



IRA A. JACKSON
COMMISSIONER

The Commonwealth of Massachusetts

Department of Revenue

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January 11, 1985

You inquire whether the Massachusetts income tax consequences of a Type "F" corporate reorganization under IRC §368(a)(1)(F) will be identical to the federal income tax consequences of same, i.e., that no gain or loss will result to the previous corporation, to the successor business trust, or to the shareholders.

You represent a Rhode Island Corporation which has one shareholder and which operates two discount stores in Massachusetts and one in Rhode Island. The sole shareholder desires to change the legal status and domicile of the enterprise from a Rhode Island Corporation to a Massachusetts business trust via a Type "F" (tax-free) reorganization under IRC §368(a)(1)(F). Pursuant to the Plan of Reorganization, the following will occur:

1. All of the assets and liabilities of the Corporation (which liabilities do not now and will not, at the time of the transfer, exceed the basis of the assets of the Corporation) are to be transferred to a newly-formed Massachusetts business trust (the "Trust"), in exchange for shares or units (herein referred to as "shares") of beneficial ownership of the Trust.

2. The shares of beneficial ownership of the Trust received by the Corporation in the exchange are to be distributed, immediately after the exchange, to the shareholders of the Corporation on a pro rata basis, in exchange for their shares of the Corporation.

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Assuming that the transaction is treated as an "F" reorganization for Federal income tax purposes, the Corporation will not recognize any gain or loss for Federal income tax purposes pursuant to Section 361(a) of the Code. Consequently, because the Massachusetts corporate excise is based in relevant part upon gross income as defined for Federal income tax purposes (with certain adjustments not relevant in this case), the Corporation will not recognize any gain or loss for Massachusetts purposes pursuant to Massachusetts General Laws Chapter 63.

The Trust will not recognize any gain or loss for Federal income tax purposes pursuant to Section 1032(a) of the Code, and, assuming that the transaction is treated as an "F" reorganization for Federal income tax purposes, it will acquire a basis in the assets transferred to it equal to the basis of the Corporation in those assets immediately before the transfer. (I.R.C. § 362(b)).

Massachusetts General Laws Chapter 62, Section 8 provides that a corporate trust shall be treated as a corporation for purposes of any determination involving Sections 351 through 368 of the Code. Accordingly, the Massachusetts treatment of this transaction will follow the federal treatment described above.

Finally, assuming that the transaction is treated as an "F" reorganization for Federal income tax purposes, each shareholder of the Corporation who becomes a shareholder of the Trust will not recognize a gain or loss for Federal income tax purposes under Section 354(a) of the Code, and will acquire a basis in his shares of the Trust equal to the basis of his old shares of the Corporation surrendered in exchange. (I.R.C. §358(a)).

In that (i) the income of an individual subject to tax in Massachusetts is based upon Federal gross income (with certain modifications not relevant in this case), and (ii) by reason of Massachusetts General Laws Chapter 62, Section 8, the provisions of Sections 354 and 358 apply under Massachusetts law to the shareholders of a Massachusetts business trust, the tax consequences of the transaction to the shareholders of the Corporation under Massachusetts law will be the same as their Federal income tax consequences.

You also inquire whether any Massachusetts corporate excise tax consequences follow the reorganization and change of domicile of the enterprise.

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Generally, the Massachusetts corporate excise is imposed upon an enterprise operating in Massachusetts in corporate form. See G.L. c. 63, §30(1) and (2).

Therefore, neither the reorganization nor the change of domicile per se entail corporate excise consequences. Since the entity which will result from the reorganization will be a Massachusetts corporate trust and not a corporation, it will not be subject to the corporate excise.

However, "(a) corporate trust engaged within the commonwealth in any business, activity or transaction...shall be subject to the taxes imposed by [Chapter 62]...", i.e., the Massachusetts income tax. G.L. c. 62, §8(a).

Since the enterprise in question will continue to be engaged in business in Massachusetts as a corporate trust, it will be subject to the Massachusetts income tax under G.L. c. 62, §8.

Very truly yours,



Commissioner of Revenue

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