Internal Revenue Service

Number: **200713015**
Release Date: 3/30/2007
Index Number: 382.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
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Refer Reply To:
CC:CORP:B04
PLR-141449-06
Date:
December 20, 2006

LEGEND:

Company =

Entity A =

Entity B =

Entity C =

Entity D =

Entity E =

Entity F =

LP1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =
Date 6 =

Date 7 =

Date 8 =

State =

a =

b =

c =

d =

e =

f =

g =

h =

Dear :

This letter responds to your letter dated August 31, 2006, requesting rulings regarding § 382 of the Internal Revenue Code. The relevant information provided in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials 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

Company is the common parent of an affiliated group of corporations filing a consolidated return. Company is also a loss corporation within the meaning of § 382. Between Date 2 and Date 8 (the "Relevant Period"), Company had two classes of stock outstanding: common stock that is publicly traded and widely held and non-voting convertible preferred stock with a liquidation preference. The preferred stock is

convertible into b shares of Company common stock, but the preferred shareholders have no right to force redemption of their stock. Throughout the Relevant Period, a shares of preferred stock were outstanding. On Date 1 (more than three years before Date 8), Company underwent an ownership change within the meaning of § 382(g)(1).

On Date 3, Company, its primary operating entity LP1, and certain of Company's domestic subsidiaries filed voluntary bankruptcy petitions in the United States Bankruptcy Court for the District of State (the "Bankruptcy Court"). On Date 4 (while Company was a loss corporation), Company filed with the Bankruptcy Court a motion requesting that the Bankruptcy Court impose trading restrictions on Company's stock. The restrictions were intended to give Company the ability to prevent an ownership change by limiting owner shifts in Company stock. On Date 5, the Bankruptcy Court entered a final order (the "Trading Order") to impose the requested restrictions.

The restrictions relate to acquisitions or dispositions of Company stock involving any person who is or becomes an owner of c percent (greater than 4 percent but less 5 percent) of the outstanding stock of Company (a "Restricted Owner"). Ownership for this purpose takes into account the constructive ownership rules of § 382 and the regulations thereunder. Under the Trading Order, any person that is or becomes a Restricted Owner is required to notify the Bankruptcy Court and Company of the person's status as such. The notice provision applies to any person intending to acquire Company stock if the proposed acquisition (the "Purported Acquisition") will: (i) cause any person to become a Restricted Owner; or (ii) increase the percentage of stock owned by any Restricted Owner. Similarly, the notice provision applies to any person intending to dispose of Company stock if the proposed disposition (the "Purported Disposition") will: (i) cause any person to cease to be a Restricted Owner; or (ii) decrease the percentage of stock owned by any Restricted Owner. Within a specified time of receiving notice of a Purported Acquisition or Purported Disposition (a "Purported Transaction"), Company may object to the transaction. If Company objects in the manner provided for in the Trading Order, any Purported Transaction is not effective unless approved by further order of the Bankruptcy Court.

Shortly before Date 5, Entity A acquired e shares of Company common stock in the open market. On Date 6, Entity A informed Company that, as of Date 5, Entity A owned in the aggregate approximately h percent (greater than 5 percent) of Company. Entity A further informed Company that d shares of the e shares of Company common stock it owned were acquired in the open market between Date 4 and Date 5. Taking into account Entity A's greater than 5 percent owner shift and the previous owner shifts during the applicable § 382 three-year testing period, Company determined it would experience an ownership change for § 382 purposes if Entity A were treated as a 5 percent shareholder.

Entity A's acquisition of d shares of Company common stock between Date 4 and Date 5 would have violated the terms of the Trading Order had the Trading Order been in effect at the time of Entity A's acquisition. On Date 7, under an order and

stipulation requested by Company and Entity A, the Bankruptcy Court ordered that the purchase by Entity A of Company common stock in excess of f shares representing approximately g percent (less than 5 percent) (the "Excess Shares") would be treated as void ab initio (“Stipulation and Order”). The Stipulation and Order further provided that the Excess Shares were to be sold with the proceeds payable first to Entity A up to its net costs and the remainder, if any, payable to a qualified charity within the meaning of § 501(c)(3) of the Internal Revenue Code. On Date 8, Entity A notified Company that the Excess Shares had been sold for an amount in excess of Entity A’s cost to acquire the shares, and that the excess proceeds from the sale had been contributed to a qualified charitable organization selected by Company.

In identifying the 5 percent shareholders during the Relevant Period, Company reviewed SEC Schedules 13D and 13G applicable to the Company common stock. During the Relevant Period, each of Entity B and Entity C reported on its respective Schedules13G that it owned greater than 5 percent of Company common stock.

Entity B is an investment advisor to various clients and Entity C is an investment advisor to Entity D, Entity E and to Entity F (the "Entity C Advisees"). Entity B and Entity C do not have the right to receive dividends or the right to proceeds from the sale of Company stock, except to the extent, if any, that each is the actual economic owner of a portion of such shares. Entity B, on behalf of its clients, and Entity C, on behalf of the Entity C Advisees, can vote Company common stock, acquire or dispose of shares of Company common stock, and use a common custodian to hold the stock. Entities A through F are unrelated third parties with respect to Company.

No client of Entity B or any Entity C Advisee has filed a Schedule 13D or 13G that reports ownership of shares representing in the aggregate more than 5 percent of the Company common stock. In the Schedules 13D and 13G filings, each of Entity B and Entity C reported that it did not acquire any Company stock for the purpose of changing or influencing the control of Company.

Representations

Company makes the following representations:

(a) The common stock of Company is publicly traded.

(b) Company is a loss corporation as defined in § 382(k)(1).

(c) Company anticipates emerging from protection under Chapter 11 of the Bankruptcy Code with a net operating loss carryforward.

(d) Company anticipates emerging from protection under Chapter 11 of the Bankruptcy Code under a plan of reorganization that will result in an ownership change within the meaning of § 382(g)(1).

(e) Company underwent an ownership change within the meaning of § 382(g)(1) on Date 1.

(f) Each of Entity B and Entity C is an investment advisor as defined in 17 CFR 240.13d-1(b)(1)(ii)(E).

(g) Neither Entity B nor Entity C is entitled to receive dividends declared and paid on the stock of Company or receive proceeds from the sale of Company common stock that was the subject of its respective Schedule 13G filings except to the extent, if any, that each is the economic owner of such shares.

(h) Neither Entity B nor Entity C is the beneficial owner of 5 percent or more (by value) of Company common stock (through application of the attribution rules of § 318 as modified by § 382(l)).

(i) Each of Entity B and Entity C has the authority, on behalf of its respective clients, to vote Company common stock, acquire or dispose of shares of Company common stock, use a common custodian to hold the stock, file Schedules 13D or 13G with respect to Company common stock, communicate with Company management regarding Company's operations, management, or capital structure, and communicate with clients or with prospective clients.

(j) Company has no knowledge of: (1) the specific clients of Entity B; (2) the existence of any group of persons who have a formal or informal understanding among themselves to make a coordinated acquisition of Company common stock using investments made through Entity B; (3) any SEC filings affirming that Entity B's clients should be treated as a group; (4) an entity or individual (through application of the attribution rules of § 318 as modified by § 382(l)) that owns 5 percent or more (by value) of Company common stock when such individual or entity's direct ownership in Company common stock is combined with its ownership of Company common stock acquired through Entity B; or (5) any activities performed by Entity B that would be outside the scope of an investment advisor.

(k) Company has no actual knowledge of: (1) the specific shareholders or investors in the Entity C Advisees; (2) the existence of any group of persons who have a formal or informal understanding among themselves to make a coordinated acquisition of Company common stock using investments made through the Entity C Advisees; (3) any SEC filings affirming that the Entity C Advisees should be treated as a group; (4) an entity or individual (through application of the attribution rules of § 318 as modified by § 382(l)) that owns 5 percent or more (by value) of Company common stock when such individual or entity's direct ownership in Company common stock is combined with its ownership of Company common stock acquired through the Entity C Advisees; or (5) any activities performed by Entity C that would be outside the scope of an investment advisor.

(l) Beyond the information set forth above, the management of Company has

no actual knowledge relating to the ownership of Company common stock that is the subject of the Schedule 13G filings made by Entity B and by Entity C.

Rulings

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

(1) Entity A will not be treated as having acquired ownership of the Excess Shares for purposes of § 382 and the regulations thereunder, so long as the Bankruptcy Court's Trading Order and the Stipulation and Order remain in effect and are not set aside by a final order of a court of competent jurisdiction.

(2) An individual or entity that has the right to the dividends and the right to the proceeds from the sale of stock ("Economic Ownership") is the owner of the stock for purposes of § 382 ("Economic Owner"). Each of Entity B and Entity C has the power on behalf of its clients to vote and/or dispose of Company common stock ("Reporting Ownership") but does not have Economic Ownership of such stock. Therefore, for § 382 purposes, neither Entity B nor Entity C is the owner of any share of Company common stock to which it does not have the right to dividends or the proceeds of sale.

(3) Unless Company has actual knowledge to the contrary, Company can rely on the existence or absence of Schedule 13D or 13G to identify all persons who directly own 5 percent or more of Company common stock. See § 1.382-2T(k)(1)(i).

(4) If an investment advisor files a Schedule 13D or 13G that reports Reporting Ownership on behalf of two or more Economic Owners of shares representing in the aggregate more than 5 percent of Company common stock, and the Economic Owners do not file a Schedule 13D or 13G that affirms the existence of a group, Company can rely on the absence of a Schedule 13D or 13G by the Economic Owners to determine that the Economic Owners are not members of a group that constitutes an entity (within the meaning of § 1.382-3(a)(1)(i)) unless Company has actual knowledge that the Economic Owners constitute an entity. See § 1.382-3(a)(1)(i), § 1.382-2T(k)(1)(i).

(5) The clients of Entity B collectively are not an entity within the meaning of § 1.382-3(a)(1)(i).

(6) The Entity C Advisees collectively are not an entity within the meaning of § 1.382-3(a)(1)(i).

Caveats

We express no opinion on the tax effect of any transaction or item discussed or referenced in this ruling letter under any other provision of the Internal Revenue Code and regulations, or the tax effect of any condition existing at the time of, or effect

resulting from, the facts and circumstances herein described that are not specifically covered by the rulings set forth above.

Procedural Statements

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

A copy of this ruling letter should be attached to the federal income tax return of each taxpayer involved for the taxable year in which the transactions covered by this ruling letter are completed. 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 ruling letter.

Under the power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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Marie C. Milnes-Vasquez
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Corporate)