

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Identifying Number:

Telephone Number:

Refer Reply To:

CC:DOM:IT&A:2 – PLR-113034-99

Date: December 17, 1999

Legend:

Mutual Company =

Transfer Agent =

Holding Company =

Country A =

U.S. Bank =

Broker =

Exchange=

Dear

This letter supplements the private letter ruling (PLR) issued on November 5, 1999, regarding Mutual and Transfer Agent. At your request, we now address the previously separated second and third requested rulings and the fourth requested ruling to the extent it relates to payments covered by the second and third requested rulings.

FACTS

The facts included in the prior PLR are essentially as follows:

Mutual Company is a mutual life insurance company incorporated under the laws of Country A. As a mutual life insurance company, Mutual Company has no issued or outstanding capital stock. Mutual Company carries on its insurance business in Country A and internationally, including branch and subsidiary operations in the United States. Mutual Company plans to demutualize by converting to a Country A stock life insurance company. The demutualization will involve the formation of Holding Company, a new Country A stock holding company. Mutual Company will be wholly owned by Holding Company immediately after the demutualization. It is anticipated that in connection with Mutual Company's demutualization, Holding Company will issue common shares in Country A and certain other countries.

PLR-113034-99

The policyholders of Mutual Company that are eligible to receive demutualization benefits will be entitled to receive common shares, cash, or policy credits in exchange for their rights to, and interests in, Mutual Company as a mutual company. Non-Country A eligible policyholders that are entitled to receive common shares may elect to sell those shares for cash through an initial public offering (IPO) as described below.

Holding Company has engaged Transfer Agent, a Country A trust company, to be its stock registrar and transfer agent and to perform certain other functions relating to Mutual Company's demutualization and Holding Company's IPO. Transfer Agent will maintain a share register showing the number of Holding Company common shares issued to each eligible policyholder in Mutual Company's demutualization.

At the time of Mutual Company's demutualization, Holding Company will issue to Transfer Agent a global stock certificate as nominee for all non-Country A eligible policyholders who elect to sell their Common Shares in the IPO. As the nominal owner of those shares, Transfer Agent will stand ready to effect sales of the common shares on behalf of the electing policyholders.

Holding Company has engaged a syndicate of underwriters to offer the common shares in the IPO to investors in Country A and in certain other countries. When the IPO closes, the underwriters will purchase from the electing policyholders the common shares they have elected to sell in the IPO that are held by Transfer Agent as the nominal owner. The lead underwriter will pay Transfer Agent for those shares. In consideration for that payment, the global certificate associated with the common shares issued to electing policyholders will be transferred by Transfer Agent to the lead underwriter.

Transfer Agent will distribute directly to each electing policyholder, including those policyholders subject to United States federal income tax, the proceeds it receives from the lead underwriter from the sale of the common shares. Transfer Agent will print the checks in, and mail them from, Country A. For United States electing policyholders, the checks will be drawn on a United States bank account of the Transfer Agent.

Transfer Agent is not engaged in any business within the United States; it does not have an office or place of business in the United States; it does not use a fiscal or paying agent in the United States; and it is not a controlled foreign corporation within the meaning of § 957(a) of the Internal Revenue Code. None of Transfer Agent's gross income during 1996, 1997, 1998, and 1999 as of the date this request was submitted was effectively connected with a United States trade or business. It is represented that Holding Company will not engage in any trade or business in the United States nor will it have an office or place of business or fiscal or paying agent there.

The rulings issued in the prior PLR relate to payments to policyholders who elected to sell their common shares in Holding Company in the IPO. The rulings in this PLR

PLR-113034-99

relate to payments to policyholders who did not sell their common shares in Holding Company in the IPO ("retained shareholders").

The additional relevant facts, as originally submitted and as supplemented by your later submission of November 16, 1999, are that Holding Company will establish an assisted sales program, under which retained shareholders may sell their shares at a reduced commission rate. Holding Company will issue to Transfer Agent a global stock certificate for non-Country A retained shareholders. United States retained shareholders who wish to sell their shares will submit their sale orders to a bank located in the United States ("U.S. Bank"), which will notify Transfer Agent. Transfer Agent will arrange for Broker, located in Country A, to sell the shares on a stock exchange also located in Country A. Broker will credit Transfer Agent's account with the proceeds, which it will then transfer to U.S. Bank. U.S. Bank will mail checks drawn on its funds to the sellers for the amount of the sales proceeds, less an administrative charge.

Holding Company also plans to pay dividends with respect to its shares. It will make one payment to Transfer Agent with respect to all the shares that Transfer Agent holds on behalf of retained shareholders covered by the global certificate. Transfer Agent will then make direct cash payments to each shareholder as of the dividend record date. Holding Company will also distribute to Transfer Agent an amount to pay dividends to retained shareholders who hold their own stock certificates and are not covered by the global certificate. The payment of dividends is not part of the assisted sales program, and U.S. Bank has no role in the payment of dividends. All payments made for which rulings are requested will occur in 1999 or 2000.

RULINGS REQUESTED

The rulings you have requested are essentially as follows:

(1) Neither Holding Company nor Transfer Agent will be required to report under §§ 6045 and 6041 U.S. Bank's payments to retained shareholders of the proceeds of the sales of their common shares through the assisted sales program.

(2) Neither Holding Company nor Transfer Agent will be required to report under §§ 6042 and 6041 the dividends Holding Company pays to retained shareholders through Transfer Agent.

(3) Neither Holding Company nor Transfer Agent will be required to deduct and withhold any amount pursuant to the backup withholding provisions of § 3406 with respect to the payments described in (1) and (2) above.

LAW AND ANALYSIS

PLR-113034-99

(1) Section 6045(a) provides that every person doing business as a broker shall, when required by the Secretary, make a return, in accordance with such regulations as the Secretary may prescribe, showing the name and address of each customer, with such details regarding gross proceeds and such other information as the Secretary may by forms or regulations require with respect to such business. Section 6045(c) defines the term “broker” to include a dealer, a barter exchange, and any other person who (for a consideration) regularly acts as a middleman with respect to property or services.

The term “broker” is further defined by § 1.6045-1(a)(1) of the Income Tax Regulations to mean a person that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others. Under § 1.6045-1(a)(10), to effect a sale means to act as a principal in the sale or as an agent for a party in the sale wherein the nature of the agency is such that the agent would ordinarily know the gross proceeds from the sale. The term “customer” is defined by § 1.6045-1(a)(2) to mean, with respect to a sale effected by a broker, the person (other than such broker) that makes the sale, if the broker acts as (i) an agent for such person in the sale; (ii) a principal in the sale; or (iii) the participant in the sale responsible for paying to such person or crediting to such person’s account the gross proceeds on the sale.

Example (1)(iii) of § 1.6045-1(b) provides that a professional custodian (such as a bank) is generally a broker if it regularly arranges sales for custodial accounts pursuant to instructions from the owner of the property.

Section 35a.9999-4T (A-2) provides that a payment made with respect to a transaction effected for a United States customer by a foreign office of a foreign broker is subject to information reporting under § 6045 only in the following circumstances: (i) the foreign broker is a controlled foreign corporation within the meaning of § 957(a); or (ii) 50 percent or more of the gross income of the foreign broker from all sources for the 3-year period ending with the close of its taxable year preceding the payment (or for such part of the period that the foreign broker has been in existence) was effectively connected with the conduct of a trade or business within the United States.

The prior PLR concluded that Holding Company is not a broker under § 6045 and the regulations thereunder with respect to the sale of common shares by electing policyholders because it is not acting as an agent or principal for them in the sale, nor is it responsible for paying the sales proceeds to them. Similarly, it is not a broker with respect to the sale of common shares by retained shareholders and has no reporting obligation under § 6045 with respect to the sales. Also, for the same reasons as stated in the prior PLR, Transfer Agent is a broker with respect to the sales by retained shareholders but has no reporting obligation because it does not meet the circumstances of § 35a-9999-4T (A-2). See also §§ 5f.6045-1(c)(3)(ii), which provides that if a broker is instructed to initiate a sale by certain “exempt recipients,” including a bank, no return of information is required by the broker so instructed.

PLR-113034-99

U.S. Bank is a broker because in the ordinary course of a trade or business it stands ready to effect sales to be made by others. Under the facts presented, it effects sales of the shares on behalf of retained shareholders and receives the sales proceeds. Thus, U.S. Bank is subject to information reporting under § 6045 with respect to these sales.

Section 6041(a) requires, in general, that persons making payments in the course of a trade or business to another person of fixed or determinable gains, profits, and income of \$600 or more in any calendar year shall file a return setting forth the required information. .

Holding Company and Transfer Agent will not make any payments to retained shareholders with respect to their sales of the common shares through the assisted sales program. Therefore, Holding Company and Transfer Agent have no information reporting obligation under § 6041 with respect to these sales.

(2) Section 6042(a)(1)(A) provides, in general, that every person who makes payments of dividends aggregating \$10 or more during any calendar year shall make a return according to the forms or regulations prescribed by the Secretary. Section 6042(b)(1)(A) defines the term “dividend” for purposes of § 6042(a) as any distribution by a corporation that is a dividend under section 316.

Section 6042(b)(2) provides an exception of the term “dividend” for purposes of § 6042. Section 6042(b)(2)(A)(i) provides, in part, that the term dividend does not include any distribution or payment by a foreign corporation to the extent provided in regulations. Section 1.6042-3(b)(1) provides that the term dividend does not include any distribution or payment by a foreign corporation if it is not engaged in business within the United States and does not have an office or place of business or a fiscal or paying agent in the United States.

Under the facts presented, Holding Company will make payments, through Transfer Agent, to retained shareholders with respect to its shares of common stock. These payments will be made by foreign corporations within the meaning of § 6042(b)(2)(A)(i). Holding Company and Transfer Agent are not engaged in business within the United States and do not have an office or place of business within the United States. Further, they do not have a fiscal or paying agent within the United States for purposes of making payments in the United States with respect to the shares. Thus, these payments are not included within the definition of dividends for purposes of § 6042 and are not subject to information reporting by Holding Company or Transfer Agent under this provision.

We must also determine whether these payments are subject to information reporting under § 6041. Section 1.6041-1(a)(1) states, in general, that except as provided in § 1.6041-3, every person engaged in a trade or business shall make an information

PLR-113034-99

return for each calendar year with respect to payments made by him during the calendar year in the course of his trade or business to another person of certain fixed or determinable amounts aggregating \$600 or more. The payments shall not include, however, payments for which a statement is required by, or may be required under authority of, § 6042(a).

A statement would be required for these payments by § 6042(a) but for the exception provided by § 1.6042-3(b)(1). Thus, information reporting by Holding Company or Transfer Agent is not required by § 6041 for these payments.

(3) In general, § 3406 provides that under specific conditions, a reportable payment is subject to backup withholding requiring the payor to deduct and withhold from such payment a tax equal to 31 percent of the payment. A reportable payment is defined, in part, as a payment required to be shown on a return required under §§ 6041, § 6042, or 6045. Since we have concluded that the payments described in (1) and (2) above are not subject to information reporting by Holding Company and Transfer Agent, these payments are not subject to backup withholding under § 3406 by them. The payments are, of course, subject to backup withholding by U.S. Bank.

CONCLUSIONS

Based solely on the facts submitted and the representations made, we conclude that:

(1) Neither Holding Company nor Transfer Agent will be required to report under §§ 6045 or 6041 U.S. Bank's payments to United States retained shareholders of the proceeds of the sales of their common shares through the assisted sales program.

(2) Neither Holding Company or Transfer Agent will be required to report under §§ 6042 and 6041 with respect to the payments made to the retained shareholders with respect to their shares of common stock.

(3) The payments to described in (1) and (2) above are not reportable payments to Holding Company and Transfer Agent under § 3406 are not subject to backup withholding by them.

PLR-113034-99

Caveats:

A copy of this letter must be attached to any income tax return to which it is relevant. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Deputy Assistant Chief Counsel
(Income Tax & Accounting)

By _____
Robert A. Berkovsky
Chief, Branch 2