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Date:
September 24, 2009

LEGEND

Parent =

Holdco =

S1 =

S2 =

State X =

State Y =

Business A =

a =

b =

c =

d =

Dear _____ :

This letter responds to your May 26, 2009 request for rulings on certain federal income tax consequences of the Proposed Transaction. 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.

STATEMENT OF FACTS

Parent, a State X publicly traded holding company, is the common parent of an affiliated group of corporations filing a consolidated federal income tax return. Parent owns all of Holdco, an intermediate holding company. Holdco has only voting stock that is authorized or issued and outstanding. Holdco owns all of S1 and S2. S1 is engaged in Business A and is incorporated in both State X and State Y. S2 is incorporated in State Y and also is engaged in Business A. The assets comprising the State Y operations are held as a tenancy in common ("TIC") owned a% by S1 and b% by S2, notwithstanding the fact that all of the income and expenses of the State Y operations have been reported on S2's federal and state tax returns. Furthermore, Parent has taken the position that the TIC is not a partnership for federal income tax purposes.

PROPOSED TRANSACTION

For administrative and regulatory purposes, Parent proposes the following transaction:

- (i) S1 will convert under State X law to a single-member limited liability company ("S1 LLC") that will be disregarded as an entity separate from Holdco (the "Reorganization").
- (ii) S1 LLC will transfer its a% interest in the TIC to S2 for no consideration (the "TIC Transfer").
- (iii) S1 LLC will convert back to a corporation ("New S1") under State X law (the "Reincorporation").

S1's interest in the TIC is the only asset that will actually move for state law purposes. It represents approximately c% of S1's gross assets and d% of S1's net assets.

The initial conversion of S1 to S1 LLC under State X law will cause S1 no longer to be incorporated under the laws of State Y. When S1 LLC converts back to a corporation, it will do so solely under State X law. As a result, New S1 will not be incorporated under or subject to the laws of State Y.

REPRESENTATIONS

Reorganization

Parent makes the following representations with respect to the Reorganization, described above in step (i):

- (1a) The fair market value of the Holdco stock deemed to be received by Holdco in the Reorganization will be approximately equal to the fair market value of the S1 stock deemed to be surrendered in the exchange.
- (1b) No property, other than the deemed shares of Holdco voting stock, will be issued by Holdco as consideration with respect to the Reorganization.
- (1c) Upon the Reorganization, in cancellation of its S1 stock, Holdco will acquire a direct interest in the S1 business enterprise through S1 LLC.
- (1d) Holdco will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by S1 immediately prior to the transaction. For purposes of this representation, amounts used by S1 to pay its reorganization expenses, amounts paid by S1 to shareholders who receive cash or other property, and all redemptions and distributions (except for regular, normal dividends) made by S1 immediately preceding the transfer will be included as assets of S1 held immediately prior to the transaction.
- (1e) During the five-year period ending on the date of the Reorganization: (1) neither Holdco, nor any person related (as defined in Treas. Reg. § 1.368-1(e)(4)) to Holdco, will have acquired S1 stock with consideration other than Holdco stock; (2) neither S1, nor any person related (as defined in Treas. Reg. § 1.368-1(e)(4) determined without regard to Treas. Reg. § 1.368-1(e)(4)(i)(A)) to S1, will have acquired or redeemed S1 stock with consideration other than Holdco stock or S1 stock; and (3) no distribution will have been made with respect to the stock of S1, other than ordinary, normal, regular dividend distributions made pursuant to the historic dividend paying practice of S1, either directly or through any transaction, agreement, or

- arrangement with any other person.
- (1f) Holdco has no plan or intention to sell or otherwise dispose of any of the assets of S1 acquired in the transaction, except for dispositions made in the ordinary course of business or transfers described in section 368(a)(2)(C) or Treas. Reg. § 1.368-2(k).
 - (1g) S1 will be treated as distributing the Holdco stock deemed received in the Reorganization, and its other properties, in pursuance of the plan of reorganization.
 - (1h) The liabilities of S1 assumed by Holdco (as determined under section 357(d)) were incurred by S1 in the ordinary course of its business and are associated with the assets deemed transferred.
 - (1i) Following the transaction, Holdco will continue, either directly or through one or more members of Holdco's qualified group (within the meaning of Treas. Reg. § 1.368-1(d)(4)(ii)), the historic business of S1 or use a significant portion of S1's historic business assets in a business.
 - (1j) Holdco and S1 will pay their respective expenses, if any, incurred in connection with the transaction.
 - (1k) There is no intercorporate indebtedness existing between Holdco and S1 that was issued, acquired, or will be settled at a discount.
 - (1l) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
 - (1m) The total fair market value of the assets of S1 deemed transferred to Holdco in the Reorganization will exceed the sum of: (i) the amount of any liabilities assumed (within the meaning of section 357(d)) by Holdco in the exchange, (ii) the amount of any liabilities owed to Holdco by S1 that are discharged or extinguished in connection with the exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under section 361(a) without recognition of gain) received by S1 in the exchange. The fair market value of the assets of Holdco will exceed the amount of Holdco's liabilities immediately after the Reorganization.
 - (1n) S1 is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).

- (1o) Items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations as a result of the Reorganization (see Treas. Reg. §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13, as published by T.D. 8597).

TIC Transfer

Parent makes the following representations with respect to the TIC Transfer, described above in step (ii):

- (2a) No stock or securities will be issued for services rendered to or for the benefit of S2 in connection with the TIC Transfer.
- (2b) No stock or securities will be issued for indebtedness of S2 that is not evidenced by a security or for interest on indebtedness of S2 that accrued on or after the beginning of the holding period of Holdco for the debt.
- (2c) The transfer is not the result of the solicitation by a promoter, broker, or investment house.
- (2d) Neither Holdco nor S1 LLC will retain any rights in the TIC interest transferred to S2.
- (2e) The adjusted basis of the TIC interest to be transferred by Holdco to S2 will be equal to or exceed the sum of the liabilities to be assumed (within the meaning of section 357(d)) by S2.
- (2f) The total fair market value of the assets transferred to S2 in the TIC Transfer will exceed the sum of: (i) the amount of any liabilities assumed (within the meaning of section 357(d)) by S2 in the exchange, (ii) the amount of any liabilities owed to S2 by Holdco that are discharged or extinguished in connection with the exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock permitted to be received under section 351(a) without recognition of gain) received by Holdco in the exchange. The fair market value of the assets of S2 will exceed the amount of its liabilities immediately after the TIC Transfer.
- (2g) The liabilities of Holdco to be assumed (within the meaning of section 357(d)) by S2 were incurred in the ordinary course of business and are associated with the assets to be transferred.

- (2h) The aggregate fair market value of the TIC interest to be transferred by Holdco to S2 will equal or exceed Holdco's aggregate adjusted basis in that TIC interest.
- (2i) There is no indebtedness between S2 and Holdco and there will be no indebtedness created in favor of Holdco as a result of the TIC Transfer.
- (2j) The Reorganization and the TIC Transfer will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
- (2k) All exchanges will occur on approximately the same date.
- (2l) There is no plan or intention on the part of S2 to redeem or otherwise reacquire any stock deemed to be issued in the TIC Transfer.
- (2m) Taking into account any issuance, deemed or otherwise, of additional shares of S2 stock; any issuance of stock for services; the exercise of any S2 stock rights, warrants, or subscriptions; a public offering of S2 stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of S2 deemed to be received in the TIC Transfer, Holdco will be in control of S2 within the meaning of section 368(c).
- (2n) Holdco will be deemed to receive stock of S2 with a value approximately equal to the fair market value of the TIC interest to be transferred to S2.
- (2o) S2 will remain in existence and will retain and use the TIC interest transferred to it in a trade or business.
- (2p) There is no plan or intention by S2 to sell or otherwise dispose of the TIC interest other than in the normal course of business operations.
- (2q) Each of the parties to the TIC Transfer will pay its own expenses, if any, incurred in connection with the TIC Transfer.
- (2r) S2 will not be an investment company within the meaning of section 351(e)(1) and Treas. Reg. § 1.351-1(c)(1)(ii).
- (2s) Holdco is not under the jurisdiction of a court in a Title 11 or similar case (within the meaning of section 368(a)(3)(A)) and the stock deemed received in the exchange will not be used to satisfy the indebtedness of such debtor.
- (2t) S2 will not be a "personal service corporation" within the meaning of section 269A.

