

Date 6 =

Date 7 =

Plan =

State =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Dear :

This letter responds to your June 27, 2007 request for rulings on certain Federal income tax consequences of a proposed transaction described below. The information submitted in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based upon 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 request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Summary of Facts

Taxpayer is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Taxpayer and its consolidated subsidiaries (collectively, the "Taxpayer Group") are engaged in Business X. The events leading to Taxpayer's current structure are as follows: On Date 1, Old Lossco and the majority of its domestic subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code. The petitions were filed in the United States Bankruptcy Court for the Northern District of State ("Bankruptcy Court").

On Date 2, Old Lossco formed Taxpayer. On Date 3, Taxpayer filed a Chapter 11 petition for bankruptcy. On Date 4, Old Lossco filed with the Bankruptcy Court its Plan providing that Old Lossco would be reorganized into Taxpayer. On Date 5, the Bankruptcy Court confirmed the Plan.

On Date 6, substantially all of the Debtors emerged from Chapter 11 bankruptcy. Pursuant to the Plan, Old Lossco: (i) transferred substantially all of its assets to Taxpayer in exchange for Taxpayer's common stock and warrants and the assumption by Taxpayer of certain of Old Lossco's liabilities; (ii) distributed Taxpayer's common stock and warrants to Old Lossco's shareholders in exchange for their Old Lossco common stock; (iii) distributed Taxpayer's common stock and warrants to Old Lossco's unsecured creditors in satisfaction of their claims; and (iv) liquidated (the "Reorganization").

Taxpayer represents that the Reorganization qualified as a tax-free reorganization under § 368(a)(1)(G) and that, as a result of the Reorganization, Taxpayer became the new common parent of the Old Lossco Group.

The Old Lossco Group had net operating loss carryovers as of Date 6 ("Pre-Change Losses"). Taxpayer maintains that an ownership change (the "First Ownership Change") occurred on Date 6 with respect to Old Lossco under § 382(g) and with respect to the Old Lossco Group under § 1.1502-92(b). Taxpayer further maintains that the First Ownership Change qualifies for the bankruptcy exception under § 382(l)(5). Since Date 6, the Taxpayer Group has earned income and has recognized gain from the sale of assets. Taxpayer intends to use Pre-Change Losses as well as losses that occurred after the First Ownership Change, but before the Second Ownership Change, to offset such Taxpayer Group income and gain.

Proposed Transaction

Taxpayer proposes the following transaction:

Prior to Date 7, greater than 50 percent of the currently outstanding common stock of Taxpayer will be sold to a third party resulting in an ownership change (the "Second Ownership Change").

Representations

Taxpayer makes the following representations with regard to its request for rulings:

- (a) The Reorganization qualified as a tax-free reorganization within the meaning of § 368(a)(1)(G).
- (b) The Reorganization did not cause a termination of the Old Lossco Group within the meaning of § 1.1502-75(d).
- (c) On Date 6, the Reorganization resulted in an ownership change of Old Lossco and the Old Lossco Group under § 382(g) and § 1.1502-92(b).

(d) Since Date 6, there has been no ownership change of the Taxpayer Group, including the Old Lossco Group, within the meaning of § 382(g) or § 1.1502-92(b).

(e) Taxpayer became the common parent of the Old Lossco Group as a result of the Reorganization.

(f) Following the Reorganization, the Taxpayer Group, including the Old Lossco Group, has continued the business it conducted immediately prior to the Reorganization.

(g) Taxpayer and Old Lossco were each under the jurisdiction of a bankruptcy court in a title 11 case immediately before Date 6.

(h) Section 382(l)(5) applies to the First Ownership Change.

(i) Taxpayer has not made an election under § 382(l)(5)(H) to forgo the application of § 382(l)(5) to the First Ownership Change.

(j) The First Ownership Change occurred because of the Reorganization.

(k) The Reorganization was included in the Plan approved by the Bankruptcy Court.

(l) Immediately after Date 6, at least 50 percent of the value and voting power (within the meaning of § 1504(a)(2) determined by substituting "50 percent" for "80 percent" each place it appears) of the common stock of Taxpayer was owned by qualified creditors (within the meaning of § 382(l)(5)(E) and § 1.382-9(d)(1)) and shareholders of Old Lossco as a result of being creditors or shareholders of Old Lossco immediately before the First Ownership Change.

(m) Pursuant to § 382(l)(5)(B), the amount of Pre-Change Losses available for use by the Old Lossco Group has been computed as if no deduction were allowable for interest paid or accrued by the Old Lossco Group during each of calendar Year 1, Year 2, Year 3, and the portion of calendar Year 4 prior to and including Date 6, for indebtedness converted into Taxpayer common stock pursuant to the Reorganization.

(n) Taxpayer was a loss corporation as defined in § 382(k)(1) at the time of the First Ownership Change and expects to be a loss corporation at the time of the Second Ownership Change.

(o) Taxpayer had only common stock outstanding during the testing period.

Rulings

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

When the Second Ownership Change occurs within the two-year period following the First Ownership Change:

(1) Application of § 382(l)(5)(D) will not result in retroactive disqualification of the application of § 382(l)(5) to the First Ownership Change. Therefore, § 382(l)(5) shall continue to apply for purposes of determining the amount of Pre-Change Losses that the Taxpayer Group may use in the period between the First Ownership Change and the Second Ownership Change.

(2) Section 382(l)(5) cannot apply to the Second Ownership Change, and the § 382(a) limitation with respect to the Second Ownership Change will be zero. § 382(l)(5)(D) and § 1.382-9(n)(1).

(3) The limitation under § 382(l)(5)(D) with respect to the Second Ownership Change shall not apply to the portion of the taxable income for such year which is allocable to the period in such year on or before the date of the Second Ownership Change. Except as provided in § 382(h)(5), if applicable, and in the regulations, taxable income shall be allocated ratably to each day in the year. § 382(b)(3)(A).

Caveats

No opinion is expressed about the tax treatment of the transactions under other provisions of the Code or regulations or on the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions that are not specifically covered by the above rulings.

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 representatives.

Sincerely,

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