

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:

February 1, 2000

Company =

State X =

Business Y =

ESOP =

M Family =

a =

b =

Pension Trust 1 =

Date D =

We respond to your September 29, 1999 request for rulings on certain federal income tax consequences of a series of proposed transactions.

The rulings given in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. Verification of this information may be required as part of the audit process.

Summary of Facts

Company is a State X corporation engaged in Business Y. The outstanding stock of Company consists of a par value nonredeemable Common Stock, b par value redeemable Series A ESOP Common Stock, and three other classes of stock not relevant here.

The Common Stock is held by members of the M Family (directly or through corporations or trusts of which M Family members are the primary beneficiaries) and by Pension Trust 1. The Common Stock has one vote per share, may receive dividends if

declared, and generally is transferable only within the M Family group.

The Series A ESOP Common Stock is held by the Company ESOP, an employee stock ownership plan described under §§ 401(a) and 4975(e)(7) of the Internal Revenue Code. The ESOP Stock has one vote per share, pays a preferential dividend along with certain other dividends, and has a liquidation preference.

On Date D (more than seven years before the date of the taxpayer's request for rulings), some Common Stock holders exchanged Common Stock for Series A ESOP Common Stock.

Proposed Transactions

To increase the amount of Company stock held by its ESOP, Company proposes the following transactions:

(i) Company's Board of Directors will authorize a new Series B ESOP Common Stock. The Series B ESOP Common Stock will have rights and par value identical to those of the Series A ESOP Common Stock except that it will not pay a preference dividend.

(ii) Company will offer to exchange Series B ESOP Common Stock shares for an equal number of outstanding Common Stock shares (the "Exchange Offer"). The shareholders who accept the Exchange Offer are the "Exchanging Shareholders," and the exchanges, collectively, are the "Exchange."

(iii) The ESOP then will offer to purchase shares of Series B ESOP Common Stock from the Exchanging Shareholders (the "ESOP Purchase Offer"). Because an Exchanging Shareholder must accept the ESOP Purchase Offer, all of the Series B stock will be held by the ESOP after the transactions.

Company will make the Exchange Offer after receiving this letter ruling and an opinion of fair market value from an independent appraisal firm. Company may make similar offers in the future.

Representations

Company has made the following representations concerning the proposed transactions:

(a) Company and its shareholders each will pay its, his, or her own expenses, if any, incurred in the proposed transactions.

(b) None of Company's outstanding stock is "section 306 stock" within the meaning of § 306(c).

(c) The fair market value of the shares received by each Exchanging Shareholder in the Exchange will approximately equal the fair market value of the shares surrendered.

(d) Company has no plan or intention to redeem or otherwise reacquire any of the stock issued in the Exchange.

(e) Company will continue its business operations after the proposed transactions.

(f) Except for (i) certain rights in stock other than Common Stock, Series A ESOP Common Stock, and Series B ESOP Common Stock to convert the stock into shares of stock other than the Common or ESOP Stock and (ii) de minimis stock appreciation rights held by certain employees that can be converted into stock other than the Common or ESOP Stock, Company will not have outstanding any stock options, warrants, convertible securities, or any other right that is convertible into any class of stock or securities of Company.

(g) Company is not under the jurisdiction of a court in a title 11 or similar case within the meaning of § 368(a)(3)(A).

Rulings

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

(1) The Exchange will qualify as a reorganization under § 368(a)(1)(E). Company will be a “party to a reorganization” under § 368(b).

(2) No gain or loss will be recognized by Company on receiving Common Stock from an Exchanging Shareholder in the Exchange (§ 1032(a)).

(3) No gain or loss will be recognized by an Exchanging Shareholder on receiving Series B ESOP Common Stock in the Exchange (§ 354(a)(1)).

(4) The basis of the Series B ESOP Common Stock received by an Exchanging Shareholder will equal the basis of the Common Stock surrendered in the Exchange (§ 358(a)(1)).

(5) The holding period of the Series B ESOP Common Stock received by an Exchanging Shareholder will include the period during which the Common Stock surrendered in the Exchange was held, provided the stock surrendered was held as a capital asset on the date of the Exchange (§ 1223(1)).

(6) The Exchange will not be treated as a distribution of property to which § 301 applies by reason of § 305(b) and § 305(c).

(7) The Exchange will not cause the exchange on Date D of Common Stock shares for Series A ESOP Common Stock shares to be treated as a distribution of property to which § 301 applies by reason of § 305(b) and § 305(c).

Caveats

We express no opinion on the federal income tax treatment of the proposed transactions under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed on the tax consequences of (a) the sale of Series B ESOP Common Stock by an Exchanging Shareholder to the ESOP described above in step (iii) or (b) any future offering similar to the Exchange Offer.

Separate Letter Ruling

Certain issues under § 409 of the Code are the subject of a separate ruling letter from the Tax Exempt and Government Entities Division (T:EP:RA:T4) issued on December 17, 1999.

Procedural Statements

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.

Each taxpayer involved in the transactions should attach a copy of this letter to the taxpayer's federal income tax return for the taxable year in which the transactions are completed.

In accordance with the power of attorney on file in this office, a copy of this letter is being sent to the taxpayer.

Sincerely,
Assistant Chief Counsel (Corporate)
By: Wayne T. Murray
Senior Technician Reviewer
Branch 4