

**Internal Revenue Service**

Number: **200843024**

Release Date: 10/24/2008

Index Numbers: 332.00-00, 337.00-00,  
351.00-00

Department of the Treasury  
Washington, DC 20224

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

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B04

PLR-118756-08

Date:

July 16, 2008

LEGEND:

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4

Sub 5

Newco

LLC 1

LLC 2

LLC 3

LLC 4

Date 1

Date 2

a

b

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

This letter responds to your April 21, 2008 request for rulings on the federal income tax consequences of a series of partially completed and proposed transactions described below. The information provided in that request 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 penalties 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**

Parent is a widely held, publicly traded corporation, and is the common parent of an affiliated group whose includible corporations join in filing a consolidated federal income tax return. Parent wholly owns Sub 1 and Sub 1 wholly owns Sub 2. Sub 2 also owns all the membership interests in LLC 1, an entity intended to be disregarded as separate from Sub 2 for federal income tax purposes under § 301.7701-3 of the Procedure and Administration Regulations (a “disregarded entity”). Through LLC 1, Sub 2 owns all the common stock of Sub 3, a corporation that has elected to be taxable as a real estate investment trust (“REIT”) for federal income tax purposes, and a percent of the common stock of Sub 4, a REIT. Sub 2 also owns all the common stock of Sub 5, a REIT. Sub 3 owns b percent of the common stock of Sub 4. (Collectively, Sub 3, Sub 4 and Sub 5 are referred to as the “Sub REITs” and each is separately referred to as a “Sub REIT”). Sub 4 also owns all the common interests in LLC 2, a limited liability company that is treated as a partnership for federal income tax purposes. Each of the Sub REITs has preferred stock of nominal value outstanding intending to meet the requirements of § 856(a). Additionally, Sub 5 has two additional classes of preferred stock outstanding. One class is owned by Sub 2 (through LLC 4) and the other class is owned by Sub 1.

### **Proposed Transaction**

Parent has completed Step (i) (below) and proposes to undertake the remaining steps (collectively, the “Proposed Transaction”):

- (i) On Date 1, Sub 2 (through LLC 1) contributed cash to Sub 3. Sub 3 used this cash in addition to cash it had on hand to repay debt owed to Sub 1.
- (ii) Sub 1 will form LLC 3, an entity intended to be disregarded from Sub 1. Pursuant to state law, Sub 2 will merge with and into LLC 3 (the “First Liquidation”).
- (iii) LLC 1 will form a new REIT (“Newco”) with nominal capital.
- (iv) Pursuant to state law, each of the Sub REITs will merge with and into LLC 1, with LLC 1 as the surviving entity (the “Sub 3 Liquidation,” the “Sub 4 Liquidation,” and the “Sub 5 Liquidation,” respectively). (Collectively, the Sub 3 Liquidation, the Sub 4 Liquidation and the Sub 5 Liquidation are the “Second Liquidations.”) Simultaneously with the Second Liquidations, all the

- preferred stock of each of the Sub REITs will be retired in exchange for cash of equivalent value.
- (v) LLC 1 will make a legal distribution to LLC 3 of all of the assets and liabilities received in the Second Liquidations except for the common interests in LLC 2.
  - (vi) LLC 1 will make an election to be treated as an association taxable as a corporation for federal income tax purposes (the “First Reincorporation”). Following the First Reincorporation, LLC 1 is referred to as “New LLC 1.”
  - (vii) New LLC 1 will transfer all its interests in LLC 2 to Newco solely in exchange for all the stock of Newco (the “Second Reincorporation”).
  - (viii) LLC 3 will legally dissolve into Sub 1.
  - (ix) To satisfy the 100 shareholder requirement of § 856(a)(5), at some time prior to Date 2, Newco will issue preferred stock to investors in exchange for cash.

## **Representations**

### The First Liquidation

Parent makes the following representations regarding the First Liquidation:

- (a1) Sub 1, on the date of adoption of the plan of merger, and at all times until the final liquidating distribution is completed, will be the owner of at least 80 percent of the total combined voting power of all classes of stock of Sub 2 entitled to vote and the owner of at least 80 percent of the total value of all classes of Sub 2 stock (excluding nonvoting stock that is limited and preferred as to dividends and otherwise meets the requirements of § 1504(a)(4)).
- (b1) No shares of Sub 2 stock will have been redeemed during the three years preceding the adoption of the plan of merger of Sub 2.
- (c1) All distributions from Sub 2 to Sub 1 pursuant to the plan of merger will be made within a single taxable year of Sub 2.
- (d1) As soon as the first liquidating distribution has been made, Sub 2 will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and distributing its remaining assets to its shareholders.
- (e1) Sub 2 will retain no assets following the First Liquidation.

