Internal Revenue Service

Number: **200622013**
Release Date: 6/2/2006
Index Number: 382.00-00, 382.07-00, 382.07-02

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B06
PLR-136651-05

Date:
January 27, 2006

Dear

Company =
a =
b =
c =
v =
x =
y =
z =
State =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Year 1 =
Year 2 =
Year 3 =
Year 4 =
Year 5 =

Dear :

This is in reply to a letter dated June 8, 2005, requesting rulings under section 382 of the Internal Revenue Code. Additional information was submitted in letters dated December 15, 2005, January 10, 2006 and January 27, 2006. The information submitted for consideration is summarized below.

Company, a State corporation, is the common parent of a consolidated group. Prior to Date 2, Year 4, Company was a publicly held corporation. Its stock traded on the *v* Stock Exchange. Company has a fiscal and tax year ending on September 30th.

Company is in the business of producing *x* and *y*. During Years 1 and 2, market conditions for the *z* Industry were poor, which resulted in Company and its subsidiaries filing for bankruptcy on Date 1, Year 3. A plan of reorganization (the "Reorganization") was consummated on Date 2, Year 4. Due to its poor financial condition in the years prior to Year 3, Company incurred significant net operating losses, which have not been absorbed or eliminated under section 108(b) of the Internal Revenue Code.

The Plan of Reorganization required Company to issue its stock to a class of its former creditors in exchange for certain senior secured notes (the "Bonds") and cancel all of its previously outstanding stock. As a result of this reorganization, Company had a change of ownership within the meaning of Section 382(g) of the Internal Revenue Code.

Prior to the Reorganization, 100% of Company's outstanding bonds were held in street name, and one result of the Reorganization is that 100% of its stock is now held in street name. Company's stock is now traded over the counter (in "pink sheet" format). Company's new post-bankruptcy common shares are not registered with the Securities and Exchange Commission (SEC) and are not traded on an established securities exchange.

Company obtained a roster of the unofficial bondholders' committee[1] to determine the identity of its post-Reorganization shareholders for purposes of determining whether it qualified under the (l)(5) or (l)(6) exceptions to section 382(a). Company mailed a letter to each member listed on the pre-Reorganization roster requesting information as to whether the member owned on Date 2, Year 4, an amount of Bonds entitling the member (pursuant to the Plan of Reorganization) to receive 5% or more of the Company's stock. It also asked each bondholder to identify when the Bonds were acquired. Follow-up phone calls were made to those bondholders who did not reply to the letter, and messages were left. Some bondholders failed to respond. Many of the brokerage firms, which held Company-issued bonds for their own account and/or for

[1] The committee consisted of only those creditors of the Taxpayer who held bonds. The roster was current as of a date in the fall of Year 3 and included the names and principal amounts of the bonds held by creditors owning over two-thirds of the aggregate principal amount of the bonds.

their clients, either failed to respond or they notified Company that they would not respond.

In addition to directly surveying known bondholders, Company used online research tools and search engines to obtain updated contact information for those bondholders who could not be reached using existing contact information. As a result of these efforts, Company received written responses from the majority of the bondholders it solicited. Company has concluded that it qualifies under the (l)(5) exception to section 382(a).

After the Reorganization, Company experienced difficulty in identifying many of its 5-percent shareholders while trying to determine whether existing 5% shareholders acquired or disposed of its stock subsequent to Date 2, Year 4. The record holders of Company's stock are stock brokers and banks who hold the stock in street name. The difficulty the Company is experiencing is due to the data not being readily available because all of its outstanding stock is held in street name.[2] Company notes that the presumptions regarding stock ownership described in Treas. Reg. § 1.382-2T(k)(1)(i) and (ii) are inapplicable to it because its stock has been delisted from the stock exchanges.

Despite this difficulty, Company has been able to identify some owner shifts through alternative means. Company has been able to identify owner shifts from conversations with its board of directors, some of whom own shares of Company's common stock. Company has identified those few 5% shareholders who have contacted the Company directly. Company has also identified some 5% shareholders who have inadvertently filed SEC Schedules 13D and 13G.[3]

Company obtained a NOBO (non-objecting beneficial owner) list in connection with its proxy solicitation relating to its Charter Amendment (see below), which listing only identified one 5% shareholder and this shareholder had already been separately identified through one of the above mentioned methods. Additionally, Company requested information regarding the beneficial ownership of the stockholdings of investors who filed SEC Forms 13F, but received only one response. The response was from an institutional investment manager representing beneficial owners of Company's stock, none of whom were 5% shareholders. Based on the information gathered through these informal means, Company has determined that it experienced an owner shift in the approximate amount of *a*% to *b*% subsequent to Date 2, Year 4.

Company was concerned that its section 382 limitation would be zero if it had another ownership change within 2 years of Date 2, Year 4. In order to lessen the risk of a

[2] SEC rules prohibit companies from communicating directly with beneficial owners who object to providing their name and address to their issuing companies.

