

In The Matter of the Petition of "M"

for a Declaratory Ruling

DOC #4598, Effective April 10, 1989

Pursuant to RSA 541-A:1(IV), 541-A:2(I) (d) and Rev. 209.01, et. seq. "M" Corporation EIN,,, New Hampshire 03103, through its accountants, "N"..... petitioned the Department of Revenue Administration for a declaratory ruling with respect to the New Hampshire tax consequences of its complete liquidation.

The petitioner represents the following:

1. "M" Corporation is a New Hampshire corporation organized and incorporated on January 1, 19...
2. "M" is a first-tier, wholly owned subsidiary doing business in New Hampshire only.
3. "M" will be completely liquidated effective, 1989. "M"'s parent will acquire all of "M"'s assets, subject to "M"'s liabilities in exchange for all "M"'s issued and outstanding capital stock.
4. Internal Revenue Code ("Code") Section 337, as originally enacted, generally provided that a corporation which adopted a plan of liquidation and, within 12 months thereafter, distributed all of its assets pursuant to the plan would not recognize gain or loss on the sale of its property.
5. The Tax Reform Act of 1986 fundamentally changed Code Section 337. The provision allowing a liquidating corporation to avoid gain on the sale of the assets was repealed.
6. Code Section 337, as amended, now provides that no gain or loss is recognized by a liquidating corporation on its distribution to its parent corporation of its property in a complete liquidation to which Code Section 332 applies.
7. "M" will recognize no gain or loss for federal tax purposes under Code Section 337 on the distribution to its parent company of its property in a complete liquidation to which Code Section 332 applies.
8. RSA 77-A:4 VIII required a corporation to add back to its New Hampshire taxable income any gain not recognized under IRC Code Section 337. This section, as written, refers to the Internal Revenue Code of 1954 and to transactions meeting the exceptions of act Section 633 of the Tax Reform Act of 1986.
9. RSA 77-A:1 XX (b) defined "United States Internal Revenue Code" for all tax years beginning after December 31, 1986 as the Code of 1986 in effect on December 22, 1987.

In view of the foregoing representations and specifically based upon them, the Department of Revenue Administration finds the following:

1. That RSA 77-A:1,XX specifically defines the Internal Revenue Code as follows:

XX. "United States Internal Revenue Code" means:

- (a) For all tax years beginning before January 1, 1987, the United States Internal Revenue Code (1954) as amended; and

(b) For all tax years beginning after December 31, 1986, the United States Internal Revenue Code of 1986 in effect on December 22, 1987, unless and until a specific statutory exception is provided in this chapter, or until the application of one of its provisions is held to violate the New Hampshire Constitution. "United States Internal Revenue Code" does not mean the rules, regulations, forms, and procedures of the United States Internal Revenue Service. The rules, regulations, forms, and procedures of the United States Internal Revenue Service may, however, be used by the commissioner of revenue administration in formulating rules for adoption under RSA 541-A.

In RSA 77-A:1, XX (b) an exception to the General Rule that the "Internal Revenue Code" means the Internal Revenue Code of 1986 is that, a specific statutory exception is recorded elsewhere in RSA 77-A.

2. The language of RSA 77-A:4,VIII specifically provides for such an exception, by requiring an add-back of such a gain under the 1954 code. It says:

VIII. In the case of a corporation, having adopted a plan of liquidation subsequent to June 30, 1981, which has a non-recognized gain as a result of the application of the United States Internal Revenue Code (1954) section 337, as amended, or meets the exception requirements allowing the federal nonrecognition provisions of section 337 as provided in act section 633 of the Tax Reform Act of 1986, an addition to gross business profits for the amount of such gain.

3. Therefore, the taxpayer who has a non-recognized gain under section 337 of the Internal Revenue Code of 1986, and not under section 337 of the Internal Revenue Code of 1954, does not have a gain which must be added back under RSA 77-A: 4,VIII.

The Department of Revenue Administration, under the specific circumstances, represented hereby rules:

1. That no gain will be recognized by "M" upon its complete liquidation.

Stanley R. Arnold, Commissioner