Internal Revenue Service

Department of the Treasury

Index Number: 0351.00-00

Washington, DC 20224

Number: **200028013**
Release Date: 7/14/2000

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:CORP:2-PLR-114903-99
Date:
April 13, 2000

LEGEND:

New Parent =

Old Parent =

Transferor Parent =

Transferor =

Transferee =

Sub =

FSub 1 =

FSub 2 =

FSub 3 =

FSub 4 =

FSub 5 =

Old Parent Subs =

a =

b =

c =

d =

State M =

Country N =

Business X =

Business Y =

Date 1 =

This responds to your authorized representative's letter, dated September 2, 1999, requesting rulings as to the federal income tax consequences of a proposed transaction. Additional information was received in letters dated February 18, and April 7, 2000. The information submitted for consideration is summarized below.

New Parent (sometimes also referred to hereinafter as "Taxpayer") is a State M corporation and the common parent of a consolidated group (the "P Group"). New Parent is a holding corporation formed on Date 1 to hold all of the stock of Old Parent.

Old Parent, a State M corporation, is a wholly-owned subsidiary of New Parent and a member of the P group. Old Parent is engaged in Business X.

Transferor Parent is a State M corporation and the common parent of a consolidated group (the "T Group").

Transferor, a State M corporation, is an a%-owned subsidiary of Transferor Parent and a member of the T Group. Transferor's lines of business include Business Y, which is complementary to that of Old Parent's Business X.

It is represented that for valid business reasons the following transaction was consummated on Date 1 (the "Prior Transaction"):

(i) Old Parent formed New Parent as a wholly-owned subsidiary, which in turn formed Merger Sub as a wholly-owned subsidiary solely for the purpose of effecting the transaction.

(ii) Merger Sub was merged with and into Old Parent, with Old Parent surviving. Old Parent's shareholders exchanged their stock in Old Parent for b% of New Parent's common stock.

(iii) Concurrent with step (ii) above, Transferor transferred to New Parent the stock of five wholly-owned subsidiaries (Transferee, Sub, FSub 1, FSub 2, and FSub 3, together sometimes referred to hereinafter as the "Y Group subsidiaries"), and other assets, including those business and operating assets comprising Business Y that were not already held directly by such five subsidiaries (the "Y Group assets"), receiving in exchange therefor c% of New Parent's common stock.

For valid business reasons the following transaction is now proposed (the "Proposed Transaction"):

(iv) New Parent will transfer the stock of the Y Group subsidiaries, the Y Group assets, liabilities, and all its other assets (excluding the stock of Old Parent) to Old Parent.

(v) Old Parent will transfer the following to Transferee: the stock of the Y Group subsidiaries, the Y Group assets, liabilities, and other assets received in step (iv) above; the stock of all its other subsidiaries ("Old Parent Subs"), excluding the stock of Transferee and the stock of FSub 4; liabilities; and all its other assets.

Section 3.01(23) of Rev. Proc. 2000-3, 2000-1 I.R.B. 103, 105 provides that the Internal Revenue Service will not rule on the qualification of a transaction as a reorganization under § 368(a)(1)(A) by reason of § 368(a)(2)(E). Although Rev. Proc. 2000-3 provides a general no-rule policy concerning § 368(a)(1)(A), the Service will rule on collateral issues where the consequences of qualification are not adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin.

Section 3.01(22) of Rev. Proc. 2000-3, 2001-1 I.R.B. 103, 104 provides that the Internal Revenue Service will not rule on whether § 351 applies to an exchange of stock for stock in the formation of a holding company. Although Rev. Proc. 2000-3 provides a general no-rule policy concerning the formation of a holding company under § 351, the Service will rule on collateral issues where the consequences of qualification are not adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin.

Taxpayer represents that, to the best of its knowledge and belief, and but for resolution of the requested rulings below, the state law merger of Merger Sub with and into Old Parent in exchange for stock of New Parent (described in step (ii) above), constitutes a reorganization within the meaning of §§ 368(a)(1)(A) and (a)(2)(E).

Taxpayer further represents that the transfer by Transferor of the Y Group subsidiaries and the Y Group assets to New Parent (described in step (iii) above), when combined with the reorganization under §§ 368(a)(1)(A) and (a)(2)(E), qualifies as a tax-free exchange under § 351(a).

The following additional representations have been made in connection with the Proposed Transaction:

(a) Old Parent and Transferee have no plan or intention to sell or otherwise dispose of (other than in the ordinary course of business) the stock of any controlled subsidiary (within the meaning of § 368(c)) to which assets may be transferred pursuant to the Proposed Transaction.

(b) Following the transaction, Old Parent and Transferee will, either directly or through controlled subsidiaries (within the meaning of § 368(c)), continue the historic business of all corporations whose stock is transferred in the transfers.

(c) No stock or securities will be issued for services rendered to or for the benefit of either transferee in connection with the proposed transaction, and no stock or securities will be issued for indebtedness (or for interest on any indebtedness) of any transferee.

(d) The income items being transferred from New Parent to Old Parent, and from Old Parent to Transferee, include accounts receivable comprising most of the Y Group assets.

(e) No patents or patent applications will be transferred to Old Parent or to Transferee.

(f) No copyrights will be transferred.

(g) No franchises, trademarks or trade names are being transferred.

(h) The proposed transaction does not involve an agreement that purports to furnish technical “know-how” in exchange for stock.

(i) Stock of Transferee and stock of Sub, FSub 1, FSub 2 and FSub 3 are part of the property being transferred to Old Parent. One hundred percent of the stock of Transferee and 100 percent of the stock of Sub, FSub 1, FSub 2 and FSub 3 are being transferred from New Parent to Old Parent. One hundred percent of Old Parent’s stock is owned by New Parent. Such stock is not being transferred subject to liabilities, and liabilities of New Parent in the approximate amount of $d are being assumed in connection with the transfer of such stock. All stock being transferred to Old Parent is common stock.

(j) Stock of Sub, FSub 1, FSub 2 and FSub 3 are part of the property being transferred to Transferee. One hundred percent of such stock is being transferred from Old Parent to Transferee. One hundred percent of Transferee’s stock will, at the end of step (v) of the Proposed Transaction, be owned by Old Parent. Such stock is not being transferred subject to liabilities and liabilities of Old Parent in the approximate amount of $d described in representation (i), above, are being assumed in connection with the transfer of such stock. All stock being transferred to Transferee is common stock, with the exception of the stock in FSub 5 (included among the Old Parent Subs), whose sole class of stock outstanding is preferred.

(k) Neither the transfer from New Parent to Old Parent, nor the transfer from Old Parent to Transferee, is the result of the solicitation by a promoter, broker, or

investment house.

(l) Neither Parent nor Old Parent will retain any rights in the property transferred to Old Parent and to Transferee, respectively.

(m) No licenses or leases are to be granted in exchange for stock or securities.

(n) No property to be transferred to Old Parent or to Transferee will be leased back to New Parent or to Old Parent, respectively, to any of their shareholders, or to a related party.

(o) With respect to the larger transaction, the shareholders of Old Parent (immediately prior to the Prior Transaction) have received, in deemed exchange for their stock of Old Parent, stock of New Parent equal, in the aggregate, to a number of shares having a value, as of the date of the exchange, of at least 50 percent of the value of all of the formerly outstanding stock of Old Parent as of the same date.

(p) There is no acquisition indebtedness beyond the liabilities assumed described in representations (i) and (j), above.

(q) The adjusted basis and the fair market value of the assets to be transferred by the transferors to the transferees will, in each instance, be equal to or exceed the sum of the liabilities to be assumed by the transferees plus any liabilities to which te transferred assets are subject.

(r) The liabilities of the transferors to be assumed by the transferees were incurred as described in representations (i) and (j), above.

(s) There is no indebtedness between the transferees and the transferors and there will be no indebtedness created in favor of the transferors as a result of the transaction.

(t) No services will be transferred in exchange for stock.

(u) No indebtedness will be created in favor of any transferor by any transferee.

(v) Both immediately before, and immediately after, the transfer from New Parent to Old Parent, there was only a single class of Old Parent stock outstanding; this was common stock of which New Parent owned (both immediately before, and immediately after, the transfer from New Parent to Old Parent) 100 percent of the outstanding shares; there are no shareholders owning any other common shares of Old Parent, and no other classes of Old Parent stock outstanding.

(w) Both immediately before, and immediately after, the transfer from Old Parent

to Transferee, there was only a single class of Transferee stock outstanding; this was common stock of which Old Parent owned (both immediately before, and immediately after, the transfer from Old Parent to Transferee) 100 percent of the outstanding shares; there are no shareholders owning any other common shares of Transferee, and no other classes of Transferee stock outstanding.

(x) The transfers will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.

(y) No stock will be placed in escrow, issued later under a contingent stock arrangement, or issued by the transferees in the near future (including by public offering).

(z) No rights, warrants, or subscriptions of the transferees are outstanding or will be issued or offered.

(aa) New Parent has only customary employee stock options outstanding; Old Parent has no options or warrants outstanding.

(bb) There is no plan or intention on the part of either Old Parent or Transferee to redeem or reacquire any stock or indebtedness.

(cc) Taking into account any issuance of additional shares of transferee stock; any issuance of stock for services; the exercise of any transferee stock rights, warrants, or subscriptions; a public offering of transferee stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of the transferees to be received in the exchange, the transferors will be in “control” of their respective transferees within the meaning of § 368(c).

(dd) The business reasons for the transfers to Old Parent and to Transferee are to simplify corporate operations and structure.

(ee) Transferee will remain in existence and retain and use the property transferred to it in a trade or business; Old Parent will remain in existence and retain and use the property transferred to it in a trade or business, except for the property transferred to Transferee described in step (v), above.

(ff) There is no plan or intention by either Old Parent or Transferee to dispose of (other than in the ordinary course of business) the transferred property other than to transfer the property to a wholly-owned subsidiary as set forth above. Property transferred to the wholly-owned subsidiary will be held by the subsidiary and there is no plan or intention for that subsidiary to dispose of the property other than in the ordinary course of business.

(gg) There are no loans, sales, exchanges, or other transactions between transferors and transferees, other than recurring arm's length sales, purchases, etc., in the normal course of business, that will occur or are contemplated (whether or not considered as related to or in connection with the exchange in the Proposed Transaction).

(hh) Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the Proposed Transaction.

(ii) Neither Old Parent nor Transferee will be an "investment company" within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii) of the Income Tax Regulations.

(jj) Neither transferee intends to make the election under § 1362(a) to be taxed as a "small business corporation" as defined in § 1361(a).

(kk) Neither transferor is under the jurisdiction of a court in a Title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy the indebtedness of such debtor.

(ll) Neither transferee will be a "personal service corporation" within the meaning of § 269A.

(mm) FSub 3, an LLC organized under the laws of Country N (included as one of the Y Group subsidiaries), is treated as a corporation for U.S. federal income tax purposes.

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

(1) No gain or loss will be recognized by New Parent upon the transfer of property to Old Parent in constructive exchange for Old Parent stock, as described above (§ 351(a)). (Rev. Rul. 77-449, 1977-2 C.B. 110.)

(2) The basis of the Old Parent stock in the hands of New Parent will be increased by an amount equal to the basis of the property transferred by New Parent to Old Parent (§ 358).

(3) No gain or loss will be recognized by Old Parent upon the receipt of property in constructive exchange for Old Parent stock (§ 1032).

(4) Old Parent's basis in the property received will be the same as the basis of such property in the hands of New Parent immediately prior to the transaction (§ 362(a)).

(5) The holding period of the New Parent property received by Old Parent will include the period during which such property was held by New Parent (§ 1223(2)).

(6) No gain or loss will be recognized by Old Parent upon the transfer of property to Transferee in constructive exchange for Transferee stock, as described above (§ 351(a)). (Rev. Rul. 77-449, 1977-2 C.B. 110.)

(7) The basis of the Transferee stock in the hands of Old Parent will be increased by an amount equal to the basis of the property transferred by Old Parent to Transferee (§ 358).

(8) No gain or loss will be recognized by Transferee upon the receipt of property in constructive exchange for Transferee stock (§ 1032).

(9) Transferee's basis in the property received will be the same as the basis of such property in the hands of Old Parent immediately prior to the transaction (§ 362(a)).

(10) The holding period of the Old Parent property received by Transferee will include the period during which such property was held by Old Parent (§ 1223(2)).

(11) Provided that the statutory merger of Merger Sub with and into Old Parent otherwise qualifies as a reorganization under §§ 368(a)(1)(A) and 368(a)(2)(E), the subsequent transfers of the acquired stock and the acquired assets by New Parent to Old Parent, and by Old Parent to Transferee, as described above, will not prevent the statutory merger from qualifying as a reorganization under §§ 368(a)(1)(A) and (a)(2)(E).

(12) Provided that the transfer by Transferor to New Parent described above, when combined with the reorganization under §§ 368(a)(1)(A) and (a)(2)(E), qualified as a tax-free exchange under § 351(a), then the subsequent transfers of the acquired stock and the acquired assets by New Parent to Old Parent, and by Old Parent to Transferee, as described above, will not prevent the earlier transfers from qualifying under § 351(a).

A determination of whether the merger of Merger Sub with and into Old Parent otherwise qualifies as a reorganization under §§ 368(a)(1)(A) and (a)(2)(E) will be made by the District Director's office upon audit of the federal income tax returns of the taxpayers.

No opinion is expressed about the tax treatment of the above transactions 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 transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed under §§ 368(a)(1)(A) or (a)(2)(E). In addition, no opinion is expressed as to the qualification

of the Prior Transaction under § 351.

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 ruling letter should be attached to the Taxpayer's federal income tax return for all years affected.

In accordance with a power of attorney currently on file with this office, a copy of this ruling is being sent to the taxpayer's authorized representative.

Sincerely,
Assistant Chief Counsel (Corporate)
By: Lewis K Brickates
Assistant to Chief, Branch 2