Internal Revenue Service

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Department of the Treasury
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[Third Party Communication:
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Person To Contact:
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Refer Reply To:
CC:CORP:6
PLR-104032-09
Date:
July 30, 2009

Legend

Holding 1

Holding 2

Parent

Foreign Company A

LLC 1

State A

Country A

Country B

Date A

Month A

$a

b

c

d

e

f

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h

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Dear :

This letter responds to your January 23, 2009, request for rulings on certain federal income tax consequences of a series of transactions. The information provided in that letter and in later correspondence is summarized below.

Summary of Facts

Holding 1 is a State A holding company and the common parent of an affiliated group of corporations for which it files a consolidated return. Holding 2 is a State A investment holding company, which prior to the transactions was wholly owned by Parent, a Country A limited partnership. Prior to the transactions, Holding 1 had three classes of common stock outstanding, consisting of Class A voting common stock, Class B non-voting common stock, and Class C non-voting common stock. Holding 2 had one class of common stock outstanding. Also prior to the transactions, Holding 2's assets consisted of approximately $a, a b% interest in LLC 1, and c shares of Holding 1's Class A voting common stock, which represented d% of Holding 1's outstanding shares and approximately e% of Holding 2's value.

Completed Transactions

During Month A, the parties completed the following series of transactions:

(i) Holding 2 transferred its $a in cash and its entire interest in LLC 1 to Parent in redemption of f outstanding shares of Holding 2 having an equivalent value (the "Redemption").

(ii) Parent exchanged all of the outstanding shares of Holding 2 for g shares of Holding 1 stock, consisting of h shares of newly-issued Holding 1 Class A voting common stock and i shares of newly-issued Holding 1 Class B non-voting common stock, having an aggregate value equal to the c shares of Holding 1 Class A voting common stock owned by Holding 2 (the "Exchange").

(iii) Pursuant to the Upstream Merger Resolutions adopted on Date A, Holding 2 merged upstream with and into Holding 1 (the "Upstream Merger"). The c shares of Holding 1 Class A voting common stock previously owned by Holding 2 became treasury shares.

(iv) Foreign Company A, organized under the laws of Country B, purchased for cash all of the outstanding shares of Holding 1 from Holding 1's shareholders, including the shares of Holding 1 Class A voting common stock and Holding 1 Class B non-voting common stock issued to Parent in the Exchange.

Representations

Holding 1 and Holding 2 have made the following representations in connection with the Exchange and the Upstream Merger:

(a) Holding 1, on the date of the adoption of the Upstream Merger Resolutions, and at all times until the final liquidating distribution was completed by the consummation of the Upstream Merger, was the owner of at least % of the single outstanding class of Holding 2 stock.

(b) All distributions from Holding 2 to Holding 1 pursuant to the Upstream Merger Resolutions were made within a single taxable year of Holding 2.

(c) As soon as the Upstream Merger occurred, Holding 2 ceased to be a going concern.

(d) Holding 2 retained no assets following the Upstream Merger.

(e) Holding 2 did not acquire assets in any nontaxable transaction at any time, except for acquisitions occurring more than 3 years prior to the date of the adoption of the Upstream Merger Resolutions.

(f) No assets of Holding 2 were disposed of by either Holding 2 or Holding 1 within the three years prior to the adoption of the Upstream Merger Resolutions, except for (i) dispositions pursuant to the Redemption; (ii) dispositions in the ordinary course of

business; and (iii) a sale of interests in an LLC in an unrelated transaction, almost two years prior to the transactions at issue.

(g) Except for the unrelated sale of the LLC interests (which occurred at a time when neither Parent nor Holding 2 had a plan to enter into either the Exchange or the Upstream Merger transactions), the liquidation of Holding 2 was not preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation (Recipient) of any of the businesses or assets of Holding 2, if persons holding, directly or indirectly, more than % in value of the Holding 2 stock also hold, directly or indirectly, more than % 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) of the Code as modified by § 304(c)(3).

(h) Prior to the adoption of the Upstream Merger Resolutions, no assets of Holding 2 were distributed in kind, transferred, or sold to Holding 1, except for (i) transactions occurring in the normal course of business; and (ii) transactions occurring more than 3 years prior to the adoption of the Upstream Merger Resolutions.

(i) Holding 2 will report all earned income represented by assets that were distributed to its shareholder in the Upstream Merger such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

(j) The fair market value of the assets of Holding 2 exceeded its liabilities both at the date of the adoption of the Upstream Merger Resolutions and immediately prior to the time the Upstream Merger occurred.

(k) There was no intercorporate debt existing between Holding 1 and Holding 2 and none has been canceled, forgiven, or discounted, except for transactions occurring prior to the date Holding 1 acquired the Holding 2 stock.

(l) Holding 1 is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.

(m) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the proposed liquidation of Holding 2 have been fully disclosed.

(n) The Upstream Merger was consummated pursuant to the laws of State A.

(o) In the Exchange, Holding 1 acquired all of the outstanding stock of Holding 2.

(p) Immediately prior to the Exchange, Holding 2 owned, directly or indirectly (after taking into account the application of § 318(a)), less than 50% in value of the stock of Holding 1.

(q) No election under § 338 has been or will be made in connection with the Exchange.

(r) Other than in the transactions described herein, Holding 1 has not purchased and has no plan or intention to purchase during the consistency period (as defined in § 338(h)(4)) any assets of Holding 2 or any affiliate of Holding 2, as defined in § 338(h)(6).

(s) The fair market value of the h shares of Holding 1 Class A common stock and the i shares of Holding 1 Class B common stock issued by Holding 1 to Parent in the Exchange is equal to the fair market value of the Holding 2 shares transferred by Parent to Holding 1 in the Exchange.

(t) There was no reduction in the fair market value of the c shares of Holding 1 Class A common stock owned by Holding 2 immediately prior to the Exchange as a result of the Exchange and the issuance of the h shares of Holding 1 Class A common stock and the i shares of Holding 1 Class B common stock by Holding 1 to Parent in the Exchange.

(u) Immediately after the Exchange, Parent owned (after taking the application of § 318(a) into account) less than 50% of the value of the stock of Holding 1.

(v) As of the date of the transfer of Holding 2 shares to Holding 1 (i.e., the Exchange), and the date of the Upstream Merger, and for the five year period ending on the date of each transaction, respectively, neither Holding 1 nor Holding 2 was a U.S. real property holding corporation within the meaning of § 897(c)(2).

Rulings

Based solely upon the information submitted and representations made, we rule as follows with respect to the Exchange and the Upstream Merger:

(1) The acquisition of all of the outstanding stock of Holding 2 by Holding 1 in the Exchange will be treated as a qualified stock purchase within the meaning of § 338(d)(3).

(2) No income, gain or loss will be recognized by Holding 1 in the Exchange. Section 1032(a).

(3) No income, gain or loss will be recognized by Holding 2 in the Exchange provided no election under § 338 has been or will be made in connection with the Exchange.

(4) The Upstream Merger will be treated as a complete liquidation of Holding 2 under § 332. Section 332(b) and Treas. Reg. § 1.332-2(d).

(5) No income, gain or loss will be recognized by Holding 1 in the Upstream Merger. Section 332(a).

(6) No income, gain or loss will be recognized by Holding 2 in the Upstream Merger. Section 337(a).

Caveats

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

Procedural Statements

This letter is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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Alfred C. Bishop, Jr.
Branch Chief, Branch 6
Office of Associate Chief Counsel (Corporate)

cc: