

Internal Revenue Service

Number: **202131005**

Release Date: 8/6/2021

Index Number: 382.11-05, 382.11-07

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

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CC:CORP:1

PLR-118554-20

Date:

May 05, 2021

Legend

Taxpayer =

State A =

Shareholder A =

Instrument I =

Instrument II =

Target =

Issue Price =

Unit =

Action I =

Date 1 =

Date 2 =

Date 3 =

a =

b =

c =

d =

e =

f =

l =

j =

Dear :

This letter responds to your letter dated August 21, 2020, and supplemented by additional letters dated November 19, 2021 and March 8, 2021 submitted on behalf of Taxpayer requesting rulings regarding the federal income tax characterization of Instrument I (as described below) for purposes of Internal Revenue Code section 382. The material information submitted in that request and subsequent correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Summary of Facts

Taxpayer is a State A corporation whose common stock is widely held and publicly traded.

On Date 2, Taxpayer acquired the stock of Target. In order to fund a portion of the purchase price for such acquisition, on Date 1 (the "Issue Date") Taxpayer issued a units of Instrument I, together with Instrument II to Shareholder A for \$b. The purchase price was allocated between Instrument I and Instrument II. As a result of such allocation, Taxpayer determined the issue price for Instrument I to be Issue Price.

Instrument I possess no right to vote in elections for any member of the Taxpayer board of directors. Instrument I generally (i) provides for (A) cumulative dividends at a fixed rate of dividend rate of c%, and (B) a liquidation right of \$d and (ii) is perpetual and callable at \$e plus accrued and unpaid dividends upon and after Date 3. On the Issue Date, Taxpayer expected to redeem Instrument I upon Date 3. The amortization of the redemption premium over the period ending with Date 3, together with the annual fixed dividend on Instrument I, would result in an effective dividend yield of f% through Date 3. Although (i) the dividend rate as well as the redemption price can be increased as a result of certain limited actions by Taxpayer, and (ii) Taxpayer has the right to pay dividends at its election in common stock, neither were expected to occur as of the Issue Date. On Date 1, the maximum number of units of Instrument I that can be transferred to carry out Action I is l% of units held by the Shareholder A. As of Date 1, j% of the units of Instrument I cannot be transferred to carry out Action I.

Representations

Taxpayer makes the following representations:

1. As of the Issue Date, Taxpayer expected that it would be able to make all quarterly payments of dividends on Instrument I and redeem Instrument I on Date 3.
2. The terms of Instrument I and Instrument II were established without Taxpayer giving any consideration to the possible application of section 382 at any point in time

Rulings

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

- (1) j% of Instrument I will not constitute stock within the meaning of either section 382(k)(6)(A) or Treas. Reg. § 1.382-2T(f)(18).
- (2) l% of Instrument I will constitute stock within the meaning of section 382(k)(6)(A).

Caveats

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax treatment of any aspect of any transaction or item discussed or referenced in this letter. We express no opinion about the tax treatment of the transaction or item as described under other provisions of the Code or regulations, or the tax treatment of any condition existing at the time of, or the effect resulting from, the facts and circumstances described herein that is not specifically covered by the ruling set forth above.

Procedural Statements

The 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 returns that provides the date on and control number of the letter ruling.

Pursuant to a Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Mark J. Weiss

Mark J. Weiss
Chief, Branch 2
Office of Associate Chief Counsel
(Corporate)

cc: