

**Internal Revenue Service**

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:CORP:B05  
PLR-163028-04

Date:  
April 08, 2005

In Re:

TYE:

Legend:

Corporation A =

State X =

Business Y =

Shareholders =

Date 1 =  
Date 2 =

Dear

This letter is in reply to your authorized representative's letter dated December 1, 2004, requesting rulings regarding a proposed transaction, including that the proposed transaction qualifies as a reorganization under section 368(a)(1)(F). Additional information was received in a letter dated January 18, 2005. The information submitted for consideration is summarized below.

Section 3.01(31) of Rev. Proc. 2005-3, 2005-1 C.B. 118, provides that the Service will not rule on the qualification of a transaction as a reorganization under section 368(a)(1)(F) unless the Service determines that there is a significant issue that is not clearly and adequately addressed by published authority. The taxpayer, an S corporation, requested guidance addressing the significant issue of whether its conversion into a limited liability company that elects corporate entity classification constitutes a reorganization under section 368(a)(1)(F).

Included in your requested rulings were rulings that the limited liability company (LLC) agreement is a governing provision for purposes of § 1.1361-1(l)(2)(i) because it is a binding agreement that defines the members' right to distribution and liquidation proceeds and that the LLC agreement does not, by its terms, create equity interests that would be treated as different classes of stock for purposes of § 1361(b)(1)(D) because it does not create different rights to current distributions or liquidation proceeds. These two rulings will be addressed in a separate ruling letter.

#### SUMMARY OF FACTS

Corporation A is organized under the laws of State X and is a calendar year S corporation that files its tax returns on an accrual basis. Corporation A is engaged in Business Y. All of the single class of common stock of Corporation A is owned by the Shareholders. For business reasons, Corporation A wishes to convert under the laws of State X to a limited liability company (LLC). The newly formed LLC (New A) will elect under Treas. Reg. § 301.7701-3 to be treated as an association taxable as a corporation for federal tax purposes. The taxpayer intends to undertake all of the above

steps in the proposed transaction prior to its tax year ending Date 1. However, the taxpayer may complete the above steps during its tax year ending Date 2.

### REPRESENTATIONS

The taxpayer has made the following representations in connection with the proposed transaction:

- (a) The fair market value of the LLC membership rights that the Shareholders will receive in the conversion will be equal to the fair market value of the Corporation A shares that will be converted into LLC membership rights in connection with the conversion.
- (b) The Shareholders will receive no consideration other than LLC membership rights for their Corporation A shares.
- (c) No Shareholder has any plan or intention to sell, exchange or otherwise dispose of any of the LLC membership rights that he or she will receive in the conversion.
- (d) Immediately after Corporation A's statutory conversion, the Shareholders will own all of the outstanding membership rights of New A as a State X LLC and will own such rights solely by reason of their ownership of Corporation A stock immediately prior to the conversion.
- (e) Immediately after Corporation A's statutory conversion, New A will continue to hold all of the assets and liabilities that it held as Corporation A. No assets will be distributed and there will be no dissenting shareholders.
- (f) At the time of the statutory conversion, Corporation A will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire an ownership interest in Corporation A as a corporation or New A as a LLC.
- (g) Corporation A has no plan or intention to reacquire or redeem Corporation A shares.
- (h) New A has no plan or intention to reacquire or redeem any of its membership interests issued in the conversion.
- (i) New A will issue no LLC membership rights except in exchange for Corporation A shares.
- (j) New A has no plan or intention to sell or otherwise transfer or dispose of any of the assets that it held as Corporation A.

- (k) Under the State X statute, New A will be considered the same entity after the statutory conversion as before. Accordingly, in connection with the statutory conversion, there will be no assignment, transfer or other change in Corporation A's liabilities and New A will assume no new liabilities.
- (l) Following the statutory conversion, New A will conduct the same business as it conducted as Corporation A prior to the transaction.
- (m) In connection with the statutory conversion, no Shareholder will incur any expense.
- (n) Corporation A is not presently under the jurisdiction of any court in a Title 11 case or similar case within the meaning of section 368(a)(3)(A) of the Internal Revenue Code.
- (o) Immediately after the statutory conversion, New A will not be under the jurisdiction of any court in a Title 11 case or similar case within the meaning of section 368(a)(3)(A) of the Internal Revenue Code.
- (p) New A's election under Treas. Reg. § 301.7701-3 to be treated as an association taxable as a corporation will be effective as of the date of the transaction such that New A will never exist as a partnership for federal tax purposes.

### RULINGS

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

- (1) The conversion of Corporation A to New A, a State X LLC followed by an election to be treated as an association taxable as a corporation for federal tax purposes effective as of the date of conversion qualifies as a reorganization under section 368(a)(1)(F).
- (2) Corporation A will not recognize any gain or loss on the deemed exchange (section 361(a) and 357(a)). The basis of the assets of Corporation A in the hands of New A will be the same as the basis of such assets in the hands of Corporation A immediately prior to the statutory conversion (section 362(b)). The holding period of the Corporation A assets held by New A will include the period during which such assets were held by Corporation A (section 1223(2)).
- (3) The basis of the membership interests in New A received by the Shareholders will be the same as the basis of the shares of Corporation A surrendered in exchange therefore (section 358(a)(1)). The holding period of the membership interests to be received by the Shareholders will include the period during which the shares of

Corporation A surrendered therefore were held, provided that the shares are held as capital assets on the date of the exchange (section 1223(1)).

(4) Corporation A's S election will not terminate as a result of the reorganization under section 368(a)(1)(F) if New A meets the requirements of an S corporation under section 1361. See Rev. Rul. 64-250, 1964-2 C.B. 333.

(5) New A will retain Corporation A's previously assigned identifying number (EIN). See Rev. Rul. 73-526, 1973-2 C.B. 404.

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. Specifically, this ruling expresses no opinion regarding the qualification of New A as an S corporation under section 1361.

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, a copy of this letter is being sent to your authorized representative.

Sincerely,

*Debra L. Carlisle*

Debra L. Carlisle  
Chief, Branch 5  
Office of Associate Chief Counsel  
(Corporate)

cc: