

**Internal Revenue Service**

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Date:

October 06, 2003

In Re:

LEGEND

Parent =

Corporation 1 =

Corporation 2 =

Seller =

Target 1 =

Target 2 =

Target 3 =

PLR-147933-03

Target 4 =

Target 5 =

Target 6 =

Target 6 Sub =

Target 7 =

Target 8 =

Target 9 =

Target 10 =

Target 11 =

Target 12 =

Target 13 =

Target 14 =

PLR-147933-03

Target 15 =

Target 16 =

Target 17 =

Target 18 =

Target 19 =

Target 20 =

Target 21 =

Disregarded Entity =

State A =

State B =

State C =

State D =

State E =

State F =

State G =

PLR-147933-03

State H =

State I =

Country A =

Country B =

Industry A =

Industry B =

Business A =

Business B =

Business C =

Business D =

Business E =

Business F =

Business G =

Business H =

Business I =

Business J =

Business K =

Business L =

Business M =

Sub 1 =

PLR-147933-03

Sub 2 =

Sub 3 =

Partnership =

\$n1 =

n2 =

n3 =

\$n4 =

p1% =

p2% =

Dear

We respond to your August 7, 2003 request for rulings regarding certain federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated August 29, 2003, and September 24, 2003. The information submitted for consideration is summarized below.

## SUMMARY OF FACTS

Parent is a publicly traded State A corporation that is the common parent of a group of corporations filing a consolidated return. Parent uses an accrual method of accounting and the twelve-month accounting period ending December 31.

Corporation 1, a State B corporation, is an indirect subsidiary of Parent and is included on Parent's consolidated return. Corporation 1 engages in Industry A both directly and indirectly through its subsidiaries.

Corporation 2, a State B corporation, is a direct subsidiary of Corporation 1 and is included on Parent's consolidated return. Corporation 2 is a holding company for a group of companies that primarily operate in Industry B, a component of Corporation 1's involvement in Industry A.

PLR-147933-03

Seller, a State B corporation, is a wholly-owned subsidiary of Corporation 2 and is included on Parent's consolidated return. Seller is a holding company for a group of companies that primarily operate in Industry B.

Target 1, a State C corporation, is a wholly-owned subsidiary of Seller and is included in Parent's consolidated return. Target 1 engages in Business A.

Target 2, a State C corporation, is a wholly-owned subsidiary of Seller and is included in Parent's consolidated return. Target 2 engages in Business B.

Target 3, a State B corporation, is a wholly-owned subsidiary of Seller and is included in Parent's consolidated return. Target 3 engages in Business C.

Target 4, a State B corporation, is a wholly-owned subsidiary of Seller and is included in Parent's consolidated return. Target 4 engages in Business D.

Target 5, a State B corporation, is a wholly-owned subsidiary of Seller and is included in Parent's consolidated return. Target 5 engages in Business E.

Target 6, a State D corporation, is a wholly-owned subsidiary of Seller and is included in Parent's consolidated return. Target 6 is a holding company for a group of companies engaging primarily in Business F.

Target 6 Sub, a State B corporation, is a wholly-owned subsidiary of Target 6. Target 6 Sub is not included in Parent's consolidated return. Target 6 Sub is the common parent of a group of Business F corporations filing a consolidated return.

Target 7, a State E corporation, is a wholly-owned subsidiary of Seller and is included in Parent's consolidated return. Target 7 engages in Business G.

Target 8, a State E corporation, is a wholly-owned subsidiary of Seller and is included in Parent's consolidated return. Target 8 is currently dormant.

Target 9, a State C corporation, is a wholly-owned subsidiary of Seller and is included in Parent's consolidated return. Target 9 is a holding company for a subsidiary engaging in Business H.

Target 10, a State D corporation, is a wholly-owned subsidiary of Seller and is included in Parent's consolidated return. Target 10 engages in Business I.

PLR-147933-03

Target 11 through Target 16 (individually described below) are wholly-owned by Seller through Disregarded Entity, a State F holding company that is disregarded as a separate entity for federal tax purposes.

Target 11, a State F corporation, is a wholly-owned subsidiary of Seller and is included in Parent's consolidated return. Target 11 engages in Business J.

Target 12, a State F corporation, is a wholly-owned subsidiary of Seller and is included in Parent's consolidated return. Target 12 engages in Business J.

Target 13, a State F corporation, is a wholly-owned subsidiary of Seller and is included in Parent's consolidated return. Target 13 engages in Business J.

Target 14, a State G corporation, is a wholly-owned subsidiary of Seller and is included in Parent's consolidated return. Target 14 engages in Business J.

Target 15, a State H corporation, is a wholly-owned subsidiary of Seller and is included in Parent's consolidated return. Target 15 engages in Business J.

Target 16, a State F corporation, is a wholly-owned subsidiary of Seller and is included in Parent's consolidated return. Target 16 engages in Business J.

Target 17, a State F corporation, is a wholly-owned subsidiary of Seller and is included in Parent's consolidated return. Target 17 engages in Business J.

Target 18, a State I corporation, is a wholly-owned subsidiary of Seller and is included in Parent's consolidated return. Target 18 engages in Business K.

Target 19, a Country A corporation, is a wholly-owned subsidiary of Seller that is treated for federal tax purposes as a domestic corporation pursuant to the election

Target 19 is not included in Parent's consolidated return. Target 19 engages in Business L.

Target 20, a Country B corporation, is a wholly-owned subsidiary of Seller and is not included in Parent's consolidated return. Target 20 engages in Business K.

Target 21, a Country B corporation, is a wholly-owned subsidiary of Seller and is not included in Parent's consolidated return. Target 21 engages in Business M.

Target 1 through Target 21 (but not including Target 6 Sub) shall be referred to collectively as the "Purchased Subsidiaries".

PLR-147933-03

Newco is, or, when formed, will be a domestic corporation that will be organized by Seller to participate in the Proposed Transaction described below. Newco will be formed with a minimal amount of capital. As a result of the Proposed Transaction, Newco will own 100% of the stock of the Purchased Subsidiaries.

The Newco Convertible Instrument will be a convertible instrument which takes the form of either Newco preferred stock or Newco debt and is expected to have a value of approximately \$n1. It is currently contemplated that the Newco Convertible Instrument will be mandatorily convertible into Newco common stock at a fixed date in the future. The Newco Convertible Instrument will be issued by Newco to Seller as part of the Proposed Transaction.

#### PROPOSED TRANSACTION

For valid business reasons, Parent plans to reduce its investment in Industry B. As part of this plan, Corporation 1 will adopt a plan of divestiture of certain of the Industry B businesses conducted by Seller's subsidiaries ("Plan of Divestiture") pursuant to which Corporation 1 will cause Seller to dispose of the Purchased Subsidiaries. In accordance with the Plan of Divestiture, Parent and Corporation 1 propose the following series of steps comprising an integrated transaction (collectively, the "Proposed Transaction"):

- (i) Seller will form Newco with a minimal amount of capital.
- (ii) Seller will execute a firm commitment underwriting agreement with the underwriters, pursuant to which Seller will be obligated to effect the sale of Newco common stock and the Newco Convertible Instrument in the Initial Public Offering (as described in Step (iv) below).
- (iii) Seller will transfer all of its stock interest in the Purchased Subsidiaries, together with Additional Assets (defined below), to Newco in exchange for 100% of the common stock of Newco, 100% of the Newco Convertible Instrument, the assumption by Newco of certain liabilities of Seller, and additional non-stock consideration, such as a short-term promissory note or cash. Seller and Newco will enter into the appropriate contractual arrangements, including a tax sharing agreement and any other transitional and service agreements customary, proper or otherwise advisable in these circumstances.
- (iv) In accordance with the firm commitment underwriting agreement executed in Step (ii) above, Seller will sell to the underwriters for cash, for resale to the public (1) more than 20% of the Newco common stock (acquired in



PLR-147933-03

Step (iii) above) and (2) all or substantially all of the Newco Convertible Instrument (acquired in Step (iii) above) (collectively, the “Initial Public Offering”). In the Initial Public Offering, Newco will neither sell any stock to the public nor receive any funds from the public in exchange for stock. The Initial Public Offering will be implemented within approximately n2 business days of the completion of Step (iii).

- (v) Newco and Parent will make timely elections under section 338(h)(10) in respect of certain Purchased Subsidiaries. It is expected that elections under section 338(h)(10) will also be made in respect of the deemed acquisitions of certain indirect and direct domestic subsidiaries of the Purchased Subsidiaries.
- (vi) Within n3 months after Step (iv), Seller will undertake one or more additional public offerings (“Additional Offerings”) of Newco common stock that together will, taking into account the Initial Public Offering and any other transactions or events taking place during the n3-month period, reduce Seller’s direct and indirect stock ownership of Newco to less than 50% of the value of Newco stock (this threshold of stock ownership as it pertains to Newco stock shall hereinafter be referred to as “less than 50%” or “below 50%”). If prior to the end of this n3-month period, Seller for any reason has not reduced its stock ownership of Newco below 50% through one or more Additional Offerings, Seller will, in accordance with the Plan of Divestiture, reduce its stock ownership of Newco below 50% within n3 months after Step (iv) through one or more alternative or additional transactions, including a private negotiated sale of Newco stock and/or other alternative transactions, dispositions or transfers.

“Additional Assets” as used in Step (iii) above shall refer to the following collectively: a p1% common stock interest in Sub 1, an indirect subsidiary of Seller; a preferred stock interest in Sub 2, an indirect subsidiary of Seller; a p2% partnership interest in Partnership; \$n4 surplus notes receivable from Sub 3, an indirect subsidiary of Seller; nominal amounts of fixed assets; and certain intercompany receivables and obligations.

The Proposed Transaction will result in Newco owning 100% of the stock of the Purchased Subsidiaries and Seller owning less than 50% of the stock of Newco within n3 months after Step (iv) of the Proposed Transaction.

## REPRESENTATIONS

PLR-147933-03

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

- (a) Parent and Corporation 1 plan to dispose of more than 50% of the Purchased Subsidiaries in the Proposed Transaction.
- (b) A sale to the public of less than 50% of Newco (after the Purchased Subsidiaries have been transferred by Seller to Newco) would not achieve the objectives of Parent and Corporation 1 in connection with the planned disposition of the Purchased Subsidiaries. In addition, Parent and Corporation 1 would not effect the proposed transfer of the Purchased Subsidiaries to Newco and the Initial Public Offering without being reasonably certain, based on advice received from their financial advisors, that they will be able to effect a disposition of sufficient additional shares of Newco to reduce their ownership of Newco below 50% through one or more additional public offerings.
- (c) Newco has not purchased and has no plan to purchase any stock of Parent, Corporation 1 or Seller, other than any stock of Parent or Corporation 1 purchased for investment purposes by the Industry B subsidiaries of Seller (or Newco) in the ordinary course of business.
- (d) All of the stock of the Purchased Subsidiaries will be acquired by Newco in a single transfer by Seller, described in Step (iii) of the Proposed Transaction.
- (e) (i) Seller is a member of the selling consolidated group (as defined in section 338(h)(10)(B)), of which Parent is the common parent, and will be so for the taxable period that includes the date on which Newco will acquire the Purchased Subsidiaries; (ii) For the taxable period that includes the date on which Newco will acquire the Purchased Subsidiaries, each domestic Purchased Subsidiary is and will be a consolidated target within the meaning of Treas. Reg. Section 1.338(h)(10)-1(b)(1), with the following exception: Target 19, a Country A company taxed as a domestic \_\_\_\_\_ company pursuant to an election \_\_\_\_\_ is and will be an affiliated target, and Seller is and will be a selling affiliate with respect to Target 19, within the meaning of Treas. Reg. Section 1.338(h)(10)-1(b)(3); (iii) Parent and Newco will make the election under section 338(h)(10) in respect of the purchase of Target 6 pursuant to the Proposed Transaction; (iv) Target 6 and Newco will make the election under section 338(h)(10) in respect of the deemed purchase of Target 6 Sub pursuant to the Proposed Transaction and the election discussed in clause (iii); (v) Target 6 Sub, the common parent of a group of Business F companies filing a consolidated return separate from that of Parent, is and will be an affiliated

PLR-147933-03

- target, and Target 6 is and will be a selling affiliate with respect to Target 6 Sub, within the meaning of Treas. Reg. Section 1.338(h)(10)-1(b)(3)
- (f) Newco is being formed prior to the closing of Step (iii) of the Proposed Transaction solely to permit registration of its stock and, if applicable, its securities with the Securities and Exchange Commission and to enable it to acquire all of the stock of the Purchased Subsidiaries at the closing of Step (iii). Except for activities incident to these actions, Newco will have no activities and will carry on no business prior to Step (iii) of the Proposed Transaction.
  - (g) The terms of the underwriting agreements pursuant to which Seller will sell the Newco common stock and the Newco Convertible Instrument will be determined pursuant to arm's-length negotiations with the underwriters.
  - (h) The fair market value of the assets of each Purchased Subsidiary will exceed its liabilities at the closing of Steps (iii) and (iv) of the Proposed Transaction.
  - (i) Except for any asset described in Treas. Reg. Section 1.338-8(d)(2), neither Newco nor any other member of the Newco affiliated group (within the meaning of section 338(h)(5)) has any plan or intention to acquire from any target or from any direct or indirect subsidiary of any target any asset described in Treas. Reg. Section 1.338-8(b)(1) (after application of Treas. Reg. Section 1.338-8(b)(2)).
  - (j) Currently, Target 6 Sub is the common parent corporation of a group of Business F companies that are not members of the consolidated federal income tax group of which Parent is the common parent corporation; and Target 19 is not a member of the consolidated federal income tax group of which Parent is the common parent corporation. On the day after the completion of Step (iv) of the Proposed Transaction, Newco, the Purchased Subsidiaries and all the subsidiaries of the Purchased Subsidiaries (both the Business F companies as well as the other subsidiaries) will not be members of the consolidated federal income tax group of which Parent is the common parent corporation.
  - (k) There is no plan or intention for Newco or the Purchased Subsidiaries to cease to remain in existence as separate corporations.
  - (l) Seller has no plan or intention to liquidate or distribute the Newco common stock or the Newco Convertible Instrument to Corporation 2.
  - (m) The sales and other transfers of Newco common stock and the Newco Convertible Instrument described in Step (iv) and Step (vi) of the Proposed Transaction will not be to parties whose ownership of Newco would be attributed

PLR-147933-03

to Seller pursuant to section 318. In measuring attributed ownership under section 318, there shall be taken into account all events occurring or contemplated during the period beginning with Step (iii) and ending with the completion of Step (vi) of the Proposed Transaction.

## RULINGS

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

- (1) Assuming completion of Steps (ii) through (vi) of the Proposed Transaction, Newco's acquisition of the stock of each of the Purchased Subsidiaries from Seller will be a "qualified stock purchase" within the meaning of section 338(d)(3) ("QSP").
- (2) Assuming completion of Steps (ii) through (vi) of the Proposed Transaction, Parent and Newco will be eligible to make the election under section 338(h)(10) in respect of Newco's acquisition of the stock of each of the domestic Purchased Subsidiaries, except Target 19, from Seller.
- (3) Assuming completion of Steps (ii) through (vi) of the Proposed Transaction, Seller and Newco will be eligible to make the election under section 338(h)(10) in respect of Newco's acquisition of the stock of Target 19 from Seller.
- (4) Assuming completion of Steps (ii) through (vi) of the Proposed Transaction:
  - (i) Upon Parent and Newco making the election under section 338(h)(10) in respect of Newco's acquisition of the stock of Target 6 pursuant to the Proposed Transaction, Target 6 and Newco will be eligible to make the election under section 338(h)(10) in respect of the deemed purchase of the stock of Target 6 Sub.
  - (ii) Upon Target 6 and Newco making the election under section 338(h)(10) in respect of the deemed purchase of the stock of Target 6 Sub pursuant to the Proposed Transaction and the election described in the preceding clause (i) in respect of the deemed purchase of the stock of Target 6 Sub, Target 6 Sub and Newco will be eligible to make the election under section 338(h)(10) in respect of each deemed purchase of the stock of any member (other than Target 6 Sub) of the consolidated group of which Target 6 Sub is the common parent.

PLR-147933-03

## CAVEAT

Except as expressly ruled herein, no opinion is expressed regarding the consequences resulting from the section 338 election. Moreover, no opinion is expressed concerning the tax treatment of the Proposed Transaction under other provisions of the Code and regulations. Because you have not yet determined in respect of which lower-tier subsidiaries of Seller (other than Target 6 Sub) you intend to make elections under section 338, you have not requested rulings, and we have not ruled, on whether elections can be made for such lower-tier subsidiaries (other than Target 6 Sub and its subsidiaries), and no inference should be drawn from our failure to rule in that regard.

Furthermore, the effectiveness of this ruling is conditioned upon Parent, Newco, Target 19, and Target 6 Sub agreeing, if requested, to an extension of their respective statutes of limitations with respect to any issues raised by this letter ruling provided the extension is for a period acceptable to the Service.

## PROCEDURAL STATEMENTS

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 the federal income tax return of each taxpayer involved in the taxable year in which the transaction is consummated.

Pursuant to a power of attorney on file in this office, we have sent a copy of this letter to your authorized representatives.

Sincerely yours,

*Alfred C. Bishop*

Alfred C. Bishop, Jr.

Chief, Branch 6

Office of Associate Chief Counsel

(Corporate)