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Private Letter Ruling 201633009

This recent ruling by the IRS is significant for what it does not say. It does not say much of anything.

It is a "significant issue" ruling, which is a type of limited ruling issued by the Corporate Division of Chief Counsel. The whole statement of facts is as follows:

> Taxpayer is a State corporation formed on Date1. Since its incorporation, Taxpayer has engaged in Business. Taxpayer acquired AssetA on Date2, AssetB and AssetC on Date3, AssetD on Date4, AssetE on Date5, and AssetF on Date6 (collectively, the "Acquired Assets"). Taxpayer intends to engage in a divisive reorganization qualifying under sections 368(a)(1)(D) and 355.

The whole ruling is this:

> Based upon the facts and information submitted and the representations made, we rule that the acquisition of the Acquired Assets by Taxpayer constitutes an expansion of Taxpayer's Business (within the meaning of Treas. Reg. § 1.355- 3(b)(3)(ii)) and does not constitute the acquisition of a new or different business. Treas. Reg. § 1.355-3(b)(3)(ii) and Rev. Rul. 2003-18, 2003-7 I.R.B. 467.

The cited revenue ruling is the one about the car dealer that acquired another brand of car dealership—it ruled that that was an expansion of the original business of selling a different make of car.

So what do we know about Taxpayer in the letter ruling? It had a business, which apparently qualified as a five-year active trade or business for Section 355 purposes. It bought six different sets of assets over a period of time, presumably less than five years. It wants to do a spinoff. Maybe it wants to put the recently acquired assets into a spinco. It can do that only if those assets were part of the qualifying original business, and they can be only if their acquisition qualified as what is called an "expansion" of the original business.

So how much connection does there need to be between the acquired assets and the original business for the one to be an expansion of the other? No way of telling from this ruling. The only "law" that can be deduced from this ruling is that the expansion doctrine is still recognized, which is not surprising given the published guidance creating it.

Not all rulings are like this; indeed, maybe most are not like this, but they are tending this way. There are at least two explanations. First, Chief Counsel has undergone a dramatic decline in personnel that has forced it to "streamline" everything it tries to do. Second, they must have figured that the best way to answer questions without exhaustive vetting of the law is to limit the damage: only the recipient of the ruling can derive any meaning from it.

What this means for those of us trying to glean meaning from letter rulings is that it is a waning source. A taxpayer must either go in for the ruling itself or find published guidance that is sufficiently on point. In theory, there is nothing surprising about that, but in practice, very long letter rulings with multiple meaningful representations were the norm in the past.

For additional information, call Jack Cummings at 919.862.2302.

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