Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:CORP:2-PLR-104627-02
Date:
June 11, 2002

Legend:

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Date A =

Date B =

Date C =

State X =

State Y =

Dear

This letter responds to your January 9, 2002 request for rulings on certain federal income tax consequences of a consummated transaction on behalf of the above-captioned taxpayer. The material information submitted for consideration is summarized below.

Parent, a State X corporation, is the common parent of an affiliated group of corporations ("the Parent Group") that files a consolidated return on a calendar year basis. The consolidated return is filed on an accrual basis.

Sub 1 is a State Y corporation whose stock is wholly-owned by Parent. Sub 2 is a State X corporation whose stock is wholly-owned by Sub 1. Sub 3 was a State X corporation whose stock was wholly-owned by Sub 1. Sub 3 was organized for the purpose of acquiring all of the outstanding stock of Sub 2.

On Date A, Sub 3 acquired through tender offer in excess of M (greater than 80) percent of the outstanding stock of Sub 2 (the "tender offer"). Immediately following the tender offer, and as part of the same transaction, Sub 3 was merged into Sub 2, with Sub 2 being the surviving entity (the "merger"), and any of the outstanding shares of Sub 2 were effectively cancelled as a result of this merger (the tender offer and merger together are hereinafter referred to as the "Acquisition").

On Date B, subsequent to the Acquisition, Sub 2 and its subsidiaries sold the stock of certain subsidiaries and other assets (built-in-gain or "BIG assets") to an unrelated corporation. Sub 2 recognized a significant gain on the sale of the BIG assets.

The Parent Group has significant consolidated operating losses carried over from years prior to its tax year ending Date C. However, without consideration of the gain or loss from any capital transactions, the Parent Group would incur a net operating loss for the taxable year ending Date C. Also, after Date B, the Parent Group entered into contracts and sold certain assets resulting in the realization of capital loss.

The taxpayer has made the following representations:

(a) Sub 2 is a "gain corporation" within the meaning of § 384(c)(4) of the Code.

(b) Neither Sub 1 nor the Parent Group has a "net-unrealized-built-in-loss," within the meaning of § 384(c)(3)(B).

(c) Neither Sub 1 nor the Parent Group has accelerated income into the acquisition period or deferred loss into the post acquisition period for the purpose of avoiding application of § 384.

(d) There were no extraordinary preacquisition items of income or expense.

(e) All corporations within the Parent Group will be treated consistently for purposes of allocating income and loss between the pre-change period and the post-change period under § 384(c)(3)(A)(ii). Each corporation in the Parent Group will close its books at the close of the change date and elect out of ratable allocation.

Based solely on the facts and information submitted, and on the representations made, it is concluded that Parent and each member of the Parent Group may allocate net operating and net capital losses for purposes of § 384(c)(3)(A)(ii) by treating their books as if they closed on Date A. However, this closing of the books shall not result in an amount of net operating loss or net capital loss apportioned to the period after the acquisition date that is greater than the net operation or net capital loss for the entire year in which the acquisition date occurs.

No opinion is expressed about the tax treatment of the transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above ruling.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusions in the ruling. See section 12.04 of Rev. Proc. 2002-1, 2002-1 I.R.B. 1, 50. However, when the criteria in section 12.05 of the revenue procedure are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

Sincerely,
Associate Chief Counsel (Corporate)

By: _____
Gerald B. Fleming
Senior Technician Reviewer (Branch 2)

cc: