

Summary of Facts

Publicly traded Target is a corporation organized under the laws of State X. Target is the common parent of a consolidated group and is directly engaged in Business A. For what are represented to be valid business reasons, Target wishes to reorganize its corporate structure by forming a holding company.

Proposed Transaction

To accomplish the holding company structure, Target has proposed the following transactions (collectively, the "Proposed Transaction"):

(i) Target will form domestic Parent.

(ii) Target and Parent will jointly form domestic Sub. Target will momentarily own a percent (more than twenty) of the only class of issued and outstanding stock of Sub and Parent will own the rest. Target is required to own the aforementioned Sub stock in order to comply with certain State X law.

(iii) Immediately following the formation of Sub in step (ii) above, Target will merge into Sub (the "Merger"). In the Merger, the Target shareholders will exchange their Target stock solely for Parent voting stock.

In connection with the Proposed Transaction, outstanding Target stock options will be exchanged for Parent stock options (the "Options Exchange"). The terms of the Parent stock options that the Target stock option holders will receive will have the same terms as those of the Target stock options surrendered.

Representations

Target makes the following representations regarding the Proposed Transaction:

(a) The fair market value of the Parent stock and other consideration received by each Target shareholder will be approximately equal to the fair market value of the Target stock surrendered in the exchange.

(b) At least 50 percent of the proprietary interest in Target will be exchanged for Parent stock and will be preserved (within the meaning of § 1.368-1(e) of the Income Tax Regulations).

(c) Sub will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by Target

immediately prior to the Proposed Transaction. For purposes of this representation, amounts paid by Target to dissenters, amounts paid by Target to shareholders who receive cash or other property, Target assets used to pay its reorganization expenses, and all redemptions and distributions (except for regular, normal dividends) made by Target immediately preceding the transfer, will be included as assets of Target held immediately before the Proposed Transaction.

(d) In connection with the Proposed Transaction, Parent will be in control of Sub within the meaning of § 368(c) of the Internal Revenue Code (the “Code”).

(e) Following the Proposed Transaction, Sub will not issue additional shares of its stock that would result in Parent losing control of Sub within the meaning of § 368(c).

(f) Parent has no plan or intention to reacquire any of its stock issued in the Proposed Transaction.

(g) Parent has no plan or intention to liquidate Sub; to merge Sub with and into another corporation; to sell or otherwise dispose of the stock of Sub; or to cause Sub to sell or otherwise dispose of any of the assets of Target acquired in the Proposed Transaction, except for dispositions made in the ordinary course of business or transfers described in § 368(a)(2)(C).

(h) The liabilities of Target assumed by Sub and the liabilities to which the transferred assets of Target are subject were incurred by Target in the ordinary course of its business.

(i) Following the Proposed Transaction, Sub will continue the historic business of Target or use a significant portion of Target’s business assets in a business.

(j) Parent, Sub, Target, and the shareholders of Target will pay their respective expenses, if any, incurred in connection with the Proposed Transaction.

(k) There is no intercorporate indebtedness existing between Parent and Target or between Sub and Target that was issued, acquired, or will be settled at a discount.

(l) No two parties to the Proposed Transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(m) Target is not under the jurisdiction of a court in a title 11 or similar case within the meaning of § 368(a)(3)(A).

(n) The fair market value of the assets of Target transferred to Sub will equal or exceed the sum of the liabilities assumed by Sub, plus the amount of liabilities, if any, to which the transferred assets are subject.

(o) No stock of Sub will be issued in the Proposed Transaction.

(p) No fractional shares or cash in lieu of fractional shares will be issued in connection with the Proposed Transaction.

Section 3 of Rev. Proc. 2004-3, 2004-1 I.R. B. 114 (January 5, 2004), lists areas in which the Service will not issue ruling letters. Section 3.01(30) of that revenue procedure provides that the Service will not rule on whether a transaction constitutes a reorganization within the meaning of § 368(a)(1)(A) (including a transaction that qualifies under § 368(a)(1)(A) by reason of § 368(a)(2)(D)), unless the Service determines that there is a significant issue that must be resolved in order to decide such matter. If the Service determines that a transaction raises a significant issue, the revenue procedure provides that the Service can rule on the entire transaction, not just the significant issue.

Rulings

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

(1) Provided the Merger qualifies as a statutory merger, Sub's acquisition of substantially all of Target's assets in exchange for Parent stock and Sub's assumption of Target liabilities will qualify as a reorganization under § 368(a)(1)(A) by reason of § 368(a)(2)(D) Target, Parent, and Sub will each be "a party to a reorganization" within the meaning of § 368(b).

(2) No gain or loss will be recognized by Target on its transfer of substantially all of its assets to Sub in exchange for Parent stock and the assumption by Sub of Target liabilities (§§ 361(a) and 357(a)).

(3) No gain or loss will be recognized by either Parent or Sub on the acquisition by Sub of substantially all of the assets of Target in exchange for Parent stock (§ 1.1032-2).

(4) The basis of each Target asset received by Sub will be the same as the basis of that asset in the hands of Target immediately before its transfer (§ 362(b)).

(5) The holding period of each Target asset received by Sub will include the period during which such asset was held by Target (§ 1223(2)).

(6) No gain or loss will be recognized by Target on its distribution of Parent stock to the Target shareholders in pursuance of the plan of reorganization (§ 361(c)(1)).

(7) No gain or loss will be recognized by the shareholders of Target on their receipt of Parent stock in exchange for their Target stock (§ 354(a)(1)).

(8) The basis of the Parent stock received by a shareholder of Target will be the same as the basis of the Target stock exchanged therefore (§ 358(a)(1)).

(9) The holding period of the Parent stock received by a shareholder of Target will include the period during which the Target stock surrendered in exchange therefore was held, provided the Target stock was a capital asset in the hands of the Target shareholder on the date of the exchange (§ 1223(1)).

(10) The basis of the Sub stock in the hands of Parent will be determined under §§ 1.358-6(c)(1) and 1.1502-30.

(11) Pursuant to § 381(a) and § 1.381(a)-1, Sub will succeed to and take into account the items of Target described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383, and 384 and the regulations thereunder.

Caveats

We express no opinion about the 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 rulings. In particular, no opinion is expressed concerning the Options Exchange.

Procedural Statements

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

Each taxpayer affected by the Proposed Transaction should attach a copy of this ruling letter to the taxpayer's federal income tax return for the taxable year in which the Proposed Transaction is completed.

Under a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Richard K. Passales

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

cc: