Internal Revenue Service

Department of the Treasury

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Date:
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LEGEND

Parent =

S1 =

S2 =

S3 =

S4 =

State X =

State Y =

Business A =

Dear

This letter responds to your October 18, 2001 request for rulings on certain aspects of a proposed transaction. Additional information was submitted in letter dated

March 6, 2002. The information submitted in such request and subsequent correspondence is summarized below.

FACTS

Parent is a State X corporation engaged in Business A. Parent has a single class of publicly held, voting common stock. Parent is the common parent of a consolidated group that files its federal income tax return on a calendar year basis. Parent has three wholly owned subsidiaries: S1, S2 and S3. S1, S2 and S3 respectively own %, % and % of the outstanding stock of S4.

In order to facilitate its new business model and realign its management structure, Parent proposes the following transaction:

First, S1, S 2 and S3 will merge into Parent, under section 368(a)(1)(A) of the Internal Revenue Code, pursuant to State X law (hereinafter the "Operating Mergers"). After the Operating Mergers, S4 will be a wholly owned subsidiary of Parent.

Second, Parent will transfer almost all of the operating assets previously held by S1, S2 and S3 to three newly formed corporations: New S1, New S2, New S3, collectively the "Transferees," in exchange for all of the outstanding stock of each of the Transferees (hereinafter this step will be known as the "Contributions"). Parent will retain the stock of S4, as well as several service contracts and joint vendor agreements.

Third, after the Contributions, S4 will adopt a plan of liquidation, pursuant to which S4 will merge upstream with and into Parent under State Y law.

The following representation are made with respect to each of the Operating Mergers in accordance with Rev. Proc. 86-42:

(a) The Operating Mergers will be pursuant to state law.

(b) Parent has no plan or intention to sell or otherwise dispose of the assets of S1, S2, and S3 acquired in the transactions, except by way of the liquidation, disposition made in the ordinary course of business or transfers described in section 368(a)(2)(C).

(c) During the five-year period ending on the date of the proposed transaction: (i) neither Parent, nor any person related to Parent (as defined in Treas. Reg. § 1.368-1(e)(3)), will have acquired stock of S1, S2 or S3 with consideration other than Parent stock; (ii) neither S1, S2, or S3, nor any person related to S1, S2 or S3 (as defined in Treas. Reg. § 1.368-1(e) determined without regard to Treas. Reg. § 1.368-1(e)(3)(i)(A)), will have acquired stock of S1, S2 or S3 with consideration other than Parent stock or stock of S1, S2 or S3; and (iii) no

distribution will have been made with respect to stock of S1, S2, or S3, other than ordinary, normal, regular, dividend distributions made pursuant to historic dividend paying practice of S1, S2 or S3, either directly or through any transaction, agreement or arrangement with any other person.

(d) Following each of the Operating Mergers, Parent will continue the historic business of S1, S2 and S3 or use a significant portion of each historic business assets in a business, either directly, or indirectly through New S1, New S2 and New S3.

(e) The liabilities of S1, S2 and S3 assumed by Parent were incurred by each respective company in the ordinary course of business.

(f) The fair market value of the assets of S1, S2 and S3, in each instance, will equal or exceed the sum of the respective liabilities assumed by Parent.

(g) Parent, S1, S2 and S3 will each pay their respective expenses, if any, incurred in connection with the transaction.

(h) At the time of the transaction, there will be no intercorporate debt existing between Parent and S1, S2 or S3, other than intercorporate accounts arising in the normal course of business (including intercorporate accounts arising in connection with S1, S2 and S3's use of intangibles), and no such intercorporate debt will have been issued, acquired or settled at a discount.

(i) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).

(j) Not any of S1, S2 or S3 are under the jurisdiction of a court in a Title 11, or similar, case within the meaning of section 368(a)(3)(A).

The following representations are made with respect to each of the Contributions in accordance with Rev. Proc. 83-59:

(a) No stock will be issued for services rendered to or for the benefit of the Transferees in connections with the Contributions.

(b) No stock will be issued for indebtedness of the Transferees that is not evidenced by a security or for the interest on indebtedness of the Transferees that accrued on or after the beginning of the holding period of the transferor for the debt.

(c) The Contributions are not the result of the solicitation by a promoter, broker or investment house.

(d) Parent will not retain any rights in the property transferred to the Transferees.

(e) None of the property being transferred to the Transferees will be leased back to Parent or a related party.

(f) The value of the stock received in exchange for accounts receivable will be equal to the net value of the accounts transferred.

(g) The adjusted basis and the fair market value of the assets to be transferred by Parent to the Transferees will, in each instance, be equal to or exceed the sum of the liabilities to be assumed by the Transferees.

(h) The liabilities to be assumed by the Transferees were incurred in the ordinary course of business and are associated with the assets to be transferred.

(i) At the time of the Contributions, there will be no intercorporate debt existing between Parent and the Transferees, and no indebtedness will be created in favor of Parent as a result of the transaction.

(j) The Contributions will occur pursuant to a plan agreed upon before the transaction in which the rights of the parties are defined.

(k) All exchanges in connection with the Contributions will occur on approximately the same date.

(l) Parent has no plan or intention to sell any of the stock of the Transferees to be received in the Contributions.

(m) There is no plan or intention on the part of the Transferees to redeem or otherwise reacquire any stock to be issued in the Contributions.

(n) Taking into account any issuance of additional shares of the Transferees' stock; any issuance of stock for services; the exercise of an transferee stock rights, warrants, or subscriptions; a public offering of the Transferees' stock; and the sale, exchange, transfer by gift, or other disposition of any of the transferees' stock received by Parent, Parent will be in "control" of each of the Transferees within the meaning of Section 368(c).

(o) Parent will receive stock in the Transferees, in each instance, approximately equal to the fair market value of the property transferred to each of the Transferees.

(p) The Transferees will remain in existence and retain and use the property

transferred to them in a trade or business.

(q) There is no plan or intention by the Transferees to dispose of the transferred property other than in the normal course of business operations.

(r) Parent and each of the Transferees will pay their own expenses, if any, incurred in connection with the Contributions.

(s) None of the Transferees will be an investment company within the meaning of Section 351(e)(1) and Treas. Reg. § 1.351-1(c).

(t) None of the Transferees intend (or are eligible) to make an election under Section 1362(a) to be taxed as a “small business corporation” as defined in Section 1361(a).

(u) Parent is not under the jurisdiction of a court in a Title 11 or similar case and the stock received in the exchange will not be used to satisfy the indebtedness of Parent.

(v) The Transferees will not be “personal service corporations” within the meaning of Section 269A.

The following Representations are made in reference to the liquidation pursuant to Rev. Proc. 90-52:

(a) Parent, on the date of the adoption of the plan of liquidation and at all times until the final liquidating distribution is completed, will be the owner of at least 80% of the single outstanding class of S4 stock.

(b) No shares of S4 will have been redeemed during the three years preceding adoption of the plan of complete liquidation of S4.

(c) All distributions from S4 to Parent pursuant to the plan of complete liquidation will be make within a single taxable year of S4.

(d) As soon as the first liquidating distribution has been made. S4 will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and distributing its remaining assets to Parent.

(e) S4 will retain no assets following the final liquidating distribution.

(f) No assets of S4 have been, or will be, disposed of by either S4 or Parent, except for dispositions in the ordinary course of business.

(g) The liquidation will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation of any of the businesses or assets of S4, if persons holding, directly or indirectly (as determined under section 318(a) as modified by section 304(c)(3)), more than 20 percent in value of the S4 stock also hold, directly or indirectly, more than 20 percent in value of the stock of the recipient corporation.

(h) No assets of S4 will have been distributed in kind or sold to Parent within three years before the adoption of the plan of liquidation, except in the ordinary course of business.

(i) S4 will report all earned income represented by assets that will be distributed to Parent such as receivables being reported on a cash basis, commissions due, etc.

(j) The fair market value of the assets of S4 will exceed its liabilities (including any amounts owed to Parent), at both the date of the adoption of the plan of complete liquidation and the time the first liquidating distribution is made.

(k) At the time of the liquidation, there will be no intercorporate debt existing between Parent and S4 other than the intercorporate accounts arising in the normal course of business (including intercorporate accounts arising in connection with S1, S2 and S3's use of the intangibles), and no such intercorporate debt will have been cancelled, forgiven, or discounted in connection with the proposed transaction. In addition, no indebtedness will have been cancelled or forgiven within three years of the adoption of the adoption of the plan of liquidation.

RULINGS

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

(1) Provided that each of the Operating Mergers qualify as statutory mergers under applicable state law, each of the Operating Mergers with and into Parent will constitute a reorganization within the meaning of Section 368(a)(1)(A), as described above.

(2) Parent, S1, S2, and S3 will each be “a party to a reorganization” within the meaning of Section 368(b).