- (f1) Sub 2 will not have acquired assets in any nontaxable transaction as part of the merger plan.
- (g1) No assets of Sub 2 have been, or will be, disposed of by either Sub 2 or Sub 1 except for dispositions in the ordinary course of business and dispositions occurring more than three years prior to adoption of the plan of merger.
- (h1) The First Liquidation will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation ("Recipient") of any of the businesses or assets of Sub 2, if persons holding, directly or indirectly, more than 20 percent in value of the Sub 2 stock also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of § 318(a) as modified by § 304(c)(3).
- (i1) Before adoption of the merger plan, no assets of Sub 2 will have been distributed in kind, transferred, or sold to Sub 1, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years before adoption of the merger plan.
- (j1) Sub 2 will report all earned income represented by assets that will be distributed to Sub 1 such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, dividends, etc.
- (k1) The fair market value of the assets of Sub 2 will exceed its liabilities both at the date of the adoption of the plan of merger and immediately before the Sub 2 Liquidation. The total fair market value of the assets of Sub 2 transferred to Sub 1 by Sub 2 will exceed the sum of (i) the amount of liabilities assumed by Sub 1 and (ii) the amount of liabilities owed to Sub 1.
- (l1) There is no intercorporate debt existing between Sub 1 and Sub 2 that was issued, acquired, or will be settled at a discount, and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years before the date of adoption of the merger plan.
- (m1) Sub 1 is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.
- (n1) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to the First Liquidation have been fully disclosed.
- (o1) Sub2 is neither a regulated investment company nor a real estate investment trust subject to § 332(c).

### The Second Liquidations

Parent makes the following representations regarding the Second Liquidations:

- (a2) Sub 1, on the date of adoption of the plan of merger, and at all times until the final liquidating distribution is completed, will be the owner of at least 80 percent of the total combined voting power of all classes of stock entitled to vote and the owner of at least 80 percent of the total value of all classes of each Sub REIT (excluding nonvoting stock that is limited and preferred as to dividends and otherwise meets the requirements of § 1504(a)(4)).
- (b2) No shares of any of the Sub REITs will have been redeemed pursuant to the merger plan.
- (c2) All distributions from each of the Sub REITs to Sub 1 pursuant to the plans of merger will be made within a single taxable year of each of the Sub REITs.
- (d2) As soon as the first liquidating distribution has been made, each Sub REIT will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and distributing its remaining assets to its shareholders.
- (e2) None of the Sub REITs will retain assets following the Second Liquidations.
- (f2) None of the Sub REITs will have acquired assets in any nontaxable transaction pursuant to the merger plan.
- (g2) No assets of any of the Sub REITs have been or will be disposed of by either the Sub REITs or Sub 1 except for dispositions in the ordinary course of business and dispositions occurring more than three years before adoption of the plan of merger.
- (h2) Except for the First and Second Reincorporations, the Second Liquidations will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation ("Recipient") of any of the businesses or assets of the Sub REITs, if persons holding, directly or indirectly, more than 20 percent in value of any of the Sub REIT stock also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of § 318(a) as modified by § 304(c)(3).
- (i2) Before adoption of the merger plans, no assets of any of the Sub REITs will have been distributed in kind, transferred, or sold to Sub 1, except for (i) transactions occurring in the normal course of business and (ii) transactions

- occurring more than three years before adoption of the merger plan. For purposes of this representation, distributions of earnings to comply with § 857(a)(1) are treated as distributions in the ordinary course of business.
- (j2) Each Sub REIT will report all earned income represented by assets that will be distributed to Sub 1, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
  - (k2) The fair market value of the assets of each Sub REIT will each exceed its respective liabilities both at the date of the adoption of the plan of merger and immediately before each of the Second Liquidations. The total fair market value of the assets of each Sub REIT transferred to Sub 1 by each Sub REIT will each exceed the sum of (i) the amount of liabilities assumed by Sub 1 and (ii) the amount of liabilities owed to Sub 1.
  - (l2) There is no intercorporate indebtedness existing between Sub 1 and any of the Sub REITs that was issued, acquired, or will be settled at a discount, except for transactions that occurred more than three years before the date of adoption of the merger plans.
  - (m2) Sub 1 is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.
  - (n2) The fair market value of the consideration received by Sub 1 and by the minority shareholders for each share of Sub REIT stock will approximately equal the fair market value of that stock.
  - (o2) The minority shareholders of each Sub REIT will receive cash of equivalent value in exchange for their shares. Accordingly, none of the assets being distributed to the minority shareholders (i) has a fair market value greater than its basis in the hands of any of the Sub REITs, (ii) is an installment obligation, (iii) is property described in the recapture provisions of the Code, or (iv) is property for which any of the Sub REITs obtained a deduction.
  - (p2) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the Second Liquidations have been fully disclosed.

### The First Reincorporation

Parent makes the following representations regarding the First Reincorporation:

- (a3) No stock or securities will be issued (or deemed issued) for services rendered to or for the benefit of New LLC 1 in connection with the First Reincorporation.

- (b3) No stock or securities will be issued (or deemed issued) for indebtedness of New LLC 1 that is not evidenced by a security or for interest on indebtedness of New LLC 1 which accrued on or after the beginning of the holding period of Sub 1 for the debt.
- (c3) The First Reincorporation is not the result of the solicitation by a promoter, broker, or investment house.
- (d3) Sub 1 will not retain any rights in the property transferred to New LLC 1.
- (e3) The value of the stock of New LLC 1 received in exchange for accounts receivable will be equal to the net value of the accounts transferred (*i.e.*, the face amount of the accounts receivable previously included in income less the amount of the reserve for bad debts).
- (f3) The adjusted basis and the fair market value of the assets to be transferred by Sub 1 to New LLC 1 will, in each instance, be equal to or exceed the sum of the liabilities to be assumed by New LLC 1 (within the meaning of § 357(d)).
- (g3) The liabilities of Sub 1 to be assumed (within the meaning of § 357(d)) by New LLC 1 were incurred in the ordinary course of business and are associated with the assets to be transferred.
- (h3) There is no indebtedness between Sub 1 and New LLC 1 and there will be no indebtedness created in favor of Sub 1 as a result of the First Reincorporation.
- (i3) The transfers and exchanges will occur under a plan agreed upon before the First Reincorporation in which the rights of the parties are defined.
- (j3) All exchanges will occur on approximately the same date.
- (k3) There is no plan or intention on the part of New LLC 1 to redeem or otherwise reacquire any of the stock of New LLC 1 that will be issued in the First Reincorporation.
- (l3) Taking into account any issuance of additional shares of New LLC 1 stock; any issuance of stock for services; the exercise of any New LLC 1 stock rights, warrants, or subscriptions; a public offering of New LLC 1; and the sale, exchange, transfer by gift, or other disposition of any of the stock of New LLC 1 to be received in the exchange, Sub 1 will be in “control” of New LLC 1 within the meaning of § 368(c).



- (m3) Sub 1 will receive stock of New LLC 1 with a value approximately equal to the fair market value of the property transferred to New LLC 1. New LLC 1 will not transfer any other property to Sub 1.
- (n3) New LLC 1 will remain in existence and retain and use the property transferred to it in a trade or business.
- (o3) The fair market value of the transferred property will exceed the sum of the amount of liabilities of Sub 1 that are assumed by New LLC 1 in connection with the transfer. Sub 1 will not receive any property other than New LLC 1 stock in the First Reincorporation.
- (p3) The fair market value of the assets of New LLC 1 will exceed the amount of its liabilities immediately after the transfer.
- (q3) Except for the formation of Newco, there is no plan or intention to dispose of the transferred property other than in the normal course of business operations.
- (r3) New LLC 1 will not be an investment company within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii).
- (s3) Sub 1 is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the stock of New LLC 1 received in the exchange will not be used to satisfy the indebtedness of such debtor.
- (t3) New LLC 1 will not be a “personal service corporation” within the meaning of § 269A.
- (u3) Pursuant to § 362(e)(2), a timely election will be made to reduce the stock basis in New LLC 1 to the fair market value of the assets transferred.

### The Second Reincorporation

Parent makes the following representations regarding the Second Reincorporation:

- (a4) No stock or securities will be issued (or deemed issued) for services rendered to or for the benefit of Newco in connection with the Second Reincorporation.
- (b4) No stock or securities will be issued (or deemed issued) for indebtedness of Newco that is not evidenced by a security or for interest on indebtedness of Newco which accrued on or after the beginning of the holding period of New LLC 1 for the debt.
- (c4) The Second Reincorporation is not the result of the solicitation by a promoter, broker, or investment house.

- (d4) New LLC 1 will not retain any rights in the property transferred to Newco.
- (e4) The value of the stock of Newco received in exchange for accounts receivable will be equal to the net value of the accounts transferred, i.e., the face amount of the accounts receivable previously included in income less the amount of the reserve for bad debts.
- (f4) The adjusted basis and the fair market value of the assets to be transferred by New LLC 1 to Newco will, in each instance, be equal to or exceed the sum of the liabilities to be assumed by Newco (within the meaning of § 357(d)).
- (g4) The liabilities of New LLC 1 to be assumed (within the meaning of § 357(d)) by Newco were incurred in the ordinary course of business and are associated with the assets to be transferred.
- (h4) There is no indebtedness between New LLC 1 and Newco and there will be no indebtedness created in favor of New LLC 1 as a result of the Second Reincorporation.
- (i4) The transfers and exchanges will occur under a plan agreed upon before the Second Reincorporation in which the rights of the parties are defined.
- (j4) All exchanges will occur on approximately the same date.
- (k4) There is no plan or intention on the part of Newco to redeem or otherwise reacquire any of stock issued in the Second Reincorporation.
- (l4) Taking into account any issuance of additional shares of Newco stock; any issuance of stock for services; the exercise of any Newco stock rights, warrants, or subscriptions; a public offering of Newco; and the sale, exchange, transfer by gift, or other disposition of any of the shares of Newco stock to be received in the exchange, New LLC 1 will be in "control" of Newco within the meaning of § 368(c).
- (m4) The fair market value of the transferred property will exceed the sum of the amount of liabilities of New LLC 1 that are assumed by Newco in connection with the transfer.
- (n4) The fair market value of the assets of Newco will exceed the amount of its liabilities immediately after the transfer.
- (o4) Newco will remain in existence and will use the assets transferred to it in a business.

- (p4) There is no plan or intention by Newco to dispose of the transferred property other than in the normal course of business operations.
- (q4) Newco will not be an investment company within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii).
- (r4) New LLC 1 is not and will not be under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the stock of Newco received in the Second Reincorporation will not be used to satisfy the indebtedness of such debtor.
- (s4) Newco will not be a “personal service corporation” within the meaning of § 269A.
- (t4) The assets transferred to Newco in the Second Reincorporation will not have a net built-in gain as that term is defined in § 1.337(d)-7(b)(1).
- (u4) Pursuant to § 362(e)(2), a timely election will be made to reduce the stock basis in Newco to the fair market value of the assets transferred.

#### With respect to the Proposed Transaction

- (a5) Sub 1 will pay all expenses associated with the Proposed Transaction.

### **Rulings**

#### The First Liquidation

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

- (1A) Sub 1 will not recognize any gain or loss upon the actual or constructive receipt of the assets of Sub 2 and the assumption of Sub 2 liabilities (§ 332(a)).
- (2A) Sub 2 will not recognize any gain or loss on the distribution of its assets to, and assumption of liabilities by, Sub 1 in the First Liquidation (§ 337(a)).
- (3A) Sub 1’s basis in each asset received or deemed received from Sub 2 in the First Liquidation will equal the basis of that asset in the hands of Sub 2 immediately before the First Liquidation (§ 334(b)(1)).
- (4A) Sub 1’s holding period in each asset received or deemed received from Sub 2 in the First Liquidation will include the period during which that asset was held by Sub 2 (§ 1223(2)).

- (5A) Sub 1 will succeed to and take into account the items of Sub 2 as described in § 381(c). These items will be taken into account by Sub 1 subject to the applicable conditions and limitations specified in §§ 381, 382, 383, and 384 and the regulations thereunder (§ 381(a) and § 1.381(a)-1).
- (6A) Sub 1 will succeed to and take into account the earnings and profits or deficit in earnings and profits of Sub 2 as of the date of the First Liquidation. Any deficit in earnings and profits will be used only to offset earnings and profits accumulated after the date of the First Liquidation (§ 381(c)(2)(A), §§ 1.381(c)(2)-1 and 1.312-11(a)).

### The Second Liquidations

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

- (1B) Sub 1 will not recognize any gain or loss upon the actual or constructive receipt of the assets of the Sub REITs and the assumption of Sub REITs' liabilities (§ 332(a)).
- (2B) In accordance with § 332(c), Sub 1 shall recognize and treat as a dividend an amount equal to the deduction for dividends paid allowable to each Sub REIT by reason of the Second Liquidations.
- (3B) The Sub REITs will not recognize any gain or loss on the distribution of assets to, and assumption of liabilities by, Sub 1 in the Second Liquidations (§ 337(a)).
- (4B) Sub 1's basis in each asset received or deemed received from the Sub REITs in the Second Liquidations will equal the basis of that asset in the hands of the Sub REITs immediately before the Second Liquidations (§ 334(b)(1)).
- (5B) Sub 1's holding period in each asset received or deemed received from the Sub REITs in the Second Liquidations will include the period during which that asset was held by Sub REITs (§ 1223(2)).
- (6B) Sub 1 will succeed to and take into account the items of the Sub REITs as described in § 381(c). These items will be taken into account by Sub 1 subject to the applicable conditions and limitations specified in §§ 381, 382, 383, and 384 and the regulations thereunder (§ 381(a) and § 1.381(a)-1).
- (7B) Sub 1 will succeed to and take into account the earnings and profits or deficit in earnings and profits of the Sub REITs as of the date of the Second

Liquidations. Any deficit in earnings and profits will be used only to offset earnings and profits accumulated after the date of the Second Liquidations (§ 381(c)(2)(A), §§ 1.381(c)(2)-1 and 1.312-11(a)).

### The First Reincorporation

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

- (1C) The First Reincorporation will be treated as a transfer by Sub1 to New LLC 1 of all of the assets and liabilities of LLC 1 (remaining after step (v)) solely in exchange for New LLC 1 stock (§ 301.7701-3(g)(1)(iv)).
- (2C) Sub 1 will not recognize any gain or loss in the First Reincorporation (§§ 351(a) and 357(a)).
- (3C) New LLC 1 will not recognize any gain or loss in the First Reincorporation (§ 1032(a)).
- (4C) The basis in the New LLC 1 stock received by Sub 1 in the First Reincorporation will not exceed the aggregate fair market value of the assets transferred to New LLC 1 in the First Reincorporation (§ 362(e)(2)(C)).
- (5C) The holding period of the New LLC 1 shares received by Sub 1 will include the holding period of the assets transferred to New LLC 1, provided that such transferred assets were capital assets on the date of the exchange (§ 1223(1)).
- (6C) The basis in each asset received by New LLC 1 in the First Reincorporation will be the same as the basis in that asset in the hands of Sub 1 immediately before the First Reincorporation (§ 362(a)).
- (7C) The holding period of New LLC 1 of each asset received in the First Reincorporation will include the holding period during which such asset was held by Sub 1 (§ 1223(2)).

### The Second Reincorporation

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

- (1D) New LLC 1 will not recognize any gain or loss in the Second Reincorporation (§§ 351(a) and 357(a); Rev. Rul. 77-449, 1977-2 C.B. 110).

- (2D) Newco will not recognize any gain or loss in the Second Reincorporation (§ 1032(a)).
- (3D) The basis in the Newco stock received by New LLC 1 in the Second Reincorporation will not exceed the aggregate fair market value of the assets transferred to Newco in the Second Reincorporation (§ 362(e)(2)(C)).
- (4D) The holding period of the Newco shares received by New LLC 1 will include the holding period of the assets transferred to Newco, provided that such transferred assets were capital assets on the date of the exchange (§ 1223(1)).
- (5D) The basis in each asset received by Newco in the Second Reincorporation will be the same as the basis in that asset in the hands of New LLC 1 immediately before the Second Reincorporation (§ 362(a)).
- (6D) The holding period of Newco of each asset received in the Second Reincorporation will include the holding period during which such asset was held by New LLC 1 (§ 1223(2)).

### **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. In particular, no ruling is expressed regarding whether any entity that is represented to be a REIT qualifies as a REIT under part II of subchapter M of Chapter 1 of the Code.

### **Procedural Statements**

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter must be attached to the federal income tax return of each party involved in the Proposed Transaction for the taxable year in which the Proposed Transaction is 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 this ruling letter.

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

Sincerely,

*Richard K. Passales*

Richard K. Passales,  
Senior Counsel, Branch 4  
Office of Associate Chief Counsel  
(Corporate)

cc: