

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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Third Party Communication: None
Date of Communication: Not Applicable

UILC: 368.14-00

date: February 26, 2014

to: Steven G. Cappellino
CC:LB&I:RFTH:DET

from: T. Ian Russell
Chief, Branch 6 Corporate

subject: PREF-106376-14
:

This memorandum responds to your request for advice regarding whether the restructuring of a debtor corporation ("Debtor Corp") constituted a reorganization within the meaning of section 368(a)(1)(G) of the Internal Revenue Code (the "Code").

You submitted a memorandum (the "Memorandum") to this office in which you analyzed various requirements that the Debtor Corp's restructuring had to satisfy in order to qualify as a Type G reorganization.¹ The Memorandum concluded that the restructuring failed to qualify as a Type G reorganization. We agree with your conclusion.

Section 368(a)(1)(G) defines a reorganization as a transfer by a corporation of all or part of its assets to another corporation in a Title 11 or similar case; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 354, 355, or 356.

The requirement that the stock or securities of the transferee corporation be distributed in a transaction that qualified under section 354, 355, or 356 was not satisfied.

¹ We adopt the detailed description of the facts and relevant background of the parties that you have set forth in your Memorandum. For the sake of brevity, we will not restate those facts here, except as needed.

Section 354(a)(1) provides that no gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization. No shareholder of the Debtor Corp received any consideration in the restructuring. In addition, based on the terms of the various debt instruments, no creditor of the Debtor Corp held an instrument in the Debtor Corp that constituted a “security” within the meaning of section 354. Therefore, the restructuring failed to meet the exchange requirement of section 354(a)(1).²

Section 355 applies to certain divisive transactions, and section 356 applies to otherwise qualifying section 354 or 355 transactions but for the fact that “boot” is distributed in the exchange.³ The restructuring of the Debtor Corp failed the section 355 component of section 368(a)(1)(G) because it was not a divisive transaction. Since the restructuring failed both the section 354 and section 355 components of section 368(a)(1)(G), it could not satisfy the section 356 component.

Accordingly, we agree with the conclusion of your Memorandum that the restructuring failed to qualify as a reorganization under section 368(a)(1)(G).⁴

No opinion is expressed about the federal income tax treatment of the restructuring under any other provisions of the Code or the Federal Income Tax Regulations. This document may not be used or cited as precedent.

Please call (202) 317-5024 if you have any questions regarding this document.

² In addition to failing to satisfy the exchange requirement of section 354(a)(1), we note that as of the date of this memorandum, the Debtor Corp has not yet liquidated as required by section 354(b)(1). That section, in relevant part, provides that section 354(a) shall not apply to an exchange in pursuance of a plan of reorganization within the meaning of section 368(a)(1)(G) unless the transferor corporation distributes the stock, securities and other property received in the transaction, as well as all its other properties, in pursuance of the plan of reorganization.

³ Section 356(a)(1) provides that if section 354 or 355 would apply to an exchange but for the fact that the property received in the exchange consists not only of property permitted by section 354 or 355 to be received without recognition of gain but also of other property or money (*i.e.*, “boot”), then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

⁴ Because the restructuring failed to qualify as a Type G reorganization for the reasons stated, this memorandum does not analyze any other requirements of section 368(a)(1)(G).