(3) No gain or loss will be recognized, in each instance, by S1, S2, and S3 on the transfer of their respective assets to Parent in exchange for Parent’s common stock and the assumption by Parent of the liabilities of each subsidiary:

S1, S2, and S3. Sections 361(a) and 357(a).

(4) No gain or loss will be recognized by Parent on the receipt of assets of S1, S2, and S3 in exchange for Parent common stock and the assumption of liabilities by Parent of each subsidiary: S1, S2 and S3, as described above. Section 1032(a).

(5) The basis of the assets of S1, S2 and S3 in the hands of Parent will be the same as the basis of such assets in the hands of each respective subsidiary: S1, S2 and S3, as described above. Section 362(b).

(6) The holding period of the assets of S1, S2 and S3 received by Parent will include the period during which the assets were held by each respective subsidiary: S1, S2 and S3. Section 1223(2).

(7) Parent will succeed to and take into account as of the close of the date of each of the transactions, the items of S1, S2 and S3 described in Section 381(c) subject to the conditions and limitations specified in Sections 381, 382, 383, and 384 and the regulations thereunder.

(8) Except to the extent that S1, S2 and S3 have earnings and profits reflected in Parent's earnings and profits, Parent will succeed to and take into account the earnings and profits, or deficit in earnings and profits of S1, S2 and S3 as of the date of each transfer. Section 381(c)(2)(A) and Treas Reg. § 1.381(c)(2)-1 and Treas. Reg. § 1.1502-33. Any deficit in the earnings and profits of Parent, S1, S2 or S3 will be used only to offset earnings and profits accumulated after the date of the Operating Mergers. Section 381(c)(2)(B).

(9) No gain or loss will be recognized by Parent on the transfer of assets to each of the Transferees in exchange for all of the common stock of the Transferees and the assumption of liabilities, as described above. Section 351(a) and 357(a).

(10) The basis of the common stock in the Transferees to be received by Parent will be the same as the basis of the assets transferred by Parent to the Transferees, decreased by the sum of the liabilities assumed by the Transferees. Sections 358(a)(1) and 358(d)(1).

(11) The holding period of the stock to be received by Parent will include the holding period of the assets that were transferred to the Transferees, provided that the assets were held as capital assets on the date of the Contributions. Section 1223(1).

(12) No gain or loss will be recognized by each of the Transferees on the receipt

of assets in exchange for their common stock. Section 1032(a).

(13) The basis of the assets received by each of the Transferees will be the same as the basis of the assets in the hands of Parent immediately prior to the Contributions. Section 362(a).

(14) The holding period of the assets transferred to the Transferees will include the holding period of such assets in the hands of Parent. Section 1223(2).

(15) For Federal income tax purposes, the statutory merger of S4 with and into Parent will be treated as a distribution by S4 of all its respective property in complete liquidation within the meaning of section 332. Treas. Reg. § 1.332-2(d).

(16) Provided that the requirements of section 332(b) are met, no gain or loss will be recognized by Parent upon the receipt of the assets and liabilities of S4 in the complete liquidation, as described above. Section 332(a).

(17) No gain or loss will be recognized by S4 on the distribution of its assets to, or the assumption of liabilities by, Parent. Sections 337(a), 337(b) and 336(d)(3).

(18) Parent's basis in each asset received from S4 as a result of the complete liquidation will be the same as the basis of that asset in the hands of S4 immediately before the liquidation. Section 334(b)(1).

(19) Parent's holding period in each asset received from S4 as a result of the liquidation will include the period during which that asset was held by S4. Section 1223(2).

(20) Parent will succeed to and take into account the items of S4 described in Section 381(c), subject to the conditions and limitations specified in Sections 381, 382, 383 and 384 and the regulations thereunder. Sections 381(a) and Treas. Reg. § 1.381(a)-1.

(21) Except to the extent S4's earnings and profits are reflected in Parent's earnings and profits, Parent will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of S4 as of the date of the liquidation. Section 381(c)(2)(A), Treas. Reg. §§ 1.381(c)(2)-1, 1.1502-33(a)(2). Any deficit in the earnings and profits of S4 will be used only to offset earnings and profits accumulated after the date of the liquidation. Section 381(c)(2)(B).

CAVEATS AND PROCEDURAL STATEMENTS

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty 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. 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.

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 your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,

Lewis K Brickates
Acting Chief, Branch 4
Office of the Associate Chief Counsel (Corporate)