

**Internal Revenue Service**

Department of the Treasury

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Refer Reply To:  
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January 24, 2002

Taxpayer =

Predecessor =

Business A =

Business B =

Year 1 =

Date X =

State A =

We respond to your letter dated November 29, 2001, requesting rulings as to the federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated January 17 and 23, 2002. The information submitted is summarized below.

Prior to Year 1, Predecessor was a membership association exempt from federal income tax under section 501(a) of the Internal Revenue Code that conducted tax-exempt Business A. Beginning in Year 1, Predecessor relinquished its tax-exempt status as a consequence of the expansion of its activities to include taxable Business B. The termination of tax-exempt status did not alter the historic purpose, structure, management, or membership of Predecessor.

From Year 1 until Date X, Predecessor operated as an unincorporated association taxable as a corporation. To obtain limited liability protection for its members, on Date X Predecessor incorporated as Taxpayer, a newly formed State A non-stock, membership corporation. Pursuant to a plan of incorporation, all of the assets of Predecessor were transferred to, and all of the liabilities of Predecessor were assumed by, Taxpayer and

Predecessor ceased to exist as a separate legal entity (the "Incorporation").

Taxpayer has proposed to transfer assets related to activities that would produce unrelated business income if conducted by Taxpayer to a wholly owned, for-profit subsidiary ("Newco") formed under the applicable State A laws solely in exchange for Newco stock and the assumption by Newco of liabilities associated with the transferred assets.

Taxpayer has made the following representations:

- (a) The Incorporation qualified as a reorganization within the meaning of section 368(a)(1)(F). Following the Incorporation, Taxpayer continued to conduct both tax-exempt Business A and taxable Business B.
- (b) None of the assets or activities of Taxpayer or Predecessor had been acquired following Year 1 in a reorganization within the meaning of section 368(a) or an applicable asset acquisition within the meaning of section 1060.
- (c) The assets of Taxpayer were purchased and/or developed by Taxpayer (or Predecessor) in the ordinary course of its business operations.
- (d) Except for Newco, qualification of Taxpayer as tax-exempt under section 501(a) will not require the formation of any legal entities under the applicable State A laws, or any change in Taxpayer's articles of incorporation or by-laws.
- (e) The assets to be transferred to Newco will represent less than 50 percent of both net and gross assets of Taxpayer.
- (f) The Taxpayer will qualify as an organization exempt from federal income tax under section 501(a) following the transfer of assets to Newco.
- (g) Other than asset dispositions in the ordinary course of its business and investment operations, Taxpayer has no plan or intention to dispose of its assets.

Based solely on the information submitted and representations made, we rule that Taxpayer is a corporation described in section 1.337(d)-4(a)(3)(i)(B), provided that Taxpayer is tax-exempt under section 501(a) within three years from January 28, 1999. For the Taxpayer to be recognized as tax-exempt, a Form 1024, Application for

Recognition of Exemption under section 501(a), must be filed with the Service. Accordingly, subject to the proviso in the preceding sentence, upon the change of status of Taxpayer to a tax-exempt entity, Taxpayer will not be treated, pursuant to section 1.337(d)-4(a)(2), as if it transferred all of its assets to a tax-exempt entity immediately before the change in status becomes effective in a transaction to which section 1.337(d)-4(a)(1) applies.

No opinion is expressed about the tax treatment of the proposed transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction that are not directly covered by the above rulings. In particular, no opinion is expressed concerning

the tax consequences associated with the Incorporation or whether the Taxpayer may qualify for tax-exempt status under the Code. Also, no opinion is expressed as to the tax consequences of any disposition of assets by the Taxpayer subsequent to the proposed transaction.

The rulings in this letter are based on the facts and representations submitted under penalties of perjury in support of the request. Verification of the information, representations, and other information may be required as part of the audit process.

A copy of this letter should be attached to the federal income tax returns of the taxpayers involved for the taxable year in which the transaction covered by this ruling letter is consummated. 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 the taxpayer.

Sincerely yours,  
Associate Chief Counsel (Corporate)

Mark S. Jennings  
Chief, Branch 1