

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:CORP:BR5  
PLR-117766-13

Date:  
September 19, 2013

**Legend**

Company =

Entity A =

Date 1 =

Date 2 =

Date 3 =

a =

b =

Dear :

This letter responds to your letters dated April 12, 2013 and July 15, 2013, submitted by your authorized representatives, requesting rulings as to Company's ability to rely on information contained in a series of Securities and Exchange Commission ("SEC") filings for purposes of determining shifts in ownership under section 382 of the Internal Revenue Code. The information submitted in that request and in subsequent correspondence is summarized below.

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 rulings, it is subject to verification on examination.

### Summary of Facts

Company is a loss corporation within the meaning of section 382(k)(1) and § 1.382-2(a)(1) of the Income Tax Regulations. Company has outstanding, and has had outstanding throughout the testing period, defined below, a single class of common stock, which is publicly traded and widely held.

Company relies on the existence and absence of filings of Schedules 13D and 13G with the SEC to identify Company's shareholders who have a direct ownership interest of five percent or more on its testing dates. Company uses a stock surveillance company to help it identify persons who control large blocks of Company stock and monitor all SEC filings with respect to Company. The stock surveillance company also monitors brokerage houses that are known to trade Company stock. Company has also inquired directly with some of the persons filing Schedule 13G regarding their ownership of Company's stock. Aside from these methods, Company has no other actual knowledge regarding or relevant system of tracking the owners of its stock.

For the period beginning Date 1 and ending Date 2, the testing period, Company has identified two entities or groups of entities that have filed Schedules 13D or 13G. There have been no other Schedule 13D or Schedule 13G filings made during the testing period. Company also has identified two entities that were 5-percent shareholders as of the beginning of the testing period that filed Schedules 13D prior to the beginning of the testing period. No other entities that filed a Schedule 13D or Schedule 13G before the testing period still beneficially own more than five percent of the shares of Company. Company has requested rulings with respect to Entity A's SEC filings only.

Entity A filed a Schedule 13G on Date 3. In the filing, Entity A identified itself as a parent holding company or control person. It indicated that it beneficially owns a percent, a number greater than five, of the common stock of Company and listed b related entities as owning a portion of these shares (the "Related Entities"). Entity A did not indicate the manner in which the Related Entities owned these shares; however, none of these individual entities were listed as beneficially owning five percent or more of the outstanding shares of Company. Instead, in response to Item 6, Entity A stated, "Various persons have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of the common stock of [Company]. No one person's interest in the common stock of [Company] is more than five percent of the total outstanding common shares." Entity A also did not affirm the existence of a "group" within the meaning of section 13(d)(3) of the Securities Exchange Act of 1934 (the "Exchange Act") in its Schedule 13G filing.

Company represents that it has no knowledge of (1) the existence of any group of persons who have or had a formal or informal understanding amongst themselves to make a coordinated acquisition of Company stock using investments made through the Related Entities; (2) any SEC filings affirming that any individual or entity investing through the Related Entities filing Schedules 13D or 13G with respect to Company stock should be treated as a group; or (3) an entity or individual (through application of the attribution rules of section 318 as modified by section 382(l)) that owns 5 percent or more (by vote or value) of Company stock when such individual or entity's direct ownership of Company stock is combined with its ownership of Company stock acquired by or through the Related Entities.

### **Rulings**

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

- (1) Only a person who has the economic right to dividends and proceeds from the sale of Company's stock (an "Economic Owner") is considered to "own" Company stock for section 382 purposes.
- (2) Absent actual knowledge to the contrary, Company can rely on Entity A's statement in its Schedule 13G that no single person has the right to receive or power to direct the dividends from, or proceeds from the sale of, more than five percent of Company stock to conclude that no such person is an Economic Owner of five percent or more of Company stock for section 382 purposes.
- (3) Company can rely on the fact that Entity A did not affirm the existence of a "group" within the meaning of section 13(d)(3) of the Exchange Act in its Schedule 13G, and the absence of any other filings affirming the existence of a group from the Economic Owners of the shares referred to in Entity A's filing, to conclude that the Economic Owners are not members of a group that constitutes an "entity" within the meaning of Treas. Reg. § 1.382-3(a)(1)(i), even though the companies referred to in the filing may have overlapping officers or directors.
- (4) Company will not be deemed to know that any of the Economic Owners of Company stock referred to in Entity A's filing constitute an "entity" within the meaning of Treas. Reg. § 1.382-3(a)(1)(i) merely because someone employed by Company may know that one or more of the entities listed in the filings have overlapping officers or directors.

### **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, a copy of this letter is being sent to your authorized representative.

Sincerely,

*Joanne M. Fay* \_\_\_\_\_

Joanne M. Fay  
Chief, Branch 2  
Office of Associate Chief Counsel (Corporate)