

Internal Revenue Service

Department of the Treasury

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Date:
December 17, 2001

LEGEND:

Taxpayer =

Trustees =

Transitory HoldCo =

Transitory MemberCo =

HoldCo =

State X =

State Y =

Business A =

Year 1 =

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Year 2	=
Year 3	=
Year 4	=
<u>a</u>	=
<u>b</u>	=
<u>c</u>	=
<u>d</u>	=
<u>e</u> %	=

This letter is in reply to a letter dated March 12, 2001 regarding the federal income tax consequences of a proposed transaction. Specifically, you request rulings on significant issues in connection with the taxpayer's representations that the transaction qualifies under section 351 of the Internal Revenue Code (Code). Additional information was submitted in letters dated June 13, August 10, November 9, and December 13, 2001. The information submitted for consideration is summarized below.

Taxpayer is a State X for profit, stock corporation with only common stock issued and outstanding. For Federal income tax purposes, Taxpayer is subject to tax as a Subchapter C corporation. Taxpayer has a June 30th fiscal year end and uses the accrual method of accounting. Taxpayer derives its revenues primarily from Business A. Under its Articles of Incorporation, as amended, Taxpayer may not declare or pay dividends on its common stock. In the event of dissolution, Taxpayer's assets must be distributed to organizations exempt from federal income tax.

Taxpayer was organized in Year 1. In order to assure continuity of management dedicated to promoting Business A, certain shareholders contributed their common stock to a voting trust in Year 2 (the "Voting Trust"), in return for trust certificates. Under the terms of the Voting Trust, the trustees of Voting Trust have the authority to exercise all rights relating to the common stock held, except that the trustees do not have the power to sell the stock. Upon expiration of the Voting Trust, the trustees must transfer the common stock to the holders of the trust certificates. The Voting Trust is currently set to expire in Year 4.

In Year 3, the then-trustees of the Voting Trust entered into a shareholder agreement (the "Shareholder Agreement"). Under the terms of the Shareholder Agreement, the trustees agreed that they would vote their Taxpayer common stock and Voting Trust certificates according to the wishes of a majority of the trustees. Upon the

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death of a trustee, the Voting Trust certificates and the common stock jointly owned by the trustees are to be cancelled and reissued in the names of the surviving trustees and a successor trustee, who would also be subject to the terms of the Shareholder Agreement.

The Shareholder Agreement provides that the trustees are never to approve a plan allowing the payment of dividends to Taxpayer's shareholders and never to eliminate the requirement that Taxpayer, upon dissolution, distribute its assets to organizations exempt from federal income tax. Further, the trustees agree to vote to dissolve Taxpayer if its assets ever cease being used for the purpose of furthering Business A without private profit.

Taxpayer has issued and outstanding a shares of common stock. Of these shares, b shares are held by trustees of the Voting Trust and are represented by trust certificates. Trust certificates relating to c shares are held jointly by Trustees as individuals. In addition, Trustees, as individuals, jointly own d shares of Taxpayer common stock. Thus, Trustees control e% of the outstanding common stock of Taxpayer.

HoldCo will be a State X nonstock, nonprofit corporation formed for the purpose of holding the stock of Taxpayer currently controlled by Trustees. For Federal income tax purposes, HoldCo will be a taxable corporation. Under its Articles of Incorporation, the management of HoldCo will be vested in its board of directors, of which Trustees will be the initial members.

For representations of valid business reasons, it has been determined that Taxpayer should be owned by a holding company organized under the nonprofit corporate laws of State X. Accordingly, pursuant to a plan, Taxpayer and Trustees propose to execute the following transactions on approximately the same date:

- (i) Transitory HoldCo will be formed under the laws of State Y. Trustees will transfer the shares of Taxpayer common stock they control, individually and through the Voting Trust (constituting e% of the total issued and outstanding stock) to Transitory HoldCo in exchange for 100% of the common stock of Transitory HoldCo (the "Formation").
- (ii) Transitory HoldCo will convert to a nonprofit, nonstock, membership corporation, Transitory MemberCo, under the laws of State Y (the "Conversion"). Trustees will be the sole members.
- (iii) HoldCo will be formed as a nonstock, nonprofit, membership corporation under the laws of State X. Transitory MemberCo will be merged with and into HoldCo, with HoldCo surviving (the "Migration"). HoldCo will acquire all of the assets and assume all of the liabilities of Transitory MemberCo. Trustees will receive membership interests in HoldCo in exchange for their membership interests in Transitory MemberCo.

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You propose that the Formation, the Conversion, and the Migration be treated as a single transaction in which the Trustees transfer their Taxpayer stock to HoldCo in a transaction qualifying under section 351. Section 3.01(29) of *Rev. Proc. 2001-3, 2001-1 I.R.B. 111, 114*, states that the Service will not rule on whether a transaction qualifies under section 351 for nonrecognition treatment and whether various consequences result from the application of that section, unless the Service determines that there is a significant issue that must be resolved in order to decide those matters. You have requested rulings only with regard to the significant issues set forth below.

The first significant issue is whether the transactions described in steps (i) through (iii), above, will be characterized as a contribution of stock by Trustees to HoldCo in exchange for membership interests in HoldCo. The second significant issue is whether the membership interests in HoldCo will be treated as stock within the meaning of section 351(a) of the Code.

The following representations are made in connection with the proposed transactions:

- (a) Subject only to the resolution of the issues addressed in the rulings below and if the transactions, as described, are treated as if Trustees transferred the shares of Taxpayer common stock directly to HoldCo in exchange for 100% of the membership interests in HoldCo, the transfer will constitute a transfer described in section 351(a) of the Code.
- (b) As members of HoldCo, Trustees will have rights equivalent to the rights they have as shareholders of Taxpayer and will have as shareholders of Transitory HoldCo and as members of Transitory MemberCo.
- (c) The proposed transactions will be undertaken pursuant to a plan and will occur simultaneously or sequentially on approximately the same date.

Based on the information submitted and the representations made, we hold as follows:

- (1) The transactions described in steps (i) through (iii), above, will be treated as if Trustees transferred the shares of Taxpayer common stock they control, individually and through the Voting Trust (constituting e% of the total outstanding stock), to HoldCo in exchange for membership interests in HoldCo. See *Rev. Rul. 90-95, 1990-2 C.B. 67; Rev. Rul. 67-448, 1967-2 C.B. 144*.
- (2) The membership interests in HoldCo will be treated as stock within the meaning of section 351(a) of the Code. See *Rev. Rul. 78-286, 1978-2 C.B. 145; Rev. Rul. 69-3, 1969-1 C.B. 103*.

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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. In particular, we express no opinion as to whether the transfer of stock, as described in steps (i) through (iii), qualifies under section 351 other than as specified above.

This ruling is directed only to the taxpayer(s) 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.

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.

Sincerely,
Associate Chief Counsel (Corporate)
Charles M. Levy
Reviewer, Branch 2