

**Internal Revenue Service**

Department of the Treasury  
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Person To Contact:

Telephone Number:

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Date:  
August 9, 2011

LEGEND

Parent =

Sub 1 =

Sub 2 =

Sub 3

Sub 4 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Year =

a =  
Utility 1 =  
Utility 2 =  
Utility 3 =  
Utility 4 =  
Utility 5 =  
State =

Dear :

This letter ruling responds to your April 29, 2011 request, submitted by your authorized representative, for rulings as to the federal income tax consequences of certain proposed transactions. The information provided in that request and in correspondence dated July 14, 15, and August 4, 2011 is summarized below.

The rulings contained in this letter are based upon the facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the rulings requested. Verification of the information, representations, and other data submitted may be required as part of the audit process.

#### SUMMARY OF FACTS

Parent is a privately held, member-owned cooperative with approximately a members. Parent was incorporated in State on Date 1. Parent was originally organized to provide local Utility 1 service to rural State. Over time, these services have expanded to include Utility 2 and Utility 3 services, provided through subsidiaries of Parent. On Date 2, Parent became exempt from federal income tax under section 501(c)(12) of the Internal Revenue Code (the "Code").

Parent wholly owns Sub 3, which is disregarded as an entity separate from Parent for federal income tax purposes. Together with Sub 3, Parent wholly owns Sub 1. Sub 1 elected to be taxable as a corporation for federal income tax purposes, effective on Date 3. Sub 1, in turn, wholly-owns Sub 4, which is disregarded as an entity separate from Sub 1 for federal income tax purposes. Together with Sub 4, Sub 1 wholly owns Sub 2, which is disregarded as an entity separate from Sub 1 for federal income tax

purposes. In addition, Sub 1 is a partner in certain large partnerships providing Utility 4 services.

Parent and its subsidiaries provide Utility 5 related services to the rural State area. As currently structured, Parent provides service (local Utility 1 services) that are different from those provided by the subsidiaries (Utility 2 and Utility 3 services). Consolidating these services at the Parent level will allow Parent to provide such services to customers from a single source on a cooperative basis. The strategic marketing from such bundled services will be valuable to Parent. A simpler structure also will streamline management and accounting functions of Parent. Further, moving Utility 2 and Utility 3 activities to Parent will minimize state franchise and sales taxes.

Parent and Sub 1 propose to engage in the following transaction on Date 4:

- (i) Sub 4 and Sub 2 will merge with and into Sub 1 with Sub 1 as the surviving entity,
- (ii) Sub 1 will convert from a limited partnership into a limited liability company and elect to be treated as a disregarded entity for federal income tax purposes effective on Date 5, and
- (iii) Simultaneously with its conversion, Sub 1 will distribute the Utility 2 and Utility 3 assets to Parent, and Sub 3 will merge with and into Sub 1, with Sub 1 as the surviving entity.

## REPRESENTATIONS

- a) Parent, on the date of adoption of the plan of conversion of Sub 1, and at all times until the deemed liquidation was complete, was the owner of at least 80 percent of the total combined voting power of all classes of stock of Sub 1 entitled to vote and the owner of at least 80 percent of the total value of all classes of stock of Sub 1 (excluding nonvoting stock that is limited and preferred as to dividends and otherwise meets the requirements of § 1504(a)(4)).
- b) No shares of Sub 1 stock were redeemed during the three years preceding the date of adoption of the plan of conversion of Sub 1.
- c) Upon the conversion of Sub 1 and its election to be treated as disregarded as an entity separate from Parent, Sub 1 ceased to exist for federal income tax purposes.
- d) Sub 1 did not acquire assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years prior to the date of adoption of the plan of conversion.

- e) No assets of Sub 1 have been, or will be, disposed of by either Sub 1 or Parent except for dispositions in the ordinary course of business and dispositions occurring more than three years prior to the date of adoption of the plan of conversion.
- f) The deemed liquidation of Sub 1 in the conversion of Sub 1 was not preceded or followed by the reincorporation, transfer, or sale of all or a part of the business assets of Sub 1 to another corporation (i) that is the alter ego of Sub 1 and (ii) that, directly or indirectly, will be owned more than 20 percent in value by persons holding directly or indirectly more than 20 percent in value of the stock of Sub 1. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of § 318(a), as modified by § 304(c)(3).
- (g) Prior to the adoption of the plan of conversion, no assets of Sub 1 had been distributed in kind, transferred, or sold to Parent, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years prior to the date of adoption of the plan of conversion.
- (h) Sub 1 will report all earned income represented by assets that will be deemed distributed to Parent such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
- (i) The fair market value of the assets of Sub 1 exceeded its liabilities both at the date of adoption of the plan of conversion and immediately prior to the conversion of Sub 1.
- (j) Other than certain intercompany payables by Parent to Sub 1, there is no intercorporate debt existing between Parent and Sub 1 and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years prior to the date of adoption of the plan of conversion.
- (k) After the conversion of Sub 1, beginning in the Year taxable year, Parent expects that it will not be an organization that is exempt from federal income tax under § 501 or any other provision of the Code.
- (l) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the conversion of Sub 1 have been fully disclosed.
- (m) The conversion of Sub 1 will not result in the transfer of stock of any corporation that has been the United States transferor, the transferee foreign corporation, or the transferred corporation, or successor thereto, with respect to any unexpired "gain recognition agreement" within the meaning of §§1.367(a)-3, 1.367(a)-8 and 1.367(a)-8T of the Income Tax Regulations.

(n) Sub 1 has not incurred any losses that are subject to an agreement, election, or certification filed pursuant to § 1503(d) and the regulations thereunder.

(o) Sub 1 does not carry on activities that would rise to the level of a qualified business unit and which, pursuant to § 1.985-1, would be treated as having a functional currency other than the United States dollar.

## RULINGS

Base solely on the information submitted and the representations set forth above, we rule as follows:

- 1) No gain or loss will be recognized by Parent on the conversion of Sub 1 ((§ 332)
- 2) No gain or loss will be recognized by Sub 1 on the Sub 1 conversion (§ 337).
- 3) If Parent's status changes to be a tax exempt cooperative under § 501(c)(12) by meeting the 85% member income test after the conversion of Sub 1, the deemed liquidation of Sub 1 will not be considered to have had a principal purpose of avoiding the application of the change in status rules under the anti-abuse rule in § 1.337(d)-4(a)(3)(iii), and Parent's return to tax-exempt status will qualify for the exception from the Change in Status Rule under § 1.337(d)-4(a)(3)(i)(E).
- 4) Parent's basis in each asset deemed received from Sub 1 in the Sub 1 conversion will equal the basis of that asset in the hands of Sub 1 immediately before the Sub 1 conversion (§ 334(b)(1)).
- 5) Parent's holding period in each asset deemed received from Sub 1 in the Sub 1 conversion will include the period during which the asset was held by Sub 1 (§ 1223(2)).
- 6) Parent will succeed to and take into account the items of Sub 1 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383, and 384 and the regulations thereunder.

## CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the above described transactions under other provisions of the Code or the regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the above described transaction that are not specifically covered by the above rulings.

PROCEDURAL MATTERS

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.

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. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Bruce A. Decker  
Senior Technician Reviewer, Branch 6  
Office of Associate Chief Counsel (Corporate)