Internal Revenue Service

Department of the Treasury
Washington, DC 20224

200017048

Index No.: 424.00-00

Contact Person:

Telephone Number:

In Reference to:

C:EBEO:4/PLR-112805-99

Date:

JAN 19 2000

LEGEND:

Company =

Plan =

Dear

This is in reply to a letter dated July 16, 1999, that was submitted on behalf of Company by its authorized representative, in which a ruling is requested that Association will be an "employer corporation," as that term is used in sections 421 through 424 of the Internal Revenue Code, and that, provided that the requisite stock-ownership requirement is met, Association will be a "subsidiary corporation," as defined in section 424(f).

The facts submitted are that Company is the parent corporation of an affiliated group of corporations that files its federal income tax returns on a consolidated basis. Association is a partnership in which Company owns a 99 percent limited partnership interest. Company intends that the Plan meet the requirements of section 423 of the Code.

Company would like the employees of Association to be able to participate in the Plan and intends to amend the Plan to include Association as a participating company. To that end, Company represents that it will elect, in accordance with section 301.7701-3(c) of the Procedural Income Tax Regulations to change the federal income tax classification of Association from a partnership to an association taxable as a corporation. The election will be made by filling Form 8832 and satisfying all of the applicable procedural requirements. Thereafter, Association will become an employer of certain current employees of Company and its subsidiaries, and Association will provide services to other affiliates of Company pursuant to various service agreements.

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In pertinent portion, section 421(a) of the Code provides that, if a share of stock is transferred to an individual in a transfer in which the requirements of section 423(a) are met, no income shall result to the individual at the time of the transfer, no deduction under section 162 shall be allowable at any time to the employer corporation with respect to the share transferred, and no amount other than the price paid under the option shall be considered as received by the employer corporation for the share transferred.

Section 423(a) of the Code provides that section 421 will apply to the transfer of a share of stock to an individual pursuant to the exercise of an option granted under an employee stock purchase plan if (1) no disposition of the stock is made by the individual within two years after the date of grant of the option nor within one year after the transfer of such share to him or her, and (2) at all times during the period beginning with the date that the option is granted and ending 3 months before the date of its exercise, the optionee remains an employee of the granting corporation, a parent or subsidiary corporation of such corporation, or a corporation (or parent or subsidiary corporation of such corporation) issuing or assuming a stock option in a transaction to which section 424(a) applies.

For purposes of these determinations, section 424(e) of the Code defines "parent corporation" as any corporation (other than the employer corporation) in an unbroken chain of corporations ending with the employer corporation if, at the time of the granting of the option, each of the corporations (other than the employer corporation) owns stock possessing 50 percent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. Section 424(f) defines "subsidiary corporation" as any corporation (other than the employer corporation) in an unbroken chain of corporations beginning with the employer corporation if, at the time of the granting of the option, each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50 percent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

Accordingly, based on the above information and Company's representations, and provided that the election to classify Association as an association taxable as a corporation is valid, we rule as follows:

(1) Association will be an "employer corporation," as that term is used in sections 421 through 424 of the Code;

(2) While the requisite 50-percent stock-ownership requirement is maintained, Association will be a "subsidiary corporation," as defined in section 424(f).

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Except as ruled above, no opinion is expressed regarding the federal tax consequences of the transaction described above under any provision of the Internal Revenue Code. In particular, we specifically note that no opinion is expressed regarding the treatment of either the Plan or of options granted under the Plan under sections 421-424 of the Code. Additionally, please note that the above rulings will continue to apply only while the described election remains in effect.

A copy of this letter must be attached to any income tax return to which it is relevant. This ruling is directed only to the taxpayer(s) requesting it. Section 6110(j)(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.

Sincerely yours,

Robert B. Misner

ROBERT B. MISNER
Assistant Chief, Branch 4
Office of the Associate Chief Counsel
(Employee Benefits and
Exempt Organizations)

Enclosures (2):
Copy of this letter
Copy for 6110 purposes