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Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:B06-PLR-139821-01

Date:

November 23, 2001

Legend

Company =

Mutual Holding =

Stock Holding =

Subsidiary 1 =

State X =

State Y =

Year A =

Year B =

Year C =

Agreement X =

Date A =

Date B =

Date C =

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Date D =

Business A =

Business B =

Business C =

Business D =

#A =

#B =

This letter responds to your authorized representative's letter dated July 20, 2001, in which rulings were requested as to certain federal income tax consequences of a proposed transaction. Additional information was submitted on October 4, 2001, November 14, 2001 and November 16, 2001. The information submitted for consideration is summarized below.

Facts

Company was founded in Year A and became a mutual insurance company in Year B. Company is an accrual basis life insurance company within the meaning of section 816 and files a separate calendar year end federal income tax return.

Company has outstanding a variety of life insurance and annuity contracts. Company also has outstanding contracts held as part of, or in connection with, tax-qualified retirement plans described in sections 401(a), 403(a), 403(b), 408 and 408A.

As a mutual insurance company, Company has no capital stock. Instead, the members of Company have both membership interests in Company and contractual rights under insurance policies or annuity contracts. The membership interest gives members (the "Company Members") the right to vote for the board of directors of Company and on significant corporate actions (#A votes per Company Member) and the right to receive cash or assets or other consideration in the event of the demutualization, dissolution, or liquidation of Company. The Company Members' membership interests are conferred by State X law and the articles of incorporation and bylaws of Company, not by the terms of an insurance policy or annuity contract.

Company Members' contract rights entitle Members or their beneficiaries to certain payments as specified in the policies in accordance with their terms and provisions if the insured dies or becomes disabled, or when the contract matures or is surrendered, and, if the Member has a participating policy, to receive policy dividend payments if,

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when, and as declared by the Board of Directors of Company in accordance with the terms and provisions of those policies.

Subsidiary 1 was formed as a mutual life insurance company in State Y in Year C. Subsidiary 1 is engaged in Business A, Business B, Business C and Business D through four separate divisions.

On Date A, Subsidiary 1 and Company entered into Agreement X which provides that Company and Subsidiary 1 will be brought together under a mutual insurance holding company structure or some other mutually agreed upon structure. The agreement provides that by Date B, Subsidiary 1 would file an application to reorganize itself under the State Y mutual holding company law and that Subsidiary 1 and Company would then initiate proceedings to facilitate the reorganization of Company into Subsidiary 1's mutual holding company structure.

On Date C, Subsidiary 1 incorporated Mutual Holding as a mutual insurance company pursuant to the State Y mutual holding company law. The members of Subsidiary 1 became members of Mutual Holding, their membership interests in Subsidiary 1 became membership interests in Mutual Holding, and their membership interests in Subsidiary 1 were extinguished. Subsidiary 1 became a stock life insurance company, all of whose stock was issued to Mutual Holding. Mutual Holding incorporated an intermediate holding company subsidiary, Stock Holding, as a stock company, and contributed the stock of Subsidiary 1 to Stock Holding.

On Date D, Company filed its plan of reorganization pursuant to State X law.

Description of the Proposed Transaction

For what is represented as valid business reasons, Company proposes to undertake the following transactions pursuant to an overall plan of reorganization (the "Reorganization"):

- (i) Pursuant to State X law, Company will amend and restate its Articles of Incorporation to authorize the issuance of capital stock. Company's corporate existence as a stock life insurance company shall be a continuation of Company's corporate existence as a mutual life insurance company without interruption from Company's initial date of organization. Every insurance policy that is in force as of the effective date shall continue as an insurance policy of the reorganized Company. The holder of a policy that is in force shall have the right to continue to receive policy dividends as provided for in the policy.
- (ii) By operation of State Y law, the members of Company will become members of Mutual Holding, their membership interests in Company will become membership interests in Mutual Holding, and their membership interests in Company will be extinguished.

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- (iii) No securities of Company will be surrendered or exchanged in the transaction. No stock or security will be issued for dividend or interest arrearages.
- (iv) Company will issue shares of its capital stock to Mutual Holding. The total number of shares Company is authorized to issue in the recapitalization is #B shares. There will be #A classes of common shares, with the same rights, preferences, limitations and restrictions. Each holder of the common shares will be entitled to #A votes for each share owned on each matter submitted to a vote of the holders of the common shares. No other property of Company will be issued to the shareholders of Company or Mutual Holding.
- (v) Mutual Holding will contribute all of the shares of Company to its subsidiary, Stock Holding.

Representations

The Taxpayer has made the following representations:

- (a) Company will issue only voting common stock in the transaction.
- (b) The fair market value of Company's shares deemed to be issued by Company to the former Company Members approximately equals the fair market value of the Company membership interests surrendered in exchange therefor.
- (c) At the time of the proposed transactions, Company will not have outstanding any stock options, warrants, convertible securities or any other right that is convertible into any class of stock or securities of Company.
- (d) Company will continue to conduct its business operations after the proposed transactions.
- (e) Company Members will not retain any rights in Company membership interests transferred to Company in the deemed exchange for Company shares.
- (f) The conversion of Company and deemed exchange are a single, isolated transaction and are not part of a plan to periodically increase the proportionate interest of any Company member in the assets or earnings and profits of Company.
- (g) Each of the parties described in the transactions above will pay its own expenses, if any, incurred in connection with the transactions.
- (h) Company is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).

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- (i) Following the conversion of Company, its corporate existence will continue and it will be treated under State X law as the same entity that existed as a mutual life insurance company.
- (j) The conversion of Company and deemed exchange will not result in any fractional share interests in Company.
- (k) The Tax-Qualified Retirement Contracts intended to qualify or be described in Code Sections 401(a), 403(a), 403(b), 408 and 408A are so qualified or described. Every policy that is in force on the effective date of the conversion and deemed exchanged shall continue as a policy of reorganized Company, and all contract rights of all policies shall be as they existed immediately prior to the reorganization. The policies shall continue to remain in force under the policies' terms. The holder of a policy that is in force on the effective date shall continue to have the right to receive policy dividends as provided for in the policy. A policyholder's rights to benefits, values, guarantees and other contractual obligations of Company shall continue after the effective date as obligations of reorganized Company.
- (l) Company Members will not receive any property other than Company shares in the conversion of Company and deemed exchange.
- (m) The fair market value of the Mutual Holding membership rights to be received by the Company Members in the Reorganization will approximately equal the fair market value of the membership rights in Company to be exchanged therefor.
- (n) There is no plan or intention by the Company Members who own 1 percent or more of the membership interests in Company, and to the best of the knowledge of the management of Company, there is no plan or intention on the part of the remaining Company Members to sell, exchange, or otherwise dispose of a number of membership interests in Mutual Holding received in the transaction that would reduce the Company Members' ownership of Mutual Holding to a number of interests having a value, as of the date of the transaction, of less than 50 percent of the value of all of the formerly outstanding membership interests of Company as of the same date. No payments will be made to dissenters, or in lieu of fractional membership interests. No membership interests will be acquired by Mutual Holding or Stock Holding prior to the Reorganization.
- (o) Company has no plan to issue additional shares of its stock that would result in Stock Holding losing control of Company within the meaning of section 368(c) of the Internal Revenue Code.
- (p) Mutual Holding has no plan or intention to liquidate Company; to merge Company into another corporation; to cause Company to sell or otherwise dispose of any of its assets, except for dispositions made in the ordinary course of business; or to sell or otherwise dispose any of the Company stock acquired in

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the transaction, except for the transfer to Stock Holding, as described in section 368(a)(2)(C) of the Internal Revenue Code.

- (q) Stock Holding has no plan or intention to liquidate Company; to merge Company into another corporation; to cause Company to sell or otherwise dispose of any of its assets, except for dispositions made in the ordinary course of business; or to sell or otherwise dispose any of the Company stock acquired in the transaction
- (r) Mutual Holding has no intention to reacquire any of its membership interests issued in the transaction.
- (s) Mutual Holding will acquire Company's stock solely in exchange for Mutual Holding membership interests. No Company stock or Company membership interests will be redeemed. Further, no liabilities of Company, or of the shareholders of Company will be assumed by Mutual Holding or Stock Holding nor will any of the Company stock be subject to any liabilities.
- (t) At the time of the transaction, Company will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Company, which if exercised or converted, would affect Mutual Holding's acquisition or Stock Holding's retention of control of Company, as described in section 368(c) of the Internal Revenue Code.
- (u) Mutual Holding does not own directly or indirectly, nor has it owned during the past five years, directly or indirectly, any stock of Company.
- (v) No two parties to the Reorganization are investment companies as defined in section 368(a)(2)(F)(iii) and (iv) of the Internal Revenue Code.
- (w) There will be no dissenter's rights in the transaction.
- (x) On the date of the transaction, the fair market value of the assets of Company will exceed the sum of its liabilities plus the liabilities, if any, to which the assets are subject.
- (y) Following the Reorganization, Company will continue its historic business and/or use a significant part of its historic business.

Rulings

Based solely on the information provided and the representations made, we hold as follows:

1. The Reorganization will be treated as (i) the transfer of the Company membership rights by the Company Members to Company in exchange for all the outstanding stock of Company; (ii) the transfer of the Company stock by the

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Company stockholders to Mutual Holding in exchange for membership interests in Mutual Holding; and (iii) the transfer of the Company stock by Mutual Holding to Stock Holding in exchange for stock of Stock Holding.

2. The deemed transfer of the Company membership rights by the Company Members to Company in exchange for all the outstanding stock of Company will be a reorganization within the meaning of section 368(a)(1)(E). Company will be a "party to a reorganization" within the meaning of section 368(b).
3. An owner of a Company membership interest will recognize no gain or loss on the exchange of its membership interest in Company for Company stock (section 354(a)(1)).
4. Company will recognize no gain or loss on the issuance of Company stock in exchange for Company membership rights (section 1032(a)).
5. The basis of the Company stock received in exchange for a Company membership interest will equal the basis of the Company membership interest surrendered (i.e., zero) (section 358(a)(1)). (Rev. Rul. 71-233, 1971-1 C.B. 113, Rev. Rul. 74-277, 1974-1 C.B. 88).
6. The holding period of the Company stock received in the exchange will include the period the owner thereof held the Company membership interest (section 1223(1)).
7. The exchange, by the Company Members, of their Company stock for Mutual Holding membership interests will constitute a reorganization described in section 368(a)(1)(B).
8. The Company Members will recognize no gain or loss on the deemed exchange of their Company stock for Mutual Holding membership interests (section 354(a)(1)).
9. The basis of the Mutual Holding membership interests received in exchange for Company stock will equal the basis of the Company stock surrendered (i.e., zero) (section 358(a)(1)).
10. The holding period of the Mutual Holding membership interests received in the exchange will include the period the owner thereof held the Company shares (section 1223(1)).
11. The transfer of the Company stock by Mutual Holding to Stock Holding will not prevent the transfer of the Company stock by the Company stockholders to Mutual Holding from qualifying under section 368(a)(1)(B). Section 368(a)(2)(C).

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12. The Reorganization will have no effect on the date each life insurance and annuity contract of Company was issued, entered into, purchased or came into existence for purposes of sections 72(e)(4), 72(e)(5), 72(e)(10), 72(e)(11), 72(q), 72(s), 72(u), 72(v), 101(f), 264(a)(3), 264(a)(4), 264(f), 7702, and 7702A. Moreover, the Reorganization will not require retesting or the starting of new test periods for the contracts under sections 264(d)(1), 7702(f)(7)(B)-(E), and 7702A(c)(3)(A).
13. The Reorganization will have no effect on each life insurance or annuity contract of Company for purposes of sections 72(e)(5), 401, 402, 403, 408, and 408A.
14. The Reorganization will not result in any transaction that constitutes a distribution in violation of section 403(b)(11) or otherwise disqualifies a section 403(b) contract under section 403(b). Similarly, the Reorganization will not result in any transaction that constitutes an actual or deemed distribution in violation of section 401(k)(2) or otherwise disqualifies a qualified cash or deferred arrangement within the meaning of section 401(k).
15. The Reorganization will not constitute, with respect to policies issued by the taxpayer prior to the effective date of the Reorganization and that are tax qualified under sections 401(a), 403(b), or 408(b), a distribution from or a contribution to any of these policies, plans, or arrangements for federal income tax purposes.
16. The Reorganization will not result in any transaction that constitutes a distribution and thus will not result in (a) any gross income to the employee or the beneficiary of a tax-qualified retirement contract as a distribution from a qualified retirement plan under section 72, prior to an actual receipt of some amount there from by such employee or beneficiary; (b) any 10 percent additional penalty tax under section 72(t) for premature distributions from a qualified retirement plan; (c) any 6 percent or 10 percent excise tax under section 4973 or section 4979, respectively, for excess contributions to certain qualified retirement plans; or (d) a designated distribution under section 3405(e)(1)(A) that is subject to withholding under sections 3405(b) or 3405(c).

In view of our conclusion with respect to your other ruling requests, it seems unlikely that the described proposed transaction results in a prohibited transaction; however, section 102(a) of the White House Reorganization Plan Number 4 of 1978, 43 Federal Register 47713 (October 17, 1978), generally provides that authority to issue rulings under section 4975 of the Code is transferred from the Secretary of the Treasury to the Secretary of Labor. Accordingly, we are unable to issue a ruling on this issue.

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.

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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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant.

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.

Sincerely,
Acting Associate Chief Counsel (Corporate)

By: Alfred C. Bishop, Jr.
Alfred C. Bishop, Jr.
Chief, Branch 6
Office of Associate Chief Counsel
(Corporate)