



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE CHIEF COUNSEL ADVICE

TO: District Director
Chief, Examination

FROM: Vicki J. Hyche
Chief, CC:DOM:CORP:Br4

SUBJECT: Notification of Withdrawal of Request for Ruling in

LEGEND:

Purchaser =

Purchased Subsidiaries =

Year 1 =

Year 2 =

The attached materials are being forwarded to you in accordance with § 8.07(2)(b) of Rev. Proc. 98-1, 1998-1 C.B. 7, 35.

This document is not binding on examination or appeals and is not a final case determination. This document is not to be cited as precedent.

In Year 1, Purchaser purchased the stock of the Purchased Subsidiaries. Each Purchased Subsidiary was a subsidiary of a different consolidated group at the time of purchase (collectively, the "Purchases"). On the date of purchase, each parent corporation of a Purchased Subsidiary was in receivership with the FDIC, and each received federal financial assistance ("FFA") from the FDIC in connection with its receivership. No FFA was provided to or received by Purchaser in the Purchases.

In Year 2, Purchaser submitted a private letter ruling request in which it sought to treat the Purchases as true stock acquisitions as opposed to deemed asset acquisitions under § 1.597-5(b) of the Federal Income Tax Regulations. In its request, Purchaser asserted that its lack of receipt of FFA precluded the Purchases from being subject to § 597 of the Internal Revenue Code and the regulations thereunder.

Section 597(a) provides that the treatment for purposes of sections 1 through 1400C of the Internal Revenue Code of any transaction in which FFA is provided with respect to a bank or domestic building and loan association shall be determined under regulations prescribed by the Secretary. The regulations under section 597 govern the treatment of all parties to the transaction in which FFA is provided, regardless of which party receives the assistance. Section 1.597-5(b) provides that a transfer of assets is deemed to occur when a Consolidated Subsidiary becomes a nonmember of its consolidated group or becomes a member of an affiliated group of which it was not previously a member while the Institution of which it is a Consolidated Subsidiary is under Agency Control. Section 1.597-1(b) says an Institution is under Agency Control if Agency (defined to include the Federal Deposit Insurance Corporation) is conservator or receiver of the Institution, or if Agency has the right to appoint any of the Institution's directors.

Based on the facts provided to us in the request for private letter ruling, we took the position that the Purchased Subsidiaries were Consolidated Subsidiaries as defined in section 1.597-1(b) and that each Purchased Subsidiary became a nonmember of its consolidated group while its parent Institution was under Agency Control. Accordingly, section 1.597-5(b) requires the Purchases to be treated as asset purchases.

At a conference of right, we informed Purchaser that the Purchases are subject to § 597 and the regulations thereunder. Following its conference of right, Purchaser withdrew the ruling request and the case was closed in this office. We are now forwarding you this letter and a copy of the materials Purchaser submitted with its ruling request so that you may use the same in connection with any future examination of Purchaser's federal tax returns.

If you need further assistance regarding this matter, please contact me at 202-622-7530.

Sincerely yours,

Assistant Chief Counsel (Corporate)

By _____

Vicki J. Hyche
Chief, Branch 4

Attachments