

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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March 29, 2011

Legend:

Taxpayer =

ClassX =

Date1 =

Shareholder =

Date2 =

Dear :

This letter responds to your January 7, 2011 letter requesting rulings on certain federal income tax consequences of the transactions described below. Additional information was received subsequently. The information provided is summarized below. Unless otherwise indicated, references herein to code sections and regulation sections are to the applicable Internal Revenue Code (the "Code") and Income Tax Regulations.

FACTS

Taxpayer is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. The authorized and outstanding capital stock of Taxpayer consists of one class of common stock (the "Common Stock") and three classes of preferred stock (each of which qualifies as section 1504(a)(4) preferred

stock). One class of such preferred stock, ClassX, is referred to herein as the "Preferred Stock".

On Date1, Taxpayer issued to Shareholder the Preferred Stock and warrants to purchase shares of Common Stock (the "Warrants") in exchange for all of the Taxpayer stock held by Shareholder (the "Exchange"). Shareholder is the only holder of the Preferred Stock.

On or after Date2, Taxpayer will issue and sell Common Stock or mandatorily convertible participating preferred stock of Taxpayer ("Common-Equivalent Preferred Stock") to investors through private placements (the "Capital Raise").

Each investor in the Capital Raise will represent that such investor: (i) reached its decision to invest in Taxpayer independently from any other investor in the other private placements and (ii) has not entered into any agreement or understanding with any other investor in the other private placements to act in concert for the purpose of exercising a controlling influence over Taxpayer or any Taxpayer subsidiary, including any agreements or understandings regarding the voting or transfer of shares of Taxpayer.

REPRESENTATIONS

Taxpayer has made the following representations:

- (a) The Preferred Stock is redeemable only for cash.
- (b) The Preferred Stock and Warrants had a collective value at the time of the Exchange equivalent to or greater than the value of the stock for which the Preferred Stock and Warrants were exchanged.
- (c) The Warrants were not issued to any person or related persons who had, in the aggregate, a direct and indirect ownership interest in Taxpayer of more than 50 percent (determined in accordance with Treas. Reg. §1.382-4(d)(4)(i)(B)).
- (d) The Warrants neither have facilitated, nor will facilitate, the creation of income (including accelerating income or deferring deductions) or value (including unrealized built-in gains) for Taxpayer.
- (e) The exercise price of the Warrants can be paid only in cash.
- (f) The Warrants do not, and will not, entitle the holder or a related person to (a) any voting or dividend rights with respect to the Common Stock or (b) participate in the management of Taxpayer or any subsidiary of Taxpayer or with other rights that ordinarily would be afforded to owners of the Common Stock.

- (g) There are no, and will not be any, reciprocal options between prospective buyers and sellers of the Warrants with respect to the Warrants.
- (h) At the time of the Exchange, it was more likely than not that the Warrants would not be exercised.
- (i) Taxpayer does not have actual knowledge of the existence of any group of persons who through a formal or informal understanding among themselves made, or will make, one or more coordinated acquisitions of Common Stock.

RULINGS

Based solely on the information and representations submitted, we rule as follows.

- (1) The Warrants will not be treated as exercised on the date of the Exchange under section 382(l)(3)(A)(iv) and Treas. Reg. §1.382-4(d)(2).
- (2) Shareholder will not be treated as owning any Taxpayer “stock” immediately before the issuance of Common Stock in the Capital Raise for purposes of applying the “cash issuance exception” of Treas. Reg. §1.382-3(j)(3).
- (3) None of the investors in the Capital Raise will be treated as a member of a group of persons who comprise an “entity” within the meaning of Treas. Reg. §1.382-3(a)(1)(i).

CAVEATS

No opinion was requested and we express no opinion as to whether the Preferred Stock, discussed above, is non-qualified preferred stock as defined in section 351(g) of the Code. Additionally, we express no opinion concerning the tax effects if the value of the Preferred Stock and Warrants issued in the Exchange exceeded the value of the stock surrendered in the Exchange. Also, we express no opinion about the tax treatment of the transactions described herein that is not specifically covered by the above rulings. The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by the appropriate parties. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

PROCEDURAL STATEMENTS

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) 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. Alternatively, a taxpayer filing its return electronically may satisfy this requirement by attaching a statement to its federal income tax return that sets forth the date and control number of this ruling.

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

Sincerely,

Thomas I. Russell
Senior Counsel, Branch 5
(Corporate)

cc: