1 C.B. 181.

- (2) The stock of Corporation will be treated as owned by Sellers, respectively, at all times during the period from the effective date of the Original Transaction to the effective date of the New Purchase Transaction.
- (3) The New Purchase Transaction will constitute a qualified stock purchase of Corporation stock within the meaning of section 338(d)(3).
- (4) An election to apply section 338(h)(10) to Corporation may be made with respect to the New Purchase Transaction under § 1.338(h)(10)-1(c)(1) of the Income Tax Regulations, provided that all other requirements of section 338(h)(10) and § 1.338(h)(10)-1(c)(1) are fulfilled.
- (5) An election by Holdco to cause Corporation to be treated as a qualified subchapter S subsidiary under section 1361(b)(3) may be made effective as of the day following the effective date of the New Purchase Transaction, provided that all other requirements of section 1361(b)(3) and § 1.1361-3(a) are fulfilled (§ 1.1361-3(a)(4)).

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.

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.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

Filiz A. Serbes
Chief, Branch 3
Office of Associate Chief Counsel (Corporate)