Reincorporation

Parent makes the following representations with respect to the Reincorporation, described above in step (iii):

- (3a) No stock or securities will be issued for services rendered to or for the benefit of New S1 in connection with the Reincorporation.
- (3b) No stock or securities will be issued for indebtedness of New S1 that is not evidenced by a security or for interest on indebtedness of New S1 which accrued on or after the beginning of the holding period of Holdco for the debt.
- (3c) The transfer is not the result of the solicitation by a promoter, broker, or investment house.
- (3d) Holdco will not retain any rights in the property transferred to New S1.
- (3e) The adjusted basis of the assets to be transferred by Holdco to New S1 will, in each instance, be equal to or exceed the sum of the liabilities to be assumed (within the meaning of section 357(d)) by New S1.
- (3f) The total fair market value of the assets transferred to New S1 in the Reincorporation will exceed the sum of: (i) the amount of any liabilities assumed (within the meaning of section 357(d)) by New S1 in the exchange, (ii) the amount of any liabilities owed to New S1 by Holdco that are discharged or extinguished in connection with the exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock permitted to be received under section 351(a) without recognition of gain) received by Holdco in the exchange. The fair market value of the assets of New S1 will exceed the amount of its liabilities immediately after the Reincorporation.
- (3g) The aggregate fair market value of the assets deemed to be transferred by Holdco to New S1 will equal or exceed Holdco's aggregate adjusted bases in those assets.
- (3h) The liabilities of Holdco to be assumed (within the meaning of section 357(d)) by New S1 were incurred in the ordinary course of business and are associated with the assets to be transferred.
- (3i) There is no indebtedness between New S1 and Holdco and there will be no indebtedness created in favor of Holdco as a result of the Reincorporation.

- (3j) The Reorganization and the Reincorporation will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
- (3k) All exchanges will occur on approximately the same date.
- (3l) There is no plan or intention on the part of New S1 to redeem or otherwise reacquire any stock or indebtedness to be issued or deemed to be issued in the Reincorporation.
- (3m) Taking into account any issuance, deemed or otherwise, of additional shares of New S1 stock; any issuance of stock for services; the exercise of any New S1 stock rights, warrants, or subscriptions; a public offering of New S1 stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of New S1 deemed to be received in the Reincorporation, Holdco will be in control of New S1 within the meaning of section 368(c).
- (3n) Holdco will be deemed to receive stock of New S1 or other property approximately equal to the fair market value of the assets deemed to be transferred to New S1.
- (3o) New S1 will remain in existence and will retain and use the property deemed transferred to it in a trade or business.
- (3p) There is no plan or intention by New S1 to sell or otherwise dispose of any of the transferred assets other than in the normal course of business operations.
- (3q) Each of the parties to the Reincorporation will pay its own expenses, if any, incurred in connection with the Reincorporation.
- (3r) New S1 will not be an investment company within the meaning of section 351(e)(1) and Treas. Reg. § 1.351-1(c)(1)(ii).
- (3s) Holdco is not under the jurisdiction of a court in a Title 11 or similar case (within the meaning of section 368(a)(3)(A)) and the stock received in the exchange will not be used to satisfy the indebtedness of such debtor.
- (3t) New S1 will not be a “personal service corporation” within the meaning of section 269A.

RULINGSReorganization

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

- (1) For federal income tax purposes, the Reorganization will be treated as a transfer by S1 of substantially all of its assets to Holdco solely in exchange for Holdco voting stock and the assumption of the liabilities of S1, followed by the distribution by S1 of the Holdco voting stock to Holdco in complete liquidation.
- (2) The deemed transfer by S1 of substantially all of its assets to Holdco solely in exchange for Holdco voting stock and the assumption of the liabilities of S1, followed by the distribution by S1 of the Holdco voting stock to Holdco in complete liquidation, will qualify as a reorganization under section 368(a)(1)(C). The Reorganization will not be disqualified or recharacterized by reason of the TIC Transfer or the Reincorporation. Section 368(a)(2)(C) and Treas. Reg. § 1.368-2(k). S1 and Holdco will each be a “party to a reorganization” within the meaning of section 368(b).
- (3) No gain or loss will be recognized by S1 on the deemed transfer of substantially all of its assets to Holdco solely in exchange for shares of Holdco voting stock and the assumption by Holdco of the liabilities of S1. Sections 361(a) and 357(a).
- (4) No gain or loss will be recognized by S1 on the deemed distribution of Holdco voting stock to Holdco. Section 361(c).
- (5) No gain or loss will be recognized by Holdco upon the deemed receipt of the assets of S1 solely in exchange for Holdco voting stock. Section 1032(a).
- (6) The basis of the assets of S1 in the hands of Holdco will be the same as the basis of those assets in the hands of S1 immediately prior to the Reorganization. Section 362(b).
- (7) The holding period of the assets of S1 in the hands of Holdco will include the period during which those assets were held by S1. Section 1223(2).
- (8) No gain or loss will be recognized by Holdco upon the deemed receipt of Holdco voting stock solely in exchange for S1 stock. Section 354 (a)(1).

- (9) Under section 381(a) and Treas. Reg. § 1.381-1, the taxable year of S1 will end on the effective date of the closing of the Reorganization, and Holdco will succeed to and take into account the items of S1 described in section 381(c), subject to the provisions and limitations specified in sections 381, 382, 383, and 384, and the regulations thereunder.

TIC Transfer

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the TIC Transfer:

- (10) For federal income tax purposes, the TIC Transfer will be treated as the transfer by Holdco of S1 LLC's interest in the TIC to S2 in deemed exchange for shares of S2 stock.
- (11) No gain or loss will be recognized by Holdco on the TIC Transfer. Sections 351(a) and 357(a).
- (12) No gain or loss will be recognized by S2 on the TIC Transfer. Section 1032(a).
- (13) At the time that Holdco determines its basis adjustments under Treas. Reg. § 1.1502-32 with respect to its stock in S2, such adjustments should be consistent with S1's and S2's formal ownership percentages in the TIC.

Reincorporation

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

- (14) For federal income tax purposes, the Reincorporation will be treated as the transfer by Holdco of the assets remaining in S1 LLC after the TIC Transfer to New S1 in deemed exchange for stock of New S1.
- (15) No gain or loss will be recognized by Holdco on the Reincorporation. Sections 351(a) and 357(a).
- (16) No gain or loss will be recognized by New S1 on the Reincorporation. Section 1032(a).
- (17) The basis of the assets received by New S1 in the Reincorporation will be equal to the basis of those assets in the hands of Holdco immediately before the Reincorporation. Section 362(a).

- (18) The holding period of each asset received by New S1 in the Reincorporation will include the period during which Holdco held that asset. Section 1223(2).
- (19) The basis of the New S1 stock deemed to be received by Holdco will equal the basis of the assets transferred in exchange therefor, reduced by the amount of liabilities deemed assumed by New S1. Section 358(a)(1) and (d).
- (20) The holding period of New S1 stock deemed received by Holdco will include the holding period of the assets transferred to New S1, provided that the assets are held by Holdco as capital assets on the date of the exchange. Section 1223(1).

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transaction under other provisions of the Code or the regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. Furthermore, no opinion is expressed or implied concerning the classification of the TIC as a partnership for federal income tax purposes.

PROCEDURAL STATEMENTS

This ruling 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.

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

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 letter ruling.

Sincerely,

Gerald B. Fleming
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel (Corporate)