

**Internal Revenue Service**

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:  
CC:CORP:B05  
PLR-160444-04  
Date:  
January 31, 2005

LEGEND

Company =

Units =

Date7 =

c =

g =

i =

k =

l =

Dear :

This letter responds to a letter dated November 3, 2004 requesting supplemental rulings to our initial ruling letter dated August 17, 2004, PLR-119361-04 (the "Prior Letter Ruling"). The Prior Letter Ruling addresses the federal income tax consequences of an Exchange Offer of Units to which section 1032 of the Internal Revenue Code (the "Code") applies. The Exchange Offer closed on Date7.

Capitalized terms not defined in this letter retain the meanings assigned in the Prior Letter Ruling and the facts and representations set forth in the Prior Letter Ruling

are hereby incorporated, except as modified below, for purposes of the supplemental rulings.

At the time that the Prior Letter Ruling was issued, the amounts to be paid to and paid by the Company pursuant to the Exchange Offer were not precisely knowable. Therefore, certain amounts indicated in the Prior Letter Ruling are incorrect.

Accordingly, the steps in the Exchange Offer described in the Prior Letter Ruling are correctly stated (the "Corrected Exchange Offer") as follows:

- (i) Each accepting Unit holder will cash settle its Contract based on a contract price of \$j instead of the original contract price of \$c, and based on a price per share of \$k.
- (ii) Company will redeem the Note of each accepting Unit holder (or Note holder) in exchange for one share of Company's common stock, plus an amount of cash, which when added to the fair market value of the share of Company's stock on Date7 equals the adjusted issue price of the Note on Date7.

Based solely on the information and representations set forth in the Prior Letter Ruling and above, we rule that Rulings 1., 3., and 4. contained in the Prior Letter Ruling are withdrawn and the following rulings are substituted therefor:

1. Company will be paid \$l by each accepting Unit holder in settlement of each Contract. This amount is gain resulting from Company's receipt of property in cash settlement of its contract to sell its stock and is therefore not recognized pursuant to section 1032(a).
3. No amount paid by Company pursuant to the Corrected Exchange Offer shall be deductible by Company, except for the \$g of accrued but unpaid original issue discount on the Note on Date7.
4. The fact that the payments owed to and by Company pursuant to the Corrected Exchange Offer will be netted shall not affect the above rulings.

In addition, we rule that the above changes will have no effect on Ruling 2. contained in the Prior Letter Ruling (restated below) and such ruling will remain in full force and effect:

2. Company will pay each accepting Unit holder an amount equal to the adjusted issue price of the Note on Date7 (which payment includes one share of Company's stock).

No opinion is expressed about the tax treatment of the proposed transaction under other provisions of the Code and Income Tax Regulations other than those

expressed in the Prior Letter Ruling, or about the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction that are not specifically covered by the above ruling or those rulings set forth in Prior Letter Ruling.

This ruling is directed only to the taxpayer who requested 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.

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.

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

Sincerely,

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Debra L. Carlisle  
Chief, Branch 5  
Office of Associate Chief Counsel  
(Corporate)

cc: