

Internal Revenue Service

Department of the Treasury
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Date:
March 30, 2011

Oldco =

Newco =

A =

Trust 1 =

Trust 2 =

Country =

State A =

State B =

Statute =

Date 1 =

Date 2 =

Date 3 =

Dear _____ :

This responds to a letter dated November 30, 2010, and prior and subsequent correspondence, submitted on behalf of Newco, requesting rulings under §§ 1361, 367, and 368 of the Internal Revenue Code.

The information submitted states that Oldco was incorporated under the laws of Country on Date 1. Trust 1 and Trust 2 were the owners of Oldco, and A reported the income of Oldco under Income Tax Regulation § 1.958-1(b) and the income of Trust 1 and Trust 2 under §§ 671 and 679.

On Date 2, Trust 1 and Trust 2 were domesticated as trusts under State A law. Trust 1 and Trust 2 made elections to be treated as electing small business trusts (ESBTs) under § 1361(e)(3) effective Date 3. On Date 3, Oldco became Newco by filing a certificate of corporate domestication under Statute of State B law that allows a foreign corporation to become a State B corporation. Newco made an election to be treated as an S corporation effective Date 3.

We have been asked to rule that (1) Trust 1 and Trust 2 are ESBTs under § 1361 effective Date 3; (2) Newco's S election is effective as of Date 3; and (3) the domestication of Newco constituted a "reorganization" within the meaning of §§ 368(a)(1)(F) and 367.

Newco has made the following representations in connection with its ruling request:

- (a) Oldco was classified as an association taxable as a corporation for federal tax purposes.
- (b) The fair market value of the stock of Newco immediately after its domestication was equal to the fair market value of the stock of Oldco immediately prior to the domestication.
- (c) Trust 1 and Trust 2 were the only shareholders of Oldco immediately before the domestication and the only shareholders of Newco immediately after the domestication.
- (d) Immediately following the domestication, Trust 1 and Trust 2 owned all the stock of Newco solely by reason of their ownership of the stock of Oldco immediately prior to the domestication.

- (e) There were no dissenters to the filing of the certificate of corporate domestication.
- (f) Newco did not issue additional stock in the domestication.
- (g) At the time of the filing of the certificate of corporate domestication, Oldco did not have outstanding any warrants, options, convertible securities, or any other type of right by which any person could acquire Oldco stock.
- (h) Newco has no plan or intention to dispose of any of the assets of Oldco deemed acquired in the transaction, except for dispositions made in the ordinary course of business.
- (i) The liabilities of Oldco deemed to be assumed by Newco in the domestication plus the liabilities, if any, to which the assets of Oldco deemed to be transferred to Newco in the domestication are subject, were acquired in the ordinary course of business and are associated with the assets deemed to be transferred.
- (j) Oldco, Trust 1, and Trust 2 each paid its own expenses, if any, in connection with the transaction.
- (k) Oldco was not and Newco is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).
- (l) Newco has no plan or intention to reacquire any of its stock deemed issued in the transaction.
- (m) Immediately after the domestication, Newco possessed the same assets and liabilities as those possessed by Oldco immediately before the domestication except for assets used to pay expenses, if any, incurred in connection with the domestication. No assets were distributed by Oldco in the domestication.
- (n) Trust 1 and Trust 2 were both domestic trusts within the meaning of § 7701(a)(30) and Treas. Reg. § 301.7701-7 at the time of the domestication.
- (o) Trust 1 and Trust 2 were United States shareholders of Oldco within the meaning of Treas. Reg. § 1.367(b)-3(b)(2) at the time of the domestication.
- (p) Oldco was a controlled foreign corporation within the meaning of § 957(a) immediately before the domestication.
- (q) Newco was a domestic corporation within the meaning of § 7701(a)(4) and Treas. Reg. § 301.7701-5 immediately after the domestication.

(r) On the date of the domestication into a State B corporation, Oldco did not own any U.S. real property interests as defined in § 897(c)(1) and Treas. Reg. § 1.897-1(c)(1).

Section 1361(a)(1) provides that the term “S corporation” means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides that a small business corporation cannot have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1361(c)(2)(A)(v) provides that for purposes of § 1361(b)(1)(B), an ESBT is a permissible shareholder. Section 1361(e)(1)(A) provides that, except as provided in § 1361(e)(1)(B), an ESBT means any trust if (i) such trust does not have as a beneficiary any person other than (I) an individual, (II) an estate, (III) an organization described in § 170(c)(2), (3), (4), or (5), or (IV) an organization described in § 170(c)(1) which holds a contingent interest in such trust and is not a potential current beneficiary, (ii) no interest in such trust was acquired by purchase, and (iii) an election under § 1361(e) applies to the trust.

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

- (1) The domestication of Oldco will constitute a reorganization within the meaning of § 368(a)(1)(F). Oldco and Newco will each be “a party to the reorganization” under § 368(b).
- (2) Oldco will recognize no gain or loss on the deemed transfer of assets to Newco in the exchange for the Newco stock and Newco’s assumption of Oldco’s liabilities in the domestication (§§ 361(a) and 357(a)).
- (3) Newco will recognize no gain or loss on the receipt of Oldco’s assets and liabilities in the deemed exchange for the Newco stock (§ 1032(a)).
- (4) Newco’s basis in the assets of Oldco will be the same as Oldco’s basis in the assets immediately prior to the domestication (§ 362(b)).
- (5) Newco’s holding period in the Oldco assets will include the periods during which the assets were held by Oldco (§ 1223(2)).
- (6) Oldco will recognize no gain or loss on the deemed distribution to Trust 1 and Trust 2 of the Newco stock (§ 361(c)(1)).

(7) Trust 1 and Trust 2 will recognize no gain or loss on the deemed exchange of the Oldco stock for Newco stock (§ 354(a)(1)).

(8) The basis of the shares of Newco stock deemed to be received by Trust 1 and Trust 2 will be the same as the basis in the Oldco stock deemed to be exchanged therefore (§ 358(a)(1)).

(9) The holding period of the shares of Newco stock deemed to be received by Trust 1 and Trust 2 in the domestication will include the holding period of the shares of Oldco deemed to be exchanged therefor, provided that Parent holds the Oldco stock as a capital asset on the date of the domestication (§ 1223(1)).

(10) The tax attributes of Oldco enumerated in § 381(c) will be taken into account by Newco as if there had been no reorganization (§ 1.381(b)-1(a)(2)).

(11) Trust 1 and Trust 2 shall include in gross income as a deemed dividend the all earnings and profits amount attributable to their stock of Oldco. Treas. Reg. § 1.367(b)-3(b)(3).

We further hold that Trust 1 and Trust 2 are eligible to elect to be treated as ESBTs effective Date 3, and that Newco is eligible to elect to be treated as an S corporation effective Date 3. 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 memorandum. Specifically, no opinion is expressed or implied regarding whether Newco is, in fact, an S corporation and whether Trust 1 and Trust 2 are, in fact, ESBTs. Furthermore, no opinion is expressed regarding the following:

- (1) To the extent not otherwise specifically ruled upon above, any other consequence under § 367 on any internal restructuring transaction in this letter ruling.
- (2) Whether any or all of the above-referenced foreign corporations are passive foreign investment companies within the meaning of § 1297(a) of the Code. If it is determined that any or all of the above described foreign corporations are passive foreign investment corporations, no opinion is expressed with respect to the application of §§ 1291 through 1298 to the Proposed Transaction. In particular, in a transaction in which gain is otherwise recognized, regulations under § 1291(f) may require gain recognition notwithstanding any other provision of the Code.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or

revoked by the adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 11.04 of Rev. Proc. 2010-1, 2011-1 I.R.B. 1, 56. However, when the criteria in section 11.06 of Rev. Proc. 2010-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

In accordance with the power of attorney on file with this office, copies of this letter ruling will be sent to the taxpayer's representatives.

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

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: