Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Date:
December 17, 2010

LEGEND:

X =
Year 1 =
Date 1 =
A =
B =
C =
D =
E =

F =

G =

Taxpayer =

Dear :

This is in reply to a letter dated July 6, 2010, submitted by your authorized representative, requesting a ruling on behalf of A, B, C, D, E, F, and G concerning the federal income tax consequences of a proposed waiver of dividends.

FACTS

X is a publicly traded corporation that was incorporated in Year 1. The authorized capital stock of X consists of shares of Class A common stock, shares of Class B common stock, and Preferred Stock. No shares of the preferred stock were outstanding as of Date 1. The Class A and Class B common stock are identical in all respects, except that each share of Class A common stock has one vote per share and each share of Class B common stock has ten votes per share. Shares of Class B common stock are freely convertible into Class A common stock on a share-for-share basis. X's Class A common stock is traded on the New York Stock Exchange. The Class B common stock is not traded or quoted on any national securities exchange or interdealer quotation system.

The X board of directors ("Board") expects that a contemplated diversification and growth strategy for X will be pursued using both cash and equity. Because a valuable public equity is likely to be more desirable to potential acquisition targets and to provide greater access to capital markets for future equity offerings, the Board believes that creating additional value in X's public equity will provide considerable flexibility to pursue the desired strategy. The Board believes that for X to continue to expand and grow its business, it must act to maintain and enhance the value of its publicly traded stock.

The Board, however, is concerned that the total amount required for payment of dividends on all issued and outstanding shares of common stock could impair X's ability to pursue other aspects of its diversification and growth strategy while also financing its working capital needs. As a result, X believes that it will be possible to utilize a strong dividend policy only if the policy applies only to the minority shareholders who own X's publicly traded common stock.

To enable X to make significant additional dividend distributions to minority shareholders who own the publicly traded common stock, A, and related shareholders B, C, D, E, F, and G (Waiving Shareholders) have offered to enter into a formal agreement with X to waive their rights in and to a portion of the regular quarterly cash dividend with respect to all of their shares of X Class A and Class B common stock. The waived portion will be an amount per share in excess of a "base per share amount" determined in consultation with X's management.

The following representations have also been made with respect to the dividend waiver:

(1) X has in the past and is expected to continue to declare and pay cash dividends on a quarterly basis;

(2) No dividend waivers will be made by any of the Waiving Shareholders with respect to stock dividends, if any, declared and paid by X;

(3) If the Board continues to believe that a strong dividend policy is advisable, the Waiving Shareholders will execute a formal agreement with X to waive their rights in and to any portion of the regular quarterly cash dividend in excess of an amount per share, to be determined by X management, declared by X with respect to all of their shares of Class A and Class B common stock (the excess hereafter being referred to as "additional cash dividends"); and

(4) Persons related to the Waiving Shareholders (as defined in Rev. Proc. 67-14, 1967-1 C.B. 591) will not receive in the aggregate, either directly or beneficially, more than 20 percent of the amount of additional cash dividends declared and paid to nonwaiving shareholders of X.

LAW AND ANALYSIS

Section 61(a)(7) of the Internal Revenue Code provides that except as otherwise provided in subtitle A, gross income means all income from whatever source derived, including dividends.

Generally, a majority shareholder who agrees to waive dividends while other shareholders receive theirs does not realize income if there is no family or direct business relationship between the majority and minority shareholders and the waiver is executed for valid business reasons. Rev. Rul. 45, 1953-1 C.B. 178. However, the waiver by a majority shareholder of the right to receive a pro rata share of any dividends paid by a corporation will not be recognized for income tax purposes where such dividends are paid to the relatives as minority shareholders as increased dividends, and the waiver results primarily in a benefit to the relatives. In general, if minority shareholder relatives benefit from a majority shareholder's dividend waiver, income is realized by the majority shareholder to the extent of the increased distribution to the related shareholders resulting from the waiver. See Rev. Rul. 56-431, 1956-2 C.B. 171.

Rev. Proc. 67-14 lists the conditions under which the Service will consider a request for a ruling on a proposed waiver of dividends transaction when the waiving and nonwaiving shareholders are individuals. The following four conditions must be satisfied: (1) a bona fide business reason must exist for the proposed waiver of dividends; (2) the relatives (e.g., brothers, sisters, spouse, ancestors, and lineal descendants) of the waiving shareholder must not be in a position to receive more than 20 percent of the total dividends distributed to the nonwaiving shareholders; (3) the ruling is not effective if any change in stock ownership (other than death) enables nonwaiving relatives to receive more than 20 percent of the dividend; and (4) a ruling issued on a proposed waiver of dividends transaction will not be effective for a period longer than three years from the date of the ruling.

In this ruling request, it is represented that there is a bona fide business reason for the proposed waiver of dividends because the waiver would allow X to make dividend distributions to the nonwaiving minority shareholders who own the publicly traded common stock of X, thereby enhancing its market value and providing X with greater access to capital markets for future equity offerings. Further, the waiver will permit X to maintain adequate capital to support its operations and expand its business.

In addition, it is represented that the relatives of the Waiving Shareholders are not in a position to receive in the aggregate more than 20 percent of the additional cash dividends distributed by X to the nonwaiving shareholders. The Waiving Shareholders recognize that this ruling will no longer be applicable if any change in the stock ownership during the waiver period enables nonwaiving relatives to receive more than 20 percent of additional cash dividends, unless the change occurs because of death. The Waiving Shareholders understand that pursuant to Rev. Proc. 67-14, a ruling issued on a proposed waiver of dividends transaction will not be effective for a period longer than three years from the date of the ruling (Waiver Period).

CONCLUSION

Based on the information submitted, the applicable law, and the representations made, we conclude that a bona fide business reason does exist for the proposed dividends waiver and that relatives are not in a position to receive in the aggregate more than 20 percent of the additional cash dividends distributed by X to the nonwaiving shareholders. Accordingly, the waiver by the Waiving Shareholders of the portion of the regular quarterly cash dividend in excess of an amount per share to be determined by X management, will not result in gross income to any of the Waiving Shareholders.

This ruling will no longer be applicable if any change in the stock ownership during the Waiver Period enables nonwaiving relatives to receive more than 20 percent of the additional cash dividends distributed to the nonwaiving shareholders, unless the change occurs because of death. In addition, this ruling will not be effective for a period longer than three years from the date of the ruling, or the death of Taxpayer, whichever is earlier.

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 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, copies of this letter are being sent to your authorized representatives.

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 return that provides the date and control number of the letter ruling.

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.

Sincerely,

John Aramburu
Senior Counsel
Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: