

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

June 15, 1999

Transferor =

Corp A =

Corp B =

Corp C =

Corp D =

Business A =

Business B =

Date 1 =

Transferee =

Corp E =

Corp F =

Corp G	=
Corp H	=
Syndicate	=
Exchange	=
x	=
<u>a</u>	=
<u>b</u>	=
Country y	=

This is in response to a letter dated February 25, 1999, in which rulings are requested as to the federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated May 5, May 21, and June 16, 1999. The facts submitted for consideration are substantially as set forth below.

Transferor (formerly known as Corp H) is an x corporation engaged principally in Business A in Country y and abroad. Transferor has outstanding a single class of stock which is traded on the Exchange.

Corp A is an x corporation engaged, directly and indirectly, in Business B. Corp A owns 38.34 percent of Transferor. Corp A also holds 99.99 percent of Corp B and 51.45 percent of Corp C.

Syndicate is a group of foreign persons that in the aggregate owns 86.92 percent of the stock of Corp D (formerly known as Corp G).

Transferee (formerly known as Corp F) was an x corporation newly created for purposes of the transactions described herein. Transferee issued and has outstanding a single class of stock.

For what are represented to be valid business reasons, the following transactions have been consummated:

- (i) Corp B incorporated Transferee, (formerly known as Corp F) and, pursuant thereto, transferred a nominal amount of property to it in

exchange for stock.

- (ii) Corp A and Corp C sold equity interests that they held in Corp E to Transferee in a fair market value, cash transaction.
- (iii) Syndicate merged into Corp D. As a result, the shareholders of Syndicate became shareholders of Corp D and Corp D acquired all of the assets and liabilities of Syndicate.
- (iv) Subsequent to the above steps (i), (ii) and (iii), on Date 1, Corp D transferred to Transferee all of its banking business assets in exchange for a percent of the stock of Transferee and the assumption by Transferee of the liabilities related to the assets transferred. Pursuant to this transfer, Corp D transferred stock of one U.S. corporation and more than 100 foreign entities many of which were corporations controlled by Corp D within the meaning of § 304(c) of the Internal Revenue Code.
- (v) Transferor transferred to Transferee all of its assets in exchange for b percent of the stock of Transferee and the assumption by Transferee of the liabilities related to the assets transferred. Pursuant to this transfer, Transferor transferred stock of three U.S. corporations and more than 100 foreign entities, many of which were corporations controlled by Transferor within the meaning of § 304(c) (“Controlled Corporations”).
- (vi) Transferee changed its name from Corp F to Transferee. Corp d changed its name from Corp G to Corp . Transferor changed its name from Corp H to Transferor.
- (vii) Corp D transferred all of its assets (including Transferee stock) to Corp B in exchange for Corp B stock and the assumption by Corp B of the liabilities, if any, related to the assets transferred.
- (viii) Corp B merged into Transferor. As a result, Corp A received Transferor stock and Transferor became the sole shareholder of Transferee.

In connection with the transaction, it is represented that:

- (a) No Transferee stock was issued for services rendered to or for the benefit of Transferee in connection with the Transaction and no stock was issued for indebtedness of Transferee or for interest on any indebtedness.
- (b) None of the assets transferred were received by the Transferor as part of plan of liquidation of another corporation.

- (c) The transfer was not the result of a solicitation by a promoter, broker or investment house.
- (d) The Transferor did not retain any rights or interest with respect to any and all property transferred to Transferee.
- (e) None of the stock being transferred by the Transferor was subject to any liabilities. None of the stock transferred was "section 306 stock" within the meaning of §306(c).
- (f) Transferee is not a holding company and the transaction did not otherwise involve the formation of a bank holding company.
- (g) The adjusted basis and the fair market value of the assets transferred by the Transferor to transferee was equal to or exceeded the sum of liabilities assumed by the Transferee plus any liabilities to which the transferred assets were subject.
- (h) The liabilities of the Transferor assumed by Transferee were incurred in the ordinary course of business and were associated with the assets transferred.
- (i) There was no indebtedness between Transferee and the Transferor and there was no indebtedness created in favor of the Transferor as a result of the transaction.
- (j) The transfers and exchanges occurred under a plan agreed upon before the transaction in which the rights of the parties were defined.
- (k) Except for the transactions that occurred in steps (i) through (iii), all exchanges occurred on approximately the same date, Date 1, and were intended to be parts of the same plan.
- (l) At the time of the transaction, and currently, there is no plan or intention on the part of Transferee to redeem or otherwise reacquire any stock issued in the transaction.
- (m) Taking into account any issuance of additional shares of Transferee stock; any issuance of stock for services; the exercise of any Transferee stock rights, warrants, or subscriptions; a public offering of Transferee stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of Transferee to be received in the exchange, the transferors (or the Transferor alone) were and will be in "control" of Transferee within the meaning of § 368(c).

- (n) Each of the transferors received stock approximately equal to the fair market value of the property transferred to Transferee.
- (o) The Transferee will remain in existence and retain and use the property transferred to it in a trade or business.
- (p) There is no plan or intention by Transferee to dispose of the transferred property other than in normal course of business.
- (q) Each of the parties to the transaction paid its own expenses, if any, incurred in connection with the transaction.
- (r) The Transferee will not be an investment company within the meaning of § 351(e)(1) and 1.351-1(c)(ii) of the Income Tax Regulations.
- (s) None of the transferors is under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the stock received in the exchange will not be used to satisfy the indebtedness of such debtor.
- (t) The Transferee will not be a “personal service corporation” within the meaning of § 269A.

Based solely on the information submitted and the representations set forth above, it is held as follows:

- (1) For federal income tax purposes, the transfer by Transferor of all its assets to Transferee will be viewed, in part, as a transfer of the Controlled Corporations’ stock in exchange for Transferee stock and an aliquot portion of the liabilities assumed by Transferee in the transaction.
- (2) To the extent of the amount of the aliquot portion of liabilities referred to in ruling (1), the acquisition by Transferee of the Controlled Corporations’ stock will constitute an acquisition of stock by a related corporation within the meaning of § 304(a)(1). To the extent of such aliquot portion of liabilities, the acquisition will be treated as a distribution in redemption of the stock of the Transferee.
- (3) The transfer by Transferor of Controlled Corporations’ stock in exchange for Transferee stock will constitute an exchange within the meaning of § 351 and no gain or loss will be recognized by Transferor (§ 351(a)). The transfer by Transferor of the assets other than the Controlled Corporations stock in exchange for Transferee stock and the assumption of liabilities will constitute an exchange within the meaning of § 351 and

no gain or loss will be recognized by Transferor (§§ 351 and 357(a)).

- (4) Transferee will recognized no gain or loss upon its receipt of property in exchange for stock of Transferee (§ 1032(a)).

We express no opinion 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 rulings.

This 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 should be attached to the federal income tax return of the taxpayers involved for the taxable year in which the transaction covered by this letter is consummated.

Pursuant to a power of attorney on file in this office, we have sent a copy of this letter to the taxpayer and an authorized representative.

Sincerely,

Assistant Chief Counsel (Corporate)

By: *Debra Carlisle* _____

Debra Carlisle
Chief, Branch 5