[3] According to Company, because its stock ceased to be registered for purposes of the Securities and Exchange Act of 1934, its shareholders are not required to file SEC Schedules 13D and 113G.

second ownership change, the Company adopted an amendment to its charter (the "Charter Amendment") on Date 3, Year 5, which imposes certain restrictions on the transfer of stock to any 5% shareholder. The charter amendment provides that any sale, transfer, assignment, pledge or other disposition of stock to a shareholder who owns, or who would own as a result of the disposition, 5% or more of the Company's common stock shall be null and void *ab initio* unless certain requirements are met. If the transferee obtains the waiver of the Board of Directors and provides the Company with an opinion that the transfer shall not result in a limitation on the Company's use of its net operating losses or other tax attributes, then such transfer would not be precluded. To date, no waivers have been granted and the Company is not aware of any transfers of its stock being made in contravention of the Charter Amendment. If a shareholder acquires stock in violation of the Charter Amendment, Company is authorized to institute legal proceedings to set aside the transfer and enforce the provisions of the Charter Amendment.

Company sought the approval of its shareholders for the Charter Amendment via a proxy solicitation. The charter amendment was approved by shareholders representing just over *c*% of the outstanding shares. Company believes that there was one shareholder owning at least 5% of the Company's stock that did not vote in the proxy solicitation. Based on applicable State law, Company believes that the charter amendment may not be binding against any Nonvoting Shareholder.

Company makes the following representations with respect to its requested rulings:

(a) Company is a loss corporation as defined in Section 382(k)(1).

(b) As a result of the consummation of the bankruptcy reorganization on Date 2, Year 4, Company had an ownership change within the meaning of Section 382(g).

(c) Company's only class of outstanding stock is its common stock.

(d) Following the consummation of the bankruptcy reorganization on Date 2, Year 4, Company's stock ceased to be registered for purposes of the Securities and Exchange Act of 1934.

(e) Following the consummation of the bankruptcy reorganization on Date 2, Year 4, all of Company's outstanding stock was held in street name.

(f) Other than actual knowledge Company obtained through (1) the shareholder inquiries made for purposes of Section 382(l)(5); (2) inadvertent 13D and 13G filings; (3) information gleaned from its board of directors; and (4) new 5% shareholders informally making themselves known to Company, Company has no actual knowledge regarding any significant change in its stock ownership.

(g) Company is currently in the process of requesting information from all 5% shareholders of whom it has actual knowledge and from the brokers who are the record holders of Company's stock. To the extent Company does not receive responses to its information request, it intends to follow-up its initial request through phone calls and additional correspondences. Company intends to follow similar procedures for any subsequent requests for information pursuant to its duty of inquiry under Treas. Reg. § 1.382-2T(k)(3).

(h) To the best of Company's knowledge, the requirements of Section 382(l)(5) are met with respect to the ownership change occurring on Date 2, Year 4.

(i) The limits on transferability that apply to the shares of Company's common stock as a result of the Charter Amendment are or will be legal, valid, binding, and enforceable against present and future holders of shares under applicable state law, except as such enforceability may be limited by bankruptcy, equitable principles or exceptions under state law. The Company intends to vigorously challenge and pursue by all available means any attempts to violate the Charter Amendment.

(j) The Company understands that with respect to any Nonvoting Shareholder who is not bound by the Charter Amendment, it has a duty of inquiry which it will satisfy by periodically requesting information pursuant to the same procedures described in ruling 1.

Based solely on the information submitted and the representations made and the unique facts of this case, we have concluded that:

(1) For purposes of determining whether a "testing date" or an "ownership change" has occurred within the meaning of Section 382 and the underlying regulations for all days during the period from and including February 19, 2004, to and including February 2, 2005, Taxpayer may rely on its actual knowledge gained from the acquisition of shareholder information during the period of February 18, 2004 to the present, regarding the existence and identity of its 5% shareholders and their percentage ownership interests. For these purposes, actual knowledge includes knowledge of: (1) 5% shareholders and their percentage ownership of Taxpayer, which knowledge Taxpayer obtained by acquiring the unofficial bondholders list and directly surveying bondholders listed thereon; (2) board members who are 5% shareholders, who Taxpayer identified by directly surveying its board of directors; (3) 5% shareholders who contacted Taxpayer directly; and (4) 5% shareholders who inadvertently filed SEC Schedules 13D and 13G. Taxpayer acquired knowledge of these 5% shareholders by acquiring and/or perusing, among other documents: (a) the unofficial bondholders list; (b) its own stock transfer records and other records it keeps in the ordinary course of business; (c) a NOBO list; (d) SEC Form 13F; and (e) SEC Schedules 13D and 13G.

(2) For purposes of determining whether a “testing date” or an “ownership change” has occurred within the meaning of Section 382 and the underlying regulations for all days on or after February 3, 2005, provided and to the extent that the transfer restrictions in the Charter Amendment are enforceable and are enforced according to their terms**,** a purported transferee of Taxpayer’s stock in contravention thereof will not be considered as acquiring ownership of such stock. With respect to any disposition of shares by a 5% shareholder during this period (which disposition would create a testing date pursuant to Treas. Reg. § 1.382-2T(j)(3)(i)), Taxpayer may rely on its actual knowledge as to the absence or existence of any such disposition in satisfying its duty of inquiry and may satisfy its duty of inquiry under Treas. Reg. § 1.382-2T(k)(3) by periodically requesting information pursuant to the same procedures described in ruling 1 above.

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.

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. Specifically, we express no opinion concerning whether or not the Company qualifies under the (l)(5) exception to Section 382(a), or whether the Company has had a second ownership change under Section 382(g) within the 2-year-period following Date 2, Year 4.

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.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 12.04 of Rev. Proc. 04-1, 2004-1 I.R.B. 7, 47. However, when the criteria in section 12.05 of Rev. Proc. 04-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

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.

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.

Sincerely,

Alfred C. Bishop, Jr.

_____

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