

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B04
PLR-131058-09
Date:
October 27, 2009

Legend

Parent =

First Tier Entity A =

Higher Tier Entity B =

Higher Tier Entity C =

Business A =

Dear :

This letter responds to your June 26, 2009, request for rulings under section 382. The information submitted in that letter and in later correspondence is summarized below.

Summary of Facts

Parent is the common parent of an affiliated group that files a U.S. consolidated federal income tax return on a calendar year basis. The consolidated group is engaged in Business A. The group has been a loss group within the meaning of § 1.1502-91(c)(1) for all times relevant to this request. Parent is also the indirect owner of other consolidated groups and separate return filers that are engaged in Business A and also are loss groups or loss corporations.

By attribution, First Tier Entity A owns all the stock of Parent. First Tier Entity A is a corporation whose common stock is publicly traded. It also has classes of preferred stock outstanding that are stock within the meaning of § 1.382-2(a)(3)(i). For purposes of determining section 382 owner shifts, Parent has identified Higher Tier Entity B and Higher Tier Entity C as two higher tier entities within the meaning of § 1.382-2T(f)(14) through First Tier Entity A. Both such entities have a percentage stock ownership in First Tier Entity A within the meaning of § 1.382-2T(f)(24) that is large enough to represent an indirect ownership interest in Parent of more than five percent.

Parent has had owner shifts within the meaning of § 1.382-2T(e)(1) as a result of changes in indirect ownership of Parent through First Tier Entity A and/or Higher Tier Entity B. In addition, Parent has experienced certain changes in proportionate ownership which are attributable to fluctuations in the relative fair market value of the direct and indirect ownership interests in Parent stock and which are relevant to Parent's ownership change determination as provided in § 1.382-2T(f)(18)(iv).

Parent seeks to identify each owner shift to which § 382 as amended by the Tax Reform Act of 1986 may apply and is therefore concerned about each owner shift that occurred after May 5, 1986. See § 1.382-2T(m)(4)(i)(A).

Parent requests a ruling that it may, under the "Hold Constant Principle" (defined below) factor out changes in proportionate ownership of Parent's stock which are attributable solely to fluctuations in the relative fair market values of different classes of stock under § 382(l)(3)(C) to determine the increase in percentage ownership of each of its 5-percent shareholders on each of its testing dates since May 5, 1986 and identify which such testing dates are change dates for purposes of § 382. For purposes of this ruling, the Hold Constant Principle is defined as follows:

On any testing date, in determining the ownership percentage of any five percent shareholder, the value of such shareholder's stock, relative to the value of all other stock of the corporation, shall be considered to remain constant since the date that shareholder acquired the stock. In addition, the value of such shareholder's stock relative to the value of all other stock of the corporation issued subsequent to such acquisition date shall also be considered to remain constant since that subsequent date.

Representations

Parent makes the following representations:

(a) The issuance of an ownership interest by Parent or its first tier or higher tier entities for cash represented an exchange between parties acting at arm's length such that the amount of cash paid represented the fair market value of the stock as of the time of the exchange.

(b) There have been no distributions to shareholders other than in the ordinary course of business.

Rulings

Based solely on the information submitted and the representations made we hold as follows:

(1) For purposes of factoring out changes in proportionate ownership of Parent's stock that are attributable solely to fluctuations in the relative fair market values of different classes of stock under § 382(l)(3)(C), we hold that Parent and members of its consolidated group (including those with separately tracked losses) may apply a method employing the Hold Constant Principle to determine the increase in percentage ownership of each of its 5-percent shareholders on each of the testing dates since May 5, 1986 (and to identify which such testing dates are change dates for purposes of section 382), provided that—(i) Parent takes a return position consistent therewith on the tax return for the first taxable year (the “First Taxable Year”) in which its application of said method would result in an amount of taxable liability differing from that which would have resulted had Parent instead applied the method set forth in the regulations at §§ 1.382-2(a)(3)(i) and 1.382-2T(c)(1), and (ii) if employment of said method does not result in an ownership change during said First Taxable Year, Parent continues to apply said method thereafter through the testing date on which said method first results in an ownership change.

(2) In applying the Hold Constant Principle, a value-for-value recapitalization or conversion of stock of a corporation into other stock of the same corporation shall be disregarded, and the exchanging shareholder shall be considered to have acquired such newly issued stock as of the date it acquired the stock exchanged therefor.

Caveats

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. In particular, no opinion is expressed as to whether or not: (i) Parent had a testing date on any given date; (ii) Parent had an ownership change on any testing date (under either the methodology set forth at §1.382-2T(c)(1) or the Hold Constant Principle); or (iii) any exchange of stock pursuant to a recapitalization or a conversion represented a value for value exchange. One or more rulings given in this letter deal with issues that have not yet been fully addressed in published guidance. See section 11.04 of Rev. Proc. 2009-1, 2009-1 I.R.B. 1, 48, regarding the circumstances, including published guidance, which may result in the revocation or modification of a letter ruling.

Procedural Matters

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

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

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

Sincerely,

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