

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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CC:CORP:4 – PLR-139965-03

Date:

October 10, 2003

LEGEND:

Company =

Holding =

Target =

Business A =

a =

b =

c =

d =

e =

f =

g =

h =

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i =

Date A =

Date B =

Date C =

Date D =

Year A =

Dear

This letter responds to your June 27, 2003 request for rulings on certain federal income tax consequences of a partially completed and proposed transaction. The information in that request and in subsequent correspondence is summarized below.

The rulings contained 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. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Summary of Facts

Publicly traded Company is the common parent of an affiliated group (the “Company Group”) that files a consolidated federal income tax return. Company owns all of the stock of Holding. Company and Holding each own stock in various subsidiaries primarily engaged in Business A.

Target, prior to its acquisition by Company (the “Acquisition”), was a publicly held corporation. Target was the common parent of an affiliated group (the “Target Group”) that filed a consolidated federal income tax return. Target, directly and through subsidiaries, also was primarily engaged in Business A. The Target Group was a loss group within the meaning of Treas. Reg. § 1.1502-91(c)(1) with a consolidated net operating loss carry forward of approximately \$a for federal income tax purposes.

On Date A (the “Acquisition Date”), Company acquired in excess of 90 percent of Target’s outstanding stock for cash pursuant to a public tender offer. As a result, the former members of the Target Group joined the Company Group (such former members of the Target Group as members of the Company Group are referred to herein as the “Target Subgroup”). On the following day, Company acquired the remaining Target shares through the cash merger of a wholly-owned acquisition subsidiary with and into Target (the “Squeeze-Out Merger”).

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Company obtained the funds necessary to make the Acquisition by drawing down on its \$b revolving line of credit with a consortium of banks (the “LOC”). The LOC was due to expire in Date B and had no requirement pursuant to which Company would be required to refinance the LOC if funds were used to effect an acquisition. In accordance with pre-existing indentures and credit agreements, the Target Subgroup members became guarantors of certain debt of Company, including the LOC. On Date C, Company completed a series of capital markets transactions to refinance its debt, including, but not limited to, the LOC.

Target’s Business A locations significantly overlapped with Company’s pre-Acquisition Business A locations. In order to achieve cost saving synergies, Company proposes to consolidate Company and Target Business A operations (the “Consolidations”). The Consolidations will occur pursuant to the following steps:

- (i) Company will contribute the stock of Target to Holding;
- (ii) Company will contribute to Holding, and Holding will contribute to Target, certain Company subsidiaries whose operations overlap with those of Target subsidiaries; and
- (iii) Overlapping Company and Target subsidiaries will be merged, with the survivor of each such merger being wholly owned by Target.

The Target Group operated c Business A locations prior to the Acquisition. Company anticipates that d such operations (representing e percent of Target Group’s pre-Acquisition sales) will ultimately be combined into historic Company operations. It is also anticipated that f historic Company operations will be combined into certain of the remaining historic Target operations.

Company must receive approval from various state and federal regulators prior to effecting steps (i) through (iii) above. Pending receipt of such regulatory approvals, Company has initiated the Consolidations by combining, operationally, certain Company and Target locations (the “Pre-Merger Operational Consolidations”). As of Date D, g of the historic Target locations (representing h percent of the Target Group’s pre-Acquisition sales) had been operationally combined with historic Company locations. In each such case, the “closing” location was shut down, its employees terminated, and its inventory and other assets were transferred to the entity designated to survive the Consolidations. Following the Pre-Merger Operational Consolidations, each “surviving” location has fulfilled the Business A obligations of the “closing” location.

Following the Acquisition, Company also applied its pre-existing consolidated treasury function (the “Consolidated Treasury Management and Cash Sweep Program”) to the Target Subgroup. Under this program, Company maintains a central disbursement account from which all of its operating subsidiaries may draw cash for disbursements and a group-wide cash “sweep” function to consolidate all excess cash from its subsidiaries’ depository accounts, on a routine

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basis. Company currently expects that the net amount of cash that will be swept from Target Subgroup members in Year A pursuant to the Consolidated Treasury Management and Cash Sweep Program will be approximately \$i, resulting in a year-end net intercompany receivable in the same amount being reflected on the books of Target or Target Subgroup members.

In addition, Company is the owner of all Company-related intellectual property. Company charges all of its subsidiaries royalties for the use of such intellectual property, with the royalties having been set at a percentage of sales in accordance with a § 482 transfer pricing study. Consistent with this practice, Target Subgroup members have begun using the intellectual property in their businesses and will pay Company for such use, although at a reduced rate for the remainder of Year A.

Representations

(a) Even absent the cash swept from the historic operations of the Target Subgroup pursuant to the Consolidated Treasury Management and Cash Sweep Program and the payment of royalties by Target Subgroup members, Company believes it will have sufficient funds to make all required payments on the debt related to the Acquisition.

(b) There is no expectation that the intercompany receivables owing to any member of the Target Subgroup (or to any other member of the Company Group that acquired assets from a member of the Target Subgroup) created pursuant to the Consolidated Treasury Management and Cash Sweep Program will be forgiven.

(c) Company has not caused, and has no plan or intention to cause, the Target Subgroup to engage in any dividend or loan not arising pursuant to the Consolidated Treasury Management and Cash Sweep Program that will result in the net asset value of the Target Subgroup at any time following completion of the Consolidations being below the net asset value of the Target Subgroup on the change date determined, in the case of change date net asset value, prior to the reduction of Target Subgroup debt on the change date funded by Company.

(d) Upon receipt of regulatory approvals for the Consolidations, Company will cause to be transferred to the Target Subgroup, either directly or through the transfer of interests in entities owning the assets, any assets received by Company entities from Target Subgroup entities pursuant to the Pre-Merger Operational Consolidations.

Rulings

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

(1) In determining the value of Target under § 382(e)(1) and § 1.1502-93(b), none of (i) the acquisition of Target stock (including the Squeeze-Out Merger), (ii) the funding of the acquisition of Target stock, (iii) the Consolidated Treasury Management and Cash Sweep

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Program and the payment of royalties or (iv) the Pre-Merger Operational Consolidations constitutes a “redemption or other corporation contraction” occurring in connection with the Acquisition within the meaning of § 382(e)(2).

(2) The Pre-Merger Operational Consolidations do not cause the Target Subgroup to fail to satisfy the requirements of § 382(c) and § 1.1502-93(d).

Caveats

We express no opinion about the tax treatment of the transaction under other provisions of the Internal Revenue Code and regulations, or the tax effects of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above rulings. In particular, other than as described above, no opinion is expressed regarding the Target Subgroup’s use of Company related intellectual property at a reduced rate during Year A.

Procedural Statements

This letter is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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

Under a power of attorney on file in this office, a copy of this letter is being sent to the taxpayer and an additional authorized representative.

Sincerely,

Richard K. Passales
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Corporate)