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Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:CORP:4 PLR-111422-98
Date: SEP 30 1998

Parent =

Purchaser 1 =

Purchaser 2 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

Sub 13 =

Sub 14 =

Sub 15 =

Sub 16 =

Sub 17 =

Date A =

Date B =

Month C =

Month D =

Month E =

Business H =

Business I =

Business J =

Business K =

l =

m =

n =

o =

p =

q =

Dear

We respond to your May 19, 1998 request for rulings on certain federal income tax consequences of a proposed series of transactions.

Summary of Facts

Publicly traded Parent is the common parent of a consolidated group (the "Parent Group"). Parent wholly owns Sub 1, Sub 1 wholly owns Sub 2, and Sub 2 wholly owns Sub 3. Before the sales described below: Parent wholly owned Sub 17; Sub 3 wholly owned Sub 4, Sub 5, and Sub 9; and Sub 5 wholly owned Sub 10, Sub 11 (which wholly owned Sub 13), Sub 12, Sub 14, Sub 15, and Sub 16. Sub 5 also owned 98 percent of Sub 6 (Sub 1 owns the remaining 2 percent).

While with the Parent Group: Sub 1, Sub 4, Sub 6, and Sub 17 conducted Business H; Sub 5 and Subs 9 through 16 conducted Business I; and Subs 7 and 8 conducted Business J. Sub 2, through subsidiaries other than Sub 3, conducts Business K.

Completed Transactions

(i) On Date A, Parent Group sold to Purchaser 1 for l dollars in cash and m dollars in notes (the "Notes") the stock of Sub 4 and Sub 17, certain Business H assets of Sub 6, all the Business K operations, and related assets ("Sale 1"). Sub 3 received the Notes in exchange for the stock of Sub 4.

(ii) On Date B, in a separate transaction, Parent sold (through Sub 3) the stock of Sub 5 and Sub 9 to Purchaser 2 for approximately n dollars in cash ("Sale 2"). In connection with Sale 2, Parent and Purchaser 2 elected under § 338(h)(10) of the Internal Revenue Code for each of the acquired corporations (including the subsidiaries of Sub 5).

Sub 3 realized net proceeds of approximately o dollars after taking into account expenses incurred on Sale 2 (the "Net Proceeds"). Sub 3 deposited the Net Proceeds in two segregated accounts apart from its general corporate funds and apart from the proceeds of Sale 1 (the "Segregated Proceeds"). The Segregated Proceeds were invested in readily marketable securities until distributed as described below.

(iii) Under a plan of liquidation adopted before Date B, Sub 5 distributed p dollars and its Sub 6 stock to Sub 3.

(iv) In Month C, Sub 3 distributed to Sub 2, Sub 2 distributed to Sub 1, and Sub 1 distributed to Parent approximately q dollars of the Segregated Proceeds. These funds were immediately deposited in a third segregated account and invested in readily marketable securities.

(v) In Month D, Sub 3 distributed to Sub 2, and Sub 2 distributed to Sub 1 the p dollars received from Sub 5, the Notes, and the remaining Segregated Proceeds.

(vi) In Month E, Sub 1 distributed to Parent the p dollars received from Sub 2, the Notes, and the Segregated Proceeds not distributed in Month C.

Proposed Transactions

As soon as practical following receipt of this ruling letter, Parent will undertake the following transactions:

(vii) Sub 2 will distribute the stock of Sub 3 to Sub 1.

(viii) Sub 1 will distribute the stock of Sub 3 to Parent.

(ix) Parent will liquidate or merge Sub 3 into Parent in a transaction intended to qualify under § 332.

(x) Parent will adopt a plan of partial liquidation under which it will distribute at least 80 percent of the Net Proceeds to its shareholders. The distribution (or distributions) may be pro rata or may be implemented through one or more redemptions. The redemption (or redemptions) will be implemented through a merger, a separate agreement with one or more shareholders, a self-tender offer, or some combination thereof.

Representations

Parent makes the following representations concerning transactions (vii) through (x) above:

(a) The Net Proceeds are not attributable to an expansion reserve that is no longer needed, a mere decline in or loss of business, a mere decrease in need for working capital, the sale of a business that is nominal in relation to the entire business of Parent, or a business operated at a loss that acquired assets from another business of Parent.

(b) All distributions of Net Proceeds will be made during the taxable year in which the plan of partial liquidation is adopted or in the succeeding taxable year.

(c) Before the time of distribution, Parent will not reinvest the Segregated Proceeds in Parent's continuing business. The amount of Net Proceeds to be distributed pursuant to the plan of partial liquidation will not include any gain realized on temporary investments and will be reduced by any loss realized on such investments.

(d) The assets sold were actively used in Business I and were not passive, investment, or substituted assets.

(e) There are no declared but unpaid dividends on the stock to be redeemed and there will be no declared but unpaid dividends on the stock redeemed before the distribution.

(f) There is no plan or intention to completely liquidate Parent.

(g) Parent has no plan or intention to reenter Business I or to expand its continuing business operations other than through normal internal growth and acquisitions consistent with prior practice that would be financed through the cash flow generated from the normal course of business, general corporate funds (which will not include the Net Proceeds distributed as described in this letter), and/or through bank financing arrangements.

(h) The partial liquidation will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation ("Recipient") of any of the business or assets of Parent, if persons holding more than 20 percent in value of Parent stock also hold more than 20 percent in value of the stock in Recipient. For this representation, ownership will be determined by application of the constructive ownership rules of § 318 as modified by § 304(c)(3).

(i) No part of the Segregated Proceeds to be distributed by Parent in step (x) above will be received by a shareholder of Parent as a debtor, creditor, employee, or some capacity other than as a shareholder of Parent.

(j) Under the sales contract for Sale 2, neither Parent nor any shareholder, officer, director, or employee of Parent has received or will receive any consideration for entering into a covenant not to compete in connection with Sale 2.

(k) There will be no outstanding warrants, options, convertible securities, shareholder agreements to purchase stock, or rights of first refusal if and when Parent makes a pro rata distribution of Net Proceeds to its shareholders.

(l) Parent does not have more than one class of stock outstanding.

(m) At least 80 percent of the Net Proceeds will be distributed under the plan of partial liquidation.

(n) As a result of Sale 2, Parent's gross revenues, number of employees, and net fair market value of its assets each was reduced by over 20 percent as measured immediately before Date B.

Rulings

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

(1) Provided (i) Parent and Purchaser 2 have made a valid § 338(h)(10) election for all of the subsidiaries involved in Sale 2 and (ii) § 332 applies to the liquidation of Sub 3, the distribution described in step (x) above will be treated as a distribution in partial liquidation under § 302(e)(1) provided the distribution is made in the taxable year in which the plan is adopted or in the next succeeding year (§ 1.346-1(a)(2) of the Income Tax Regulations).

(2) The maximum amount considered distributed in partial liquidation will equal the Net Proceeds. Net Proceeds will not include (i) any assets received by Parent attributable to indebtedness canceled upon the liquidation of Sub 3 (Rev. Rul. 77-375, 1977-2 C.B. 106) or (ii) any earned or accrued investment earnings on the temporary investment of the Segregated Proceeds (Rev. Rul. 71-250, 1971-1 C.B. 112). Further, Net Proceeds will be reduced by any loss on the temporary investments (Rev. Rul. 76-279, 1976-2 C.B. 99).

(3) Amounts distributed in excess of those specified in ruling (2), above, may be treated as distributions of property under § 301 and § 316.

Caveats

No opinion is expressed as to the tax treatment of the transaction under other provisions of the Code and regulations or about the tax treatment of any condition existing at the time of, or effect resulting from, the transaction that is not specifically covered by the above rulings. In particular, no opinion is expressed about the tax treatment of (i) transactions (i) through (ix) above, or (ii) amounts properly allocable to covenants not to compete.

Procedural Statements

This letter is directed only to the taxpayer who requested it. Section 6110(j)(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 taxpayer involved for the taxable year in which the transaction covered by this letter is consummated.

Sincerely yours,

Assistant Chief Counsel (Corporate)

By
Wayne T. Murray
Senior Technician/Reviewer
Branch 4