

## Internal Revenue Service

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## Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

**CC:CORP:1 - PLR-162900-02**

Date:

February 24, 2003

### Legend:

Parent =

Corp =

State X =

Date 1 =

Date 2 =

Class 1 stock =

Class 2 stock =

Class 3 stock =

Z =

Dear \_\_\_\_\_ :

This letter responds to your ruling request letter dated November 4, 2002 requesting a ruling on a certain federal income tax consequence of a proposed transaction.

### **Summary of Facts**

Corp is a State X for-profit corporation that was incorporated on Date 1. The first taxable year of Corp ended on Date 2. Parent, an organization exempt from federal income taxation under § 501(c)(3) of the Internal Revenue Code, owns all the Class 2 stock of Corp and the majority of the Class 1 stock of Corp. Various other shareholders (the Minority Shareholders) own the remainder of the Class 1 stock of Corp. Z owns Class 3 stock of Corp.

Parent wishes to purchase the Corp stock held by the Minority Shareholders and Z, and then convert Corp from a for-profit corporation to a nonprofit corporation under State X law. The following transactions are proposed or have recently been consummated:

- (i) Parent created Acquisition Sub as its wholly owned subsidiary.
- (ii) Acquisition Sub purchased the Class 3 stock of Corp owned by Z.
- (iii) Parent converted its Class 2 stock of Corp to Class 1 stock, and then contributed all of its Class 1 stock of Corp to Acquisition Sub
- (iv) Acquisition Sub converted the Class 3 stock of Corp into Class 1 stock.
- (v) Acquisition Sub will merge downstream into Corp. In the merger, the remaining Minority Shareholders will receive cash for their Class 1 stock in Corp, and Corp will be a wholly-owned subsidiary of Parent.
- (vi) Corp will cancel all shares of its stock and amend and restate its articles of incorporation so that it can qualify for tax-exempt status under § 501.

Corp represents that:

- (a) Corp has no plan or intention to dispose of its assets other than in the ordinary course of its business and investment operations.
- (b) The proposed amendment of Corp's certificate of incorporation will not result in the formation of a new legal entity under applicable State X law.

(c) The proposed amendment of Corp's certificate of incorporation will not result in a liquidation or dissolution of Corp, nor will it result in the transfer or disposition of the assets of Corp under applicable State X law.

(d) Following the transactions described above, which will occur prior to the date that is three years after Date 2, Corp will qualify as an organization exempt from federal income tax under §§ 501(a) and 501(c)(3). A request for recognition of tax-exempt status under § 501(c)(3) will be timely filed by Corp.

### **Law**

Section 1.337(d)-4(a)(1) of the Income Tax Regulations provides that if a taxable corporation transfers all or substantially all of its assets to a tax-exempt entity, the taxable corporation must recognize gain or loss immediately before the transfer as if the assets transferred were sold at their fair market value. Under § 1.337(d)-4(a)(2), a taxable corporation's change in status to a tax-exempt entity will be treated as if it transferred all of its assets to a tax-exempt entity immediately before the change in status becomes effective in a transaction in which § 1.337(d)-4(a)(1) applies (the "Change in Status Rule").

Section 1.337(d)-4(a)(3)(i)(C) provides an exception from the Change in Status Rule for a newly formed corporation that is tax-exempt under § 501(a) (other than an organization described in § 501(c)(7)) within three taxable years from the end of the taxable year in which it was formed. Under § 1.337(d)-4(a)(3)(ii), an organization is deemed to have tax-exempt status within that three-year period if it files an application for recognition of exemption with the IRS within that period and the application results in a determination or final adjudication that the organization is tax-exempt during any part of that period.

### **Ruling**

Based solely on the information submitted, we rule that Taxpayer is a corporation described in § 1.337(d)-4(a)(3)(i)(C), provided that Taxpayer applies for tax-exempt status with the IRS within three years from Date 2 and that application results in Corp obtaining tax-exempt status during any time within three years from Date 2. Accordingly, subject to the proviso in the preceding sentence, upon the change of Taxpayer to a tax-exempt entity, Taxpayer will not be treated, pursuant to §§ 1.337(d)-4(a)(1) and 1.337(d)-4(a)(2), as if it transferred all of its assets in a taxable transaction.

### **Caveats**

We express no opinion on (a) the federal income tax consequences, if any, of transactions (i) through (v), above. We also express no opinion on the federal income tax treatment of the proposed transaction 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 transaction that are not specifically covered by the above ruling.

### **Procedural Statements**

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.

Each taxpayer involved in the transaction should attach a copy of this letter to the taxpayer's federal income tax return for the taxable year in which the transaction is 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,

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Lisa A. Fuller  
Assistant to the Chief, Branch 1  
Office of Associate Chief Counsel  
(Corporate)

CC:

CC:

CC: