

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
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Refer Reply To:
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PLR-132276-09
Date:
October 13, 2009

Legend:

Parent =

Subsidiary 1 =

Subsidiary 2 =

Subsidiary 3 =

OpCo =

Holdco 1 =

Holdco 2 =

Holdco 3 =

Holdco 4 =

Holdco Sub 1 =

Holdco Sub 2 =

Transitory =
Subs =
Target =

Business X =

Other Assets =

Date 1 =

Date 2 =

Date 3 =

Agreements =

A =

Dear :

This letter responds to your July 2, 2009 request for rulings as to the federal income tax consequences of a proposed transaction. The information received in that request and in subsequent correspondence is summarized below.

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

Summary of Facts

Parent is the common parent of an affiliated group whose includible corporations join in the filing of a consolidated federal income tax return. Parent wholly owns Subsidiary 1, Holdco 1, Holdco 2, Holdco 3, and Holdco 4. Subsidiary 1 wholly owns Subsidiary 2 and Subsidiary 3. Holdco 3 wholly owns Holdco Sub 1 and Holdco Sub 2. Together, Parent, Holdco 1, Holdco 2, Holdco 3, Holdco 4, Holdco Sub 1 and Holdco Sub 2 (the "OpCo Shareholders") own Opco.

Subsidiary 1 was formed on Date 1 in connection with the merger of Target with and into Parent (the "Pre-Transaction Merger"). The Pre-Transaction Merger occurred on Date 2. On Date 3, Parent contributed substantially all of Target's subsidiaries to Subsidiary 1, including all the stock of Subsidiary 2 and Subsidiary 3.

Each of Subsidiary 2, Subsidiary 3 and OpCo conducts Business X. In order to consolidate its Business X operations in OpCo, Parent intends to effectuate the Proposed Transaction (defined below).

Proposed Transaction

To effect the merger of Subsidiary 2's Business X operations into OpCo (the "Subsidiary 2 Reorganization") pursuant to a plan of reorganization (the "Subsidiary 2 Plan of Reorganization") and the merger of Subsidiary 3's Business X operations into OpCo (the "Subsidiary 3 Reorganization") pursuant to a second plan of reorganization (the "Subsidiary 3 Plan of Reorganization"), the following series of related transactions has been proposed (collectively, the "Proposed Transaction"):

(i) Pursuant to a plan to liquidate Subsidiary 1 into Parent, Subsidiary 1 will distribute all of the stock of Subsidiary 2 and Subsidiary 3 to Parent. All of the assets will be distributed on the same date and simultaneously with the merger or dissolution of Subsidiary 1 with or into Parent pursuant to the plan of liquidation.

(ii) Parent will contribute an amount of stock of Subsidiary 2 and Subsidiary 3 to Holdco 1, Holdco 2, Holdco 3 and Holdco 4 in accordance with such entities' direct and indirect percentage interests in OpCo and will retain a percentage interest in the stock of Subsidiary 2 and Subsidiary 3 equal to Parent's direct percentage interest in OpCo. Holdco 3 will contribute some of its shares of the stock of Subsidiary 2 and Subsidiary 3 to Holdco Sub 1 and Holdco Sub 2 (in accordance with such entities' relative interests in OpCo) and retain an amount of

stock equal to its direct percentage interest in OpCo.

(iii) Over a period of time that may extend up to A (the "Reorganization Time Period"), Subsidiary 2 and Subsidiary 3, as applicable, will contribute certain assets and liabilities to one or more Transitory Subs, the shares of which will immediately be distributed to the OpCo Shareholders in accordance with such shareholder's direct percentage interest in OpCo. Each of the Transitory Subs will then immediately merge with and into OpCo with OpCo surviving (each merger, a "Transitory Sub Merger").

(iv) During the Reorganization Time Period, Subsidiary 2 and Subsidiary 3, as applicable, will also transfer certain assets and liabilities to OpCo pursuant to one or more Agreements (collectively, the "Regulatory Transfers"). In addition, some employees of Subsidiary 2 and Subsidiary 3 may be assigned to OpCo during the Reorganization Time Period, and Subsidiary 2 and Subsidiary 3 may directly transfer Other Assets to OpCo (collectively, the "Other Transfers").

(v) Following the completion of the Transitory Sub Mergers, the Regulatory Transfers and the Other Transfers and pursuant to the Subsidiary 2 Plan of Reorganization and the Subsidiary 3 Plan of Reorganization, Subsidiary 2 will merge with and into OpCo with OpCo surviving (the "First Merger") and Subsidiary 3 will merge with and into OpCo with OpCo surviving (the "Second Merger"). The First Merger and the Second Merger may occur simultaneous pursuant to a merger.

Following the Proposed Transaction, OpCo may distribute certain lines of business originally conducted, directly or indirectly, by Subsidiary 2 or Subsidiary 3 to one or more of the OpCo Shareholders. In addition, during the Reorganization Time Period, Subsidiary 2 and Subsidiary 3, as applicable, may transfer certain assets, liabilities and businesses that are not material to either Subsidiary 2's or Subsidiary 3's overall operations to affiliates of Parent other than OpCo pursuant to one or more transactions in exchange for arm's-length consideration.

Representations

The following representations have been made regarding the Reorganizations:

(a) The fair market value of the OpCo stock and other consideration received (or deemed received) by the shareholders of Subsidiary 2 will be approximately equal to the fair market value of the Subsidiary 2 stock surrendered in the exchange.

(b) The fair market value of the OpCo stock and other consideration received (or deemed received) by the shareholders of Subsidiary 3 will be approximately equal to the fair market value of the Subsidiary 3 stock surrendered in the exchange.

(c) At least 40 percent of the proprietary interest in Subsidiary 2 will be exchanged (or deemed exchanged) for shares of Opco stock and that proprietary interest will be preserved (within the meaning of § 1.368-1(e)).

(d) At least 40 percent of the proprietary interest in Subsidiary 3 will be exchanged (or deemed exchanged) for shares of Opco stock and that proprietary interest will be preserved (within the meaning of § 1.368-1(e)).

(e) OpCo 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 Subsidiary 2 immediately prior to the Proposed Transaction. For purposes of this representation, amounts used by Subsidiary 2 to pay its reorganization expenses, and all redemptions and distributions (except for regular dividends) made by Subsidiary 2 immediately preceding the transfer will be included as assets of Subsidiary 2 held immediately prior to the Proposed Transaction.

(f) OpCo 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 Subsidiary 3 immediately prior to the Proposed Transaction. For purposes of this representation, amounts used by Subsidiary 3 to pay its reorganization expenses, and all redemptions and distributions (except for regular dividends) made by Subsidiary 3 immediately preceding the transfer will be included as assets of Subsidiary 3 held immediately prior to the Proposed Transaction.

(g) In the event OpCo distributes assets and liabilities originally held by Subsidiary 2 or Subsidiary 3 in a distribution or transfer occurring after the Reorganizations, the subsequent distribution or transfer (whether taxable or tax-free) will satisfy all the conditions of Treasury Regulation § 1.368-2(k)(1).

(h) After the Proposed Transaction, the OpCo Shareholders will collectively own 100% of OpCo and will be in control of OpCo within the meaning of § 368(a)(2)(H)(i).

(i) OpCo has no plan or intention to reacquire any of its stock issued (or deemed issued) in the Reorganizations.

(j) OpCo has no plan or intention to sell or otherwise dispose of any of the assets of Subsidiary 2 in the Proposed Transaction, except for dispositions made in the ordinary course of business. OpCo may (but has not committed to) make distributions or transfers that would meet the conditions of Treasury Regulation § 1.368-2(k)(1).

(k) OpCo has no plan or intention to sell or otherwise dispose of any of the assets of Subsidiary 3 in the Proposed Transaction, except for dispositions made in the ordinary course of business. OpCo may (but has not committed to) make distributions or transfers that would meet the conditions of Treasury Regulation § 1.368-2(k)(1).

(l) The liabilities of Subsidiary 2 assumed by OpCo and the liabilities to which the transferred assets of Subsidiary 2 are subject were incurred by Subsidiary 2 in the ordinary course of its business and are associated with the assets transferred.

(m) The liabilities of Subsidiary 3 assumed by OpCo and the liabilities to which the transferred assets of Subsidiary 3 are subject were incurred by Subsidiary 3 in the ordinary course of its business and are associated with the assets transferred.

(n) Following the Proposed Transaction, OpCo will continue the historic business of Subsidiary 2 and Subsidiary 3 or use a significant portion of Subsidiary 2's and Subsidiary 3's historic business assets in a business. This will continue to be true even if OpCo makes distributions or transfers to its shareholders following the Reorganizations. This will be true taking into account Subsidiary 2's and Subsidiary 3's transfer of certain assets, liabilities and businesses that are not material to either Subsidiary 2's or Subsidiary 3's overall operations to affiliates of Parent other than OpCo pursuant to one or more transactions during the Reorganization Time Period discussed above.

(o) At the time of the Proposed Transaction, OpCo will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in OpCo that, if exercised or converted, would affect the Subsidiary 2 and Subsidiary 3 shareholders' acquisition or retention of control of OpCo, as defined in § 368(a)(2)(H).

(p) Subsidiary 2, Subsidiary 3, OpCo, the shareholders of Subsidiary 2 and the shareholders of Subsidiary 3 will pay their respective expenses, if any, incurred in connection with the Proposed Transaction.

(q) There is no intercorporate indebtedness existing between Subsidiary 2 and OpCo, or between Subsidiary 3 and OpCo that was issued, acquired, or will be settled at a discount.

(r) No two parties to the Proposed Transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(s) The fair market value of the assets of Subsidiary 2 transferred to OpCo will equal or exceed the sum of the liabilities assumed by OpCo plus the amount of liabilities, if any, to which the transferred assets are subject.

(t) The fair market value of the assets of Subsidiary 3 transferred to OpCo will equal or exceed the sum of the liabilities assumed by OpCo plus the amount of liabilities, if any, to which the transferred assets are subject.

(u) The total adjusted basis of the assets of Subsidiary 2 transferred to

OpCo will equal or exceed the sum of the liabilities assumed by OpCo, plus the amount of liabilities, if any, to which the transferred assets are subject.

(v) The total adjusted basis of the assets of Subsidiary 3 transferred to OpCo will equal or exceed the sum of the liabilities assumed by OpCo, plus the amount of liabilities, if any, to which the transferred assets are subject.

(w) Subsidiary 2 and Subsidiary 3 are not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

Rulings

Based solely on the information submitted in the original and supplemental requests and the representations stated herein, we rule as follows.

(1) The formation of each Transitory Sub by Subsidiary 2, the distribution of each Transitory Sub to the shareholders of Subsidiary 2 and subsequent merger of each Transitory Sub with and into OpCo will be disregarded for federal tax purposes and will be integrated and treated as if Subsidiary 2 had transferred the assets contributed to such Transitory Sub directly to OpCo as part of a transaction qualifying as a reorganization under § 368(a)(1)(D).

(2) The formation of each Transitory Sub by Subsidiary 3, the distribution of each Transitory Sub to the shareholders of Subsidiary 3 and subsequent merger of each Transitory Sub with and into OpCo will be disregarded for federal tax purposes and will be integrated and treated as if Subsidiary 3 had transferred the assets contributed to such Transitory Sub directly to OpCo as part of a transaction qualifying as a reorganization under § 368(a)(1)(D).

(3) Regulatory Transfers by Subsidiary 2 during the Reorganization Time Period will be integrated and treated as part of a transaction qualifying as a reorganization under § 368(a)(1)(D).

(4) Regulatory Transfers by Subsidiary 3 during the Reorganization Time Period will be integrated and treated as part of a transaction qualifying as a reorganization under § 368(a)(1)(D).

(5) The Other Transfers by Subsidiary 2 during the Reorganization Time Period will be integrated and treated as part of a transaction qualifying as a reorganization under § 368(a)(1)(D).

(6) The Other Transfers by Subsidiary 3 during the Reorganization Time Period will be integrated and treated as part of a transaction qualifying as a reorganization under § 368(a)(1)(D).

(7) The Subsidiary 2 Reorganization (consisting of the Transitory Sub Mergers, the Regulatory Transfers, the Other Transfers with respect to Subsidiary 2 and the First Merger) will qualify as a reorganization within the meaning of § 368(a)(1)(D). Subsidiary 2 and OpCo will each be a "party to a reorganization" within the meaning of § 368(b).

(8) The Subsidiary 3 Reorganization (consisting of the Transitory Sub Mergers, the Regulatory Transfers, the Other Transfers with respect to Subsidiary 3 and the Second Merger) will qualify as a reorganization within the meaning of § 368(a)(1)(D). Subsidiary 3 and OpCo will each be a "party to a reorganization" within the meaning of § 368(b).

(9) No gain or loss will be recognized by Subsidiary 2 upon the transfer of its assets to OpCo (including through the Transitory Sub Mergers, the Regulatory Transfers and the Other Transfers) in exchange solely for proprietary interests in OpCo and the assumption of liabilities of Subsidiary 2 by OpCo pursuant to the Subsidiary 2 Reorganization (§§ 361(a), 357(a)).

(10) No gain or loss will be recognized by Subsidiary 3 upon the transfer of its assets to OpCo (including through the Transitory Sub Mergers, the Regulatory Transfers and the Other Transfers) in exchange solely for proprietary interests in OpCo and the assumption of liabilities of Subsidiary 3 by OpCo pursuant to the Subsidiary 3 Reorganization (§§ 361(a), 357(a)).

(11) No gain or loss will be recognized by Subsidiary 2 upon the deemed transfer of the proprietary interests in OpCo to the OpCo Shareholders (§ 361(c)).

(12) No gain or loss will be recognized by Subsidiary 3 upon the deemed transfer of the proprietary interests in OpCo to the OpCo Shareholders (§ 361(c)).

(13) The OpCo Shareholders will not recognize gain or loss upon the merger of Subsidiary 2 with and into OpCo (§§ 368(a)(1)(D), 354(a)).

(14) The OpCo Shareholders will not recognize gain or loss upon the merger of Subsidiary 3 with and into OpCo (§§ 368(a)(1)(D), 354(a)).

(15) OpCo will not recognize gain or loss upon the merger of Subsidiary 2 and Subsidiary 3 with and into OpCo (§ 1032).

(16) The OpCo Shareholders' basis in their stock of OpCo will be increased by the tax basis of the Subsidiary 2 stock surrendered in the exchange (§ 358(a)).

(17) The OpCo Shareholders' basis in their stock of OpCo will be increased

by the tax basis of the Subsidiary 3 stock surrendered in the exchange (§ 358(a)).

(18) OpCo's basis in the assets of Subsidiary 2, including any assets transferred pursuant to the Transitory Sub Mergers, the Regulatory Transfers and the Other Transfers, will be the basis of the assets in Subsidiary 2's hands immediately before the transfer of those assets (§ 362(b)).

(19) The holding period of those assets will include the period during which such assets were held by Subsidiary 2 immediately before their transfer (§ 1223(2)).

(20) OpCo's basis in the assets of Subsidiary 3, including any assets transferred pursuant to the Transitory Sub Mergers, the Regulatory Transfers and the Other Transfers, will be the basis of the assets in Subsidiary 3's hands immediately before the transfer of those assets (§ 362(b)).

(21) The holding period of those assets will include the period during which such assets were held by Subsidiary 3 immediately before their transfer (§ 1223(2)).

(22) Subsidiary 2 will be treated for tax purposes as remaining in existence and will accordingly be included in Parent's consolidated return until the date of the First Merger (§§ 1.381(b)-1, 1.1502-11).

(23) Subsidiary 3 will be treated for tax purposes as remaining in existence and will accordingly be included in Parent's consolidated return until the date of the Second Merger (§§ 1.381(b)-1, 1.1502-11).

(24) OpCo will succeed to and take into account those attributes of Subsidiary 2 described in § 381(c) (§§ 381(a), 1.381(a)-1). These items will be taken into account by OpCo subject to the conditions and limitations specified in §§ 381, 382, 383 and 384 and the Treasury Regulations thereunder.

(25) OpCo will succeed to and take into account those attributes of Subsidiary 3 described in § 381(c) (§§ 381(a), 1.381(a)-1). These items will be taken into account by OpCo subject to the conditions and limitations specified in §§ 381, 382, 383 and 384 and the Treasury Regulations thereunder.

Caveats

We express no opinion about the tax treatment of the Proposed Transaction under other provisions of the Code and 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. In particular, no opinion is expressed with respect to the liquidation of Subsidiary 1 described in step (i) of the Proposed Transaction. Furthermore, no opinion is expressed with respect to the contribution of assets described in step (ii) of the Proposed Transaction.

Procedural Statements

This ruling letter is directed only to the taxpayers who requested it. See § 6110(k)(3), which 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 letter ruling. In accordance with the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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

cc: