

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:

In Re:

Refer Reply To:
CC:CORP:B02
PLR-120712-04
Date:
September 30, 2004

DO:

Legend

US Parent =

Sub =

Foreign Parent =

Governmental Entity =

Business A =

State X =

State Y =

Country Z =

B =

Dear _____ :

This letter responds to your April 7, 2004 request for rulings on behalf of the above referenced taxpayer. Additional information was submitted on July 23, 2004, and August 27, 2004. The information submitted for consideration is summarized below.

US Parent is a corporation organized under the laws of State X. Its wholly owned subsidiary, Sub, is a State Y corporation engaged in Business A. Parent and Sub intend to join in the filing of a consolidated return. Foreign Parent, a business entity organized under the laws of Country Z, indirectly holds B percent of US Parent's issued capital. Foreign Parent is ultimately owned in substantial part by Governmental Entity, a public purpose entity established pursuant to legislation by Country Z.

The laws of a significant number of states prohibit the licensing of a company engaged in Business A if it is owned or controlled, financially or otherwise, in substantial part by a foreign government or political subdivision or an agency or instrumentality thereof (collectively, the "Government Ownership Statutes"). Sub was advised by its legal counsel that by virtue of Governmental Entity's substantial indirect ownership, the Government Ownership Statutes may be interpreted such that Sub might not receive licenses in certain states.

In order to comply with the ownership statutes of State Y, US Parent deposited its Sub stock in an irrevocable voting trust. The relevant terms of the trust (the "Trust Agreement") are as follows:

- The trust was set up solely for the purpose of complying with Government Ownership Statutes;
- The trust will continue for ten years, but may be terminated early with the consent of State Y if the trust structure is no longer necessary;
- The trust may be renewed at the end of the ten-year period;
- The trust will have five trustees, all appointed by US Parent;
- Trustees cannot sell, transfer, or otherwise dispose of Sub shares except in the case of a merger, consolidation or similar business combination transaction involving Sub.

In addition, to insure that Governmental Entity neither owns nor controls Sub for the purposes of the Government Ownership Statutes, Governmental Entity and US Parent have made certain undertakings to State Y in connection with the establishment of the voting trust. In the undertakings, Governmental Entity committed not to directly or indirectly participate or seek to influence the voting trustees or Sub's board of directors or officers in their oversight or management of Sub.

Section 1504(a) of the Code defines an affiliated group as one or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation, but only if the common parent owns directly stock meeting the requirements of section 1504(a)(2) of the Code in at least one of the other includible corporations, and stock meeting the requirements of section

1504(a)(2) in each of the includible corporations (except the common parent) is owned directly by one or more of the other includible corporations.

Section 1504(a)(2) of the Code provides, generally, that the ownership of stock of any corporation meets the requirements of this paragraph if it (A) possesses at least 80 percent of the total voting power of the stock of such corporation and (B) has a value equal to at least 80 percent of the total value of the stock of such corporation.

In Rev. Rul. 84-79, 1984-2 C.B. 190, P transferred all of the stock of its wholly owned subsidiary, S, to a revocable voting trust in order to satisfy FAA regulations. The trust agreement provided that the trustee had all voting power in the S stock, but could not vote the S stock in favor of either a sale of substantially all of S's assets or a dissolution of S without P's approval. All dividends, except for stock dividends, were to be paid directly to P. The trustee could not dispose of the S stock without P's approval. Additionally, P could remove the trustee at any time without cause and could also amend or terminate the trust agreement at any time. The revenue ruling holds that P's dominion over the S stock is as complete as the dominion exercisable by one having both beneficial and legal ownership. Therefore, P directly owns the S stock while the S stock is in trust.

From the facts submitted it is clear that even while the stock of Sub is subject to the Trust Agreement, US Parent retains all of its economic interests in Sub. US Parent remains entitled to all dividends declared on the Sub stock, is entitled to the benefit of any appreciation of the stock, and may sell or otherwise transfer all or a portion of its shares of Sub (through the sale of the trust certificates) to a third party. Therefore, the only issue remaining concerning Sub's inclusion in the US Parent affiliated group involves US Parent's voting rights in Sub. In the present arrangement, US Parent has given up its actual voting rights in Sub to the trustees pursuant to the Trust Agreement. However, US Parent appointed all of the initial trustees.

When considering all of the above factors, along with the fact that the Sub stock was made subject to the Trust Agreement solely to satisfy State Y regulations and that the initial trustees were appointed by US Parent, it is held as follows:

US Parent will be considered the owner of all the outstanding Sub stock for purposes of § 1504(a), and the creation of the voting trust and subsequent transfer of Sub's stock was not a disaffiliation event for purposes of the consolidated return rules.

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.

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.

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 the taxpayer.

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,

Gerald B. Fleming
Senior Technician Reviewer, Branch 2
(Corporate)