

Internal Revenue Service

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Person To Contact:

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Telephone Number:

Refer Reply To:

CC:CORP:B03 – PLR-153043-03

Date:

November 12, 2003

In Re:

Taxpayer =

State X =

Activities =

Member 1 =

Member 2 =

Member 3 =

Member 4 =

Member 5 =

Member 6 =

Member 7 =

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Member 8 =

Member 9 =

Member 10 =

Business A =

Business B =

Business C =

Activity E =

Activity F =

Date 1 =

Date 2 =

Date 3 =

Bankruptcy Court =

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g =\$i =\$j =\$k =\$l =\$m =

Taxable Year =

Dear

We respond to your letter dated September 5, 2003, requesting a ruling concerning the Federal income tax consequences under § 382 of the Internal Revenue Code of a transaction that involves the restructuring of Taxpayer's operations. Additional information was submitted in subsequent correspondence, and the information submitted for consideration is substantially as described below. The Federal income tax consequences of the transaction under other Code sections may be addressed in a separate letter.

Taxpayer is a State X corporation and is the common parent of a group of corporations that join in the filing of a consolidated tax return (the Consolidated Group). The Consolidated Group's taxable year is the calendar year. The Consolidated Group uses the accrual method of accounting for book and tax purposes, except that Members 1 through 7 account for Activities on a mark-to-market basis for book and tax purposes.

Taxpayer, along with its domestic and foreign affiliated and associated entities, is involved in a broad spectrum of related businesses, including (i) Business A, (ii) Business B, and (iii) Business C.

On Date 1, Taxpayer and g affiliates filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. Since Date 1, numerous additional affiliates or subsidiaries of Taxpayer have filed voluntary petitions for relief with the Bankruptcy Court (collectively, all filers are referred to herein as the Debtors). These cases have been administratively consolidated with those affiliates and subsidiaries already under the jurisdiction of the Bankruptcy Court. Since their respective petition dates, the Debtors have continued to actively manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the

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Bankruptcy Code.

On Date 2, the Debtors filed a Bankruptcy Plan and the related Disclosure Statement for the Bankruptcy Plan with the Bankruptcy Court. An Amended Bankruptcy Plan and an Amended Disclosure Statement were filed with the court on Date 3 (all amendments are included in any references herein to the Bankruptcy Plan). The Debtors estimate that there will be in excess of \$i of valid claims and that the value of the total recoveries will be approximately \$j (which is significantly less than \$i). Pursuant to the Bankruptcy Plan, Taxpayer will not survive as an entity. Its three primary operating businesses will be disposed of, and the proceeds as well as other assets will be distributed to creditors as soon as practicable. To date, over \$k has been realized from the settlement of Business B contracts, and sales of stock and assets of non-core businesses have yielded in excess of \$l. Contingent payments remain to be realized, and significant litigation has been instituted by and against the Debtors and their officers and directors as well, which remains in process. The Debtors anticipate that, after filing the consolidated return for Taxable Year, the Consolidated Group will have net operating loss (NOL) carryovers of approximately \$m.

Although the transactions contemplated by the Bankruptcy Plan will be governed by chapter 11 of the Bankruptcy Code, the Bankruptcy Plan constitutes a plan of liquidation of Taxpayer that preserves the rights of Taxpayer's shareholders to receive distributions in the unlikely event that the Debtors' assets can be liquidated for values that will enable the creditors to be paid in full. The Debtors do not expect that any amounts will be available for distribution to holders of Allowed Equity Interests (i.e., holders of equity interests in Taxpayer that were outstanding immediately prior to the petition date), but the Bankruptcy Plan preserves their right to receive all distributions (in accordance with their respective priorities) after creditors' claims are satisfied in full.

Specifically, the Bankruptcy Plan provides that each class of Taxpayer stock will be replaced with a newly issued class of stock having the same priority and the same entitlement to distribution (the Exchanged Taxpayer Common Stock and the Exchanged Taxpayer Preferred Stock, as applicable), and each class of Exchanged Taxpayer Common Stock and Exchanged Taxpayer Preferred Stock will be issued to a separate trust (or a separate class of interests in a trust) for the exclusive benefit of the holders of the class of existing Taxpayer stock that is being replaced by such class of Exchanged Taxpayer Common Stock or Exchanged Taxpayer Preferred Stock (the Common Equity Trust and the Preferred Equity Trust, respectively). The interests in these trusts will not be certificated or transferable except pursuant to the laws of descent or distribution. The trust agreements for these trusts will contain such provisions as are necessary to ensure that each trust is a grantor trust for federal income tax purposes so that each owner of a trust interest is treated for such purposes as the owner of the Exchanged Taxpayer Common Stock or Exchanged Taxpayer Preferred Stock to which such trust interest relates. By virtue of this structure, each holder of a trust interest in the

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Common Equity Trust or the Preferred Equity Trust will have the same entitlement (including, without limitation, the same priority) to receive distributions from Taxpayer (after creditors' claims are satisfied in full) as such holder previously enjoyed by virtue of the existing Taxpayer stock owned by such holder prior to consummation of the Bankruptcy Plan.

Taxpayer's general objective under the Bankruptcy Plan is to distribute to its creditors (1) the stock (or proceeds from the sale of the stock) of Member 8, Member 9, and Member 10, (2) the proceeds of sales of unwanted assets, (3) the right to pursue certain causes of action against third parties and (4) cash. At the conclusion of these distributions, the Debtors will dissolve. More specifically, the Bankruptcy Plan provides that, after provision for the payment of post-petition date administrative expenses and priority and secured tax and non-tax claims, the Debtors will make distributions to holders of claims against the Debtors for which no unresolved objections are outstanding (the Allowed Claims). Subject to all required approvals and consents being obtained, the Bankruptcy Plan provides for the following securities to be distributed: (i) stock of Member 8 or a related newly-formed holding company, (ii) stock of Member 9 or a related newly-formed holding, and (iii) stock of Member 10. With the consent of the creditors, in lieu of such stock distribution, the stock of any such company may first be issued to a separate trust (the Member 8 Trust, the Member 9 Trust, or the Member 10 Trust, respectively) and non-certificated, non-transferable interests in such trust would be allocated to the persons entitled to receive distributions of such stock pursuant to the Bankruptcy Plan.

Member 8 is a regulated corporation based in State X. Member 9 will be a newly formed holding company that will own equity interests in regulated Activity E companies located in the United States. Member 10 will be a newly formed holding company that will own equity interests in various foreign Activity F companies. Members 8, 9, 10, and their respective subsidiaries have not filed for protection under chapter 11 of the Bankruptcy Code or any comparable foreign law.

In general, the Bankruptcy Plan will become effective upon the earliest date on which the satisfaction of all of the following conditions has occurred (the Effective Date): (i) the entry of the confirmation order by the Bankruptcy Court (the Confirmation Date) and lapse of 10 days without a stay thereof, (ii) all actions and documents necessary to implement the Bankruptcy Plan have been effected or executed, (iii) the requisite consents to the issuance of the stock of Member 8 have been obtained, (iv) the requisite consents to the issuance of the stock of Member 9 have been obtained, and (v) the requisite consents to the transfer of assets to Member 10 and the issuance of Member 10 stock have been obtained.

On the latest to occur of (a) the Effective Date, (b) the entry of a final order by the Bankruptcy Court resolving all claims in the chapter 11 cases and (c) the final

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distribution made to holders of Allowed Claims and Allowed Equity Interests, all claims against and equity interests in the Debtors will be discharged and released in full (the Discharge Date); provided, however, that the Bankruptcy Court may, upon request by the Debtors, and notice and a hearing, enter an order discharging and releasing such claims and equity interests on an earlier date as determined by the Bankruptcy Court.

Taxpayer seeks a ruling that neither the confirmation nor the consummation of the Bankruptcy Plan will result in a §382(g) change of ownership of Taxpayer.

Based solely on the information submitted, we hold as follows:

The replacement of each existing class of Taxpayer common and preferred stock with the newly issued classes of stock having the same priority and the same entitlement to distribution (the Exchanged Taxpayer Common Stock and the Exchanged Taxpayer Preferred Stock, as applicable) and the issuance of each class of Exchanged Taxpayer Common Stock and Exchanged Taxpayer Preferred Stock to the Common Equity Trust and the Preferred Equity Trust, respectively, does not result in an owner shift for purposes of §382(g). In addition, any interests received by the creditors of Taxpayer in satisfaction of their claims are not "stock" for purposes of determining whether there has occurred an ownership change under §382 on any testing date (§1.382-2T(f)(18)(iii) of the Temporary Regulations).

No opinion is expressed about the tax treatment of the transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction which are not specifically covered by the above ruling.

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.

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.

A copy of this letter must be attached to any income tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to Taxpayer and a second authorized representative.

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Sincerely,

Ken Cohen

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Corporate)

cc: