

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200901001**  
Release Date: 1/2/2009

Third Party Communication: None  
Date of Communication: Not Applicable  
Person To Contact:

Index Numbers: 382.00-00, 382.12-06

, ID No.  
Telephone Number:

Refer Reply To:  
CC:CORP:04  
PLR-100186-08  
Date:  
September 30, 2008

Legend

Taxpayer =

Entity A =

Entity B =

Entity C =

Entity D =

Entity E =

Entity F =

Entity G =

State A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

Date 12 =

Date 13 =

Date 14 =

Date 15 =

Date 16 =

Date 17 =

Date 18 =

Date 19 =

Date 20 =

Date 21 =

Date 22 =

Date 23 =

Date 24 =

Year 1 =

Year 2 =

a =  
b =  
c =  
d =  
e =  
f =  
g =  
h =  
i =  
j =  
k =  
l =  
m =  
n =  
o =  
p =  
q =  
r =  
s =  
t =  
u =  
v =

w =

x =

y =

z =

aa =

bb =

cc =

dd =

ee =

ff =

gg =

hh =

ii =

jj =

kk =

ll =

mm =

nn =

oo =

pp =

qq =

rr =

ss =

tt =

uu =

vv =

ww =

Dear \_\_\_\_\_ :

This letter responds to your letter dated December 26, 2007, requesting rulings regarding § 382 of the Internal Revenue Code. The relevant information provided in that letter and in later correspondence is summarized below.

### Summary of Facts

Taxpayer is a privately-held State A corporation and a loss corporation within the meaning of § 382. Between Date 1 and Date 24 (the “Relevant Period”), Taxpayer engaged in numerous rounds of financing involving different classes of common and preferred stock. The fair market value of each of these classes of stock has fluctuated relative to the other classes of stock from the time of their respective issuances. Taxpayer also engaged in recapitalizations in Year 1 and Year 2 (the “Year 1 Recapitalization” and the “Year 2 Recapitalization”).

On Date 1, Taxpayer initially issued a shares of common stock at a price of \$b per share to its founders. Throughout the Relevant Period, Taxpayer issued additional common stock, generally in connection with the exercise of stock options by employees or former employees, and certain acquisitions and recapitalizations.

Taxpayer has identified the following issuances, transfers, conversions, and recapitalizations of stock as relevant to the application of § 382:

On Date 2, Taxpayer issued c shares of Series A preferred stock at a price of \$d per share.

On Date 3, Taxpayer engaged in a stock split, at a ratio of e, of both its Series A preferred stock and its common stock.

On Date 4, Taxpayer issued f shares of Series B preferred stock at a price of \$g per share.

On Date 5, Taxpayer issued h shares of Series C preferred stock at a price of \$i per share.

On Date 6, Taxpayer issued j shares of Series C preferred stock at a price of \$i per share.

On Date 7, Entity A sold k shares of Series B preferred stock to Entity B, which was a 5-percent shareholder as of the date of the transfer. On the same date, Entity B sold l shares of Series B preferred stock to Entity C.

On Date 8, Taxpayer issued m shares of Series D preferred stock at a price of \$n per share.

On Date 9, Entity D, a 5-percent shareholder, sold o shares of common stock to Entity E.

On Date 10, Entity D, a 5-percent shareholder, sold p shares of common stock to Entity F.

On Date 11, Entity D, a 5-percent shareholder, sold q shares of common stock to Entity G.

On Date 12, Taxpayer issued r shares of Series D preferred stock at a price of \$n per share.

On Date 13, Taxpayer issued r shares of Series D preferred stock at a price of \$n per share.

On Date 14, pursuant to the Year 1 Recapitalization, all of the outstanding common stock of Taxpayer was exchanged for Class A common stock at a conversion ratio of s. The Year 1 Recapitalization also authorized the issuance of Class B common stock. Class A and Class B common stock held identical rights, with the exception of the Class B common stock having certain liquidation preferences over the Class A common stock.

On Date 15, Date 16, Date 17, and Date 18, Taxpayer issued t, u, v, and w shares of Series E preferred stock, respectively, at a price of \$x per share. Participation in the Series E preferred stock financing was offered initially to existing preferred shareholders. Preferred shareholders who did not purchase their pro rata allocation of Series E preferred stock automatically had their preferred stock converted to Class B common stock. Certain preferred shareholders holding Series B preferred stock declined to participate in the Series E financing, and, accordingly, their preferred stock was converted into Class B common stock at a conversion ratio of y (the "Series B

Conversion”). In addition, certain preferred shareholders holding Series C preferred stock declined to participate in the Series E financing, and, accordingly, their preferred stock was converted into Class B common stock at a conversion ratio of z (the “Series C Conversion”).

On Date 19, Taxpayer completed the Year 2 Recapitalization and commenced a unit financing. As part of the Year 2 Recapitalization, all of the Class A and Class B common stock and Series A, Series B, Series C, and Series D preferred stock was converted to a single class of new common stock at the conversion ratios of aa, bb, cc, dd, ee, and ff, respectively. In addition, all of the Series E preferred stock was converted to shares of new Class B preferred stock at a conversion ratio of gg. Holders of new Class B preferred stock who elected to participate in the unit financing purchased an investment unit consisting of new Class A preferred stock and additional new Class B preferred stock. Holders of new Class B preferred stock that did not purchase their pro rata share of the investment units had their new Class B preferred stock (received upon conversion of their Series E preferred stock) automatically converted into new Class A preferred stock (the “Class B Conversion”).

The new Class A and new Class B preferred stock held identical rights, with the exception of the new Class B preferred stock having certain liquidation preferences over the new Class A preferred stock. Certain preferred shareholders holding new Class B preferred stock declined to participate in the unit financing, and, accordingly, their new Class B preferred stock was converted into new Class A preferred stock.

In connection with the unit financing, on Date 20, Date 21, Date 22, and Date 23, Taxpayer issued hh, ii, jj, and kk investment units, respectively, each consisting of ll shares of new Class A preferred stock and mm share of new Class B preferred stock at a price of \$nn per unit with each share of new Class A and new Class B preferred stock priced at \$oo.

Specifically, on Date 20, Taxpayer issued pp shares of new Class A preferred stock and qq shares of new Class B preferred stock each at a price of \$oo per share. On Date 21, Taxpayer issued rr shares of new Class A preferred stock and ss shares of new Class B preferred stock each at a price of \$oo per share. On Date 22, Taxpayer issued tt shares of new Class A preferred stock and uu shares of new Class B preferred stock each at a price of \$oo per share. On Date 23, Taxpayer issued vv shares of new Class A preferred stock and ww shares of new Class B preferred stock each at a price of \$oo per share.

Throughout the Relevant Period, Taxpayer issued warrants to purchase various classes of its common and preferred stock in connection with the preferred stock financing transactions described above and other business transactions. Taxpayer also issued stock options to service providers with respect to its common stock pursuant to compensatory option plans.

## **Rulings**

Based solely on the information submitted, for purposes of factoring out changes in proportionate ownership of Taxpayer's stock which are attributable solely to fluctuations in the relative fair market values of different classes of stock under § 382(l)(3)(C), we hold that Taxpayer may apply the following principles with respect to all testing dates that occurred during the Relevant Period:

(1) On any testing date, in determining the ownership percentage of any 5-percent shareholder, the value of such shareholder's stock shall be considered to remain constant since the date that shareholder acquired the stock, relative to the value of all other stock of the Taxpayer outstanding on such date. The value of such shareholder's stock relative to the value of all other stock of the Taxpayer issued on any date subsequent to such acquisition shall also be considered to remain constant since that subsequent date.

(2) In applying the methodology described above, a value-for-value recapitalization or conversion of stock of Taxpayer into other stock of Taxpayer shall be disregarded, and the exchanging shareholder shall be considered to have acquired such newly issued stock as of the date it acquired the stock exchanged therefor.

## **Caveats**

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. In particular, no opinion is expressed regarding whether Taxpayer experienced any ownership change as defined under § 382(g) or whether any warrants or options should be treated as exercised for purposes of calculating an owner shift under § 382(g). Further, no opinion is expressed whether any exchange of stock pursuant to the Class B Conversion, the Series B Conversion, the Series C Conversion, the Year 1 Recapitalization, or the Year 2 Recapitalization of Taxpayer constituted a value-for-value exchange. Verification of these facts should be required as part of the audit process.

## **Procedural Statements**

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

A copy of this ruling letter should be attached to the federal income tax return of each taxpayer involved for the taxable year in which the transactions covered by this ruling letter are completed. 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 ruling letter.

Under the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

---

Marie C. Milnes-Vasquez  
Senior Technician Reviewer, Branch 4  
Office of Associate Chief Counsel (Corporate)

cc: