

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:Corp:B06-PLR-138103-02
Date:
August 27, 2002

LEGEND

Parent =

GP Sub =

GP Sub Renamed =

Partnership =

State X =

Business A =

Date =

p1% =

p2% =

Dear :

This letter responds to your request, dated July 11, 2002, for supplemental rulings to PLR-100157-02 ("Prior Ruling"), issued by our office on June 25, 2002. The information submitted in that request and later correspondence is summarized below.

SUMMARY OF FACTS

The Prior Ruling concerned a proposed transaction under §§721 and 311. The facts and representations set forth in the Prior Ruling are hereby incorporated, except as modified below, for purposes of this supplemental ruling. All capitalized terms not defined herein shall have the meanings ascribed to them in the Prior Ruling.

In your request, you have indicated that Parent no longer intends to effectuate the Restructuring as described in the Prior Ruling. Instead, Parent now intends to restructure its operations in the following manner (the “Restructuring” as defined in the Prior Ruling will now be redefined so as to refer only to the following revised series of transactions):

- (1) Parent will, under applicable state law, convert or merge most of its existing corporate subsidiaries into partnerships or disregarded entities for federal income tax purposes.
- (2) Either before or after Step (1), Parent and GP Sub, a pre-existing subsidiary of Parent that is indirectly wholly-owned by Parent (GP Sub is owned by Parent through a chain of wholly-owned subsidiaries of Parent that will be converted into partnerships as part of Step (1) above), will form Partnership, a State X limited partnership that will be treated as a partnership for federal income tax purposes. Initially, Partnership will be capitalized with (i) a contribution of cash from GP Sub in exchange for the issuance to GP Sub of all of Partnership’s general partner interests and (ii) a contribution of cash from Parent in exchange for all of Partnership’s limited partner interests. Parent intends to cause GP Sub to reincorporate in State X and to change its name to GP Sub Renamed prior to consummation of the Restructuring.
- (3) After the completion of Steps (1) and (2) above, and under applicable State X law, Parent will merge with and into Partnership, with Partnership surviving the merger (the “Merger”). Pursuant to the Merger, (i) all of Parent’s remaining assets (except for the outstanding stock of GP Sub), subject to all of Parent’s remaining liabilities, will be transferred to Partnership and (ii) Parent shareholders will receive all of Partnership’s limited partner interests (representing approximately p1% of the economic interest in the Partnership) and all of GP Sub’s outstanding shares, in each case pro rata, in exchange for all of the outstanding Parent Common Stock (the “Distribution”).
- (4) Following the Restructuring, Partnership and its lower tier entities will continue to carry on the Business A business formerly conducted by Parent and its lower tier entities prior to the Restructuring. Partners in Partnership will include: (i) GP Sub (as general partner owning approximately p2% of the economic interest in the Partnership) and (ii) the former Parent shareholders (as limited partners owning approximately p1% of the economic interest in the Partnership).

REPRESENTATIONS

Parent reaffirms representation (b), representations (d) through (i), and representation (l) contained in the Prior Ruling.

Parent does not reaffirm representation (j) of the Prior Ruling because it pertains

to a transaction that is not part of the Restructuring as revised herein and thus is not applicable to this ruling.

Parent revises representations (a), (c), and (k) of the Prior Ruling as set forth below:

Revised Representation (a):

The principal purpose of Parent's transfer of all the Business A assets to Partnership, pursuant to the Merger and otherwise in connection with the revised Restructuring, is not the recognition of any loss, directly or indirectly, in any such assets in connection with the Distribution. Rather, the principal purpose of Parent's transfer of all the Business A assets to Partnership, pursuant to the Merger and otherwise in connection with the revised Restructuring, is to restructure the Business A business that was carried on by Parent and its lower tier entities prior to the revised Restructuring so that it will be conducted in partnership form by Partnership and its lower tier entities on a continuing basis following the revised Restructuring.

Revised Representation (c):

Parent will transfer, pursuant to the Merger and otherwise in connection with the revised Restructuring, all of its assets (other than the outstanding stock of GP Sub) to Partnership subject to all of Parent's liabilities.

Revised Representation (k):

For purposes of measuring § 336 gain or loss to Parent on the distribution of Partnership interests and GP Sub shares, the aggregate value of the distributed Partnership interests and GP Sub shares will be equal to the value of the entire Business A business held by Partnership. Cf. Pope & Talbot, Inc. v. Commissioner, 104 T.C. 574 (1995), affirmed 162 F.3d 1236 (9th Cir. 1999).

Parent also makes the following representations in connection with the revised Restructuring:

- (aa) No formal or informal plan of liquidation has ever been adopted by Parent, except for the present plan which is expected to be formally adopted on or before Date.
- (bb) The liquidation of Parent will not be preceded or followed by the reincorporation in, or transfer or sale of all or a part of the business assets of Parent to a recipient corporation (Recipient) that is the alter ego of Parent and which, directly or indirectly, is owned more than 20 percent in value by persons holding directly or indirectly more than 20 percent in value of Parent's stock. For purposes of this representation, ownership has been determined by application of the constructive ownership rules of section 318, as modified by section 304(c)(3). Compare Rev. Ruls. 84-2, 1984-1 C.B. 92, and 61-156, 1961-2 C.B. 62.

- (cc) No part of the consideration to be received by any shareholder of Parent will be received by the shareholder as a creditor, employee, or in some other capacity other than that of a shareholder of Parent.
- (dd) Pursuant to the plan of complete liquidation, Parent will cease to be a going concern and its activities will be limited to the winding up of its affairs, paying or providing for the payment of its debts, and distributing any balance of its assets to its shareholders. (See Rev. Rul. 60-50, 1960-1 C.B. 150).
- (ee) The fair market value of Parent's assets will exceed its liabilities both on the date of adoption of the plan of liquidation and at the time the first liquidating distribution is made.
- (ff) The liquidating distributions described in this request for supplemental rulings are an isolated transaction and are not related to any other past or future transaction that is not related to the Restructuring.

RULINGS

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

- (1) The revised Restructuring, as described above, will have no adverse effect on the rulings contained in the Prior Ruling and, except as revised here in below, those rulings will continue in full force and effect.
- (2) Ruling 1 of the Prior Ruling is revised as follows:

Revised Ruling 1:

Parent will be treated as (i) directly transferring all of its assets (other than its stock in GP Sub), subject to its liabilities, to Partnership in exchange for the Partnership interests and (ii) distributing all of its Partnership interests and GP Sub shares to its shareholders in exchange for their Parent Common Stock in a complete liquidation of Parent.

- (3) Ruling 4 of the Prior Ruling is revised as follows:

Revised Ruling 4:

Parent will recognize gain or loss on the distribution of Partnership interests and GP Sub shares in liquidation of the Parent shareholders' Parent Common Stock based upon the difference between the fair market value of the Partnership interests and GP Sub shares distributed in liquidation and their adjusted tax basis in the hands of Parent. (§ 336).

CAVEAT

No opinion is expressed about the tax treatment of the proposed 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 proposed transaction that are not specifically covered by the above rulings.

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.

This supplemental 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.

A copy of this supplemental ruling and the Prior Ruling must be attached to the federal income tax return of each taxpayer involved in the taxable year in which the transaction is consummated.

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

Sincerely yours,

Alfred C. Bishop, Jr.

Alfred C. Bishop, Jr.
Branch Chief, Branch 6
Office of Associate Chief Counsel
(Corporate)