Internal Revenue Service

Number: **200450016**
Release Date: 12/10/04
Index Number: 1032.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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Refer Reply To:
CC:CORP:BO5
PLR-119361-04

Date:
August 17, 2004

LEGEND

Company =

Industry =

Exchange =

Units =

State X =

State Y =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Date6 =

Date7 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

Dear :

This letter responds to your April 5, 2004 request submitted on behalf of Company, for rulings on certain federal income tax consequences of a proposed transaction. Additional information was received in letters dated May 18, 2004, June 10, 2004, July 19, 2004, July 28, 2004, August 11, 2004, August 16, 2004, and August 17, 2004. The rulings contained in this letter are based on the facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. Verification of the information, representations, and other data may be required as part of the audit process. The material information is summarized below.

Company is engaged in several lines of business in the Industry. Company is organized under the laws of State X and its principal offices are located in State Y. Company is the common parent of a group of affiliated corporations that files a consolidated income tax return and computes their federal income tax liability using the accrual method of accounting and a taxable year ending Date1. Company's common stock is publicly traded on the Exchange.

During Date2, Company issued a Units in exchange for $b. Each Unit has an issue price of $c and is traded on the Exchange. Date2 is before August 22, 2003. See Rev. Rul. 2003-97, 2003-34 I.R.B. 380. Each Unit consists of a $c principal amount senior note issued by Company due on Date3 (Note) and a contract for the purchase of a variable number of shares of Company's common stock for $c on Date4 (Contract). Company is required to pay interest at the rate of d percent per annum on each Note and a fee of e percent of the Unit issue price per annum on each Contract, both amounts payable on a quarterly basis.

Although the Notes are pledged to secure a Unit holder's obligations under the Contract, a Unit holder may separate the Note from a Unit before Date4, either by substituting a zero-coupon Treasury security for the Note or by settling the Contract in cash prior to Date4.

Company is required to attempt to remarket the Notes to the public on behalf of the Note holders on Date5 at a reset rate of interest that would yield proceeds in an amount sufficient to satisfy the Unit holder's obligations under the Contract. If the Notes cannot successfully be remarketed on Date5, Company is obligated to make a second attempt to remarket on Date6. If the second attempt is not successful, Unit holders can deliver the Notes to Company in full payment for the Company common stock to be purchased by the Unit holders under the Contract.

Company now considers it financially beneficial to redeem the Notes and cancel the Contracts contained in the Units prior to its obligation under the terms of the Units to remarket the Notes on Date5.

Company proposes to make an exchange offer to each Unit holder (and if the Note has been separated from the Unit, then to each Note holder) prior to Date5 (Exchange Offer) under which:

(i) Each accepting Unit holder will cash settle its Contract based on a contract price of $f instead of the original contract price of $c.

(ii) Company will redeem the Note of each accepting Unit holder (or Note holder) in exchange for one share of Company's common stock, plus an amount of cash, which when added to the fair market value of the share of Company's stock on Date7 equals the adjusted issue price of the Note on Date7.

In connection with the proposed Exchange Offer, it has been represented that:

(a) Under Rev. Rul. 2003-97, 2003-34 I.R.B. 380, the Units will be treated for Federal income tax purposes as a Note and a Contract, each of which is a separate instrument.

(b) Each Note redeemed by Company will be redeemed for its adjusted issue price on Date7.

(c) The additional $g paid by Company to the Unit holders (or Note holders) for redeeming any Note will constitute accrued but unpaid original issue discount.

(d) The value of Company's stock has decreased by approximately $h from Date2 to Date7.

(e) Company has not treated the fee of e percent payable on each Contract as a deductible item for Federal income tax purposes on any tax return, nor does Company plan or intend to do so.

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

(1) Company will be paid $i by each accepting Unit holder in settlement of each Contract. This amount is gain resulting from Company's receipt of property in cash settlement of its contract to sell its stock and is therefore not recognized pursuant to section 1032(a).

(2) Company will pay each accepting Unit holder an amount equal to the adjusted issue price of the Note on Date7 (which payment includes one share of Company's stock).

(3) No amount paid by Company pursuant to the Exchange Offer shall be deductible by Company, except for the $g of accrued but unpaid original issue discount on the Note on Date7.

(4) The fact that the payments owed to and by Company pursuant to the Exchange Offer will be netted shall not affect the above rulings.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of the proposed Exchange Offer or any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed as to whether the Units are treated as a Note and a Contract, each of which is a separate instrument, for Federal income tax purposes. In addition, no opinion is expressed as to whether the proposed Exchange Offer constitutes a reorganization within the meaning of section 368(a)(1). Finally, no opinion is expressed as to whether the Notes are contingent payment debt instruments for purposes of §1.1275-4 of the Income Tax Regulations.

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, a copy of this letter is being sent to your authorized representative.

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

Sincerely,

Debra L. Carlisle
Chief, Branch 5
Office of Associate Chief Counsel
(Corporate)