Internal Revenue Service

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Department of the Treasury
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Refer Reply To:
CC:CORP:BR2
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Date:
December 15, 2010

Legend

Taxpayer =

Parent =

Sub 1 =

FSub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub X =

FSub 6 =

LLC1 =

LLC 2 =

LLC 3 =

LLC 4 =

LLC 5 =

LLC 6 =

LLC 7 =

Newco =

x percent =

$y =

State A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Year 1 =

Dear :

We respond to your letter dated November 4, 2010, submitted on behalf of Taxpayer by your authorized representatives requesting rulings on certain federal income tax consequences of a consummated and related proposed transactions. Additional information was submitted in a letter dated December 9, 2010. The information submitted is summarized below.

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

Background

Taxpayer is the common parent of an affiliated group of corporations that files a consolidated return for federal income tax purposes (the Taxpayer Group). Before the events described below, Taxpayer owned all of the outstanding stock of Parent, which owned all of the outstanding stock of Sub 1, a State A corporation, which in turn owned all of the ownership interests in LLC 1, LLC 2, LLC 3 (through a chain of disregarded entities), and FSub 2. LLC 2 owned all of the ownership interests in LLC 4. LLC 4 owned all of the outstanding stock of Sub 3, Sub 4 (collectively, Sub 3 and Sub 4 are the Dormant Entities), LLC 7, and Sub 5. LLC 3 owned all of the ownership interests in LLC 5 and LLC 6, which together owned approximately x percent of the stock of FSub 6. Each of LLC 1, LLC 2, LLC 3, LLC 4, LLC 5, LLC 6, and LLC 7 were disregarded as an entity separate from Sub 1 for federal income tax purposes.

On Date 1, Sub 1 sold its entire interest in LLC 5 and LLC 6 to an unrelated third party for approximately $y. For federal tax purposes, Taxpayer has characterized this transaction as a sale by Sub 1 of the x percent stock interest in FSub 6 (the Sale). The Sale represents a disposition of a significant portion of Sub 1's business assets.

After the Sale, Taxpayer reviewed its operating structure and decided to engage in the following transactions to restructure its internal operations (the Internal Restructuring):

(i) On Date 2, Sub 1 incorporated Newco as a wholly owned corporate subsidiary.

(ii) On Date 3, the Dormant Entities liquidated into LLC 4 (the Liquidations). For federal income tax purposes, the Dormant Entities are considered to have liquidated into Sub 1.

(iii) On Date 4, LLC 4 distributed an intercompany note receivable (the Intercompany Receivable) to LLC 2, which distributed the Intercompany Receivable to Sub 1, which distributed the Intercompany Receivable to Parent. For federal income tax purposes, Sub 1 is considered to have distributed the Intercompany Receivable to Parent.

(iv) On Date 5, Sub 1 merged with and into Parent, with Parent surviving, in a transaction intended to qualify for nonrecognition treatment under sections 332 and 337 (or alternatively section 368(a)(1)(A)) (the Merger). Pursuant to the Merger, certain intercompany, non-interest bearing receivable and payable balances between Parent and Sub 1 were extinguished.

(v) On Date 6, Parent contributed all of the ownership interests in LLC1 to Newco and assigned to Newco its rights under a loan agreement between LLC1, as lender, and Sub 1 as borrower, that had not yet been drawn upon (the Undrawn Loan Agreement) in exchange for Newco common shares (the Contribution).

All dates occurred in Year 1. Although Taxpayer views the Sale, the Contribution, the Merger, and certain steps of the Internal Restructuring as separate transactions not related to or dependent upon the occurrence of any other transactions or steps, in light of the Sale and the Contribution, Taxpayer became concerned about the tax consequence uncertainties associated with the Merger of old Sub 1 into Parent and proposes the following steps to rescind the Merger (the Rescission):

(vi) Parent will form a new holding company, new Sub 1, as a State A corporation with articles of incorporation and bylaws identical to the articles of incorporation and bylaws of old Sub 1 in effect immediately before the Merger. The Articles of Incorporation for new Sub 1, however, will appear different due to subsequent changes in State A corporate law but will not be materially different.

(vii) Subsequent to the Rescission, new Sub 1 may change its Articles of Incorporation to allow for cumulative voting rights for directors and may change its legal name to Sub X.

(vii) Parent will transfer to new Sub 1 all of the assets and liabilities held by old Sub 1 immediately prior to the Merger in exchange for shares of new Sub 1 of the same class as, and equal in number to, the old Sub 1 shares held

by Parent immediately prior to the Merger. Instead of transferring the ownership interests in LLC1, however, Parent will transfer all of the stock of Newco to new Sub 1.

(viii) Parent and new Sub 1 will establish non-interest bearing intercompany accounts between themselves with balances equal to the balances on the non-interest bearing intercompany accounts that were outstanding between old Sub 1 and Parent immediately before the Merger.

Representations

Taxpayer makes the following representations with respect to the Rescission:

(a) The Merger and the Rescission will occur within the same taxable year of Parent and old Sub 1. The taxable year of each of Parent and old Sub 1 is the calendar year.

(b) The Rescission will restore in all material respects the legal and financial arrangements between Parent and new Sub 1 that would have existed between Parent and old Sub 1 had the Merger not occurred.

(c) Except for the assets and liabilities of LLC 1, which will be transferred to new Sub 1 indirectly through the transfer of the stock of Newco rather than directly through the transfer of interests in LLC 1, Parent will transfer to new Sub 1 in accordance with the Rescission all of the assets and liabilities that either: (1) were transferred to or assumed by Parent from old Sub 1 pursuant to the Merger; or (2) were or will be purchased or incurred by Parent in the ordinary course of owning and managing old Sub 1's assets and liabilities that it received pursuant to the Merger.

(d) Newco would have been formed, and the ownership interests in LLC 1 would have been contributed to Newco, without regard to whether the Merger had occurred.

(e) The rights associated with the Undrawn Loan Agreement between LLC 1, as lender, and Sub 1, as borrower, would have been assigned to Newco as part of the contribution of all of the ownership interests in LLC 1 to Newco without regard to whether the Merger had occurred.

(f) The distribution of the Intercompany Receivable is intended to be treated as a distribution to which section 301 and § 1.1502-13(f)(2) of the Income Tax Regulations apply.

(g) Sub 1 would have distributed the Intercompany Receivable to Parent without regard to whether the Merger had occurred.

(h) Sub 1 at all times prior to the Merger had the legal right to amend its Articles of Incorporation to allow for cumulative voting rights for directors.

(i) During the period between the Merger and the Rescission, no material changes to the legal or financial relationships between Newco or LLC 1, on the one hand, and Parent or any other member of the Taxpayer Group, on the other hand, will have occurred that would not have occurred if the Merger had not occurred.

(j) Neither Parent nor Sub 1 has taken or will take any material position for federal income tax purposes inconsistent with the position that would have existed had the Merger not occurred.

(k) Other than treating new Sub 1 as old Sub 1, the Rescission will not involve any party that was not involved in the Merger.

(l) Parent and new Sub 1 will mutually agree to each of the steps to implement the Rescission.

(m) Provided the Rescission is effective to disregard the Merger for federal income tax purposes, the Taxpayer Group will complete its Year 1 federal income tax and information returns in all material respects as if the Merger had not occurred.

Rulings

Based solely on the facts submitted, the representations made, and the parties' restoration, in Year 1, of the relative positions they would have occupied if the Merger had not occurred (Rev. Rul. 80-58, 1980-1 C.B. 181), we rule that, for federal income tax purposes:

(1) Sub 1 will be treated as not having liquidated into or having merged with and into Parent, and Parent and Sub 1 will be treated as two separate corporations at all times during the Year 1 taxable year; and

(2) Parent will be treated as having been the shareholder of Sub 1 at all times during the Year 1 taxable year and Sub 1 will be treated as having remained a wholly-owned subsidiary of Parent and a member of the Taxpayer consolidated group at all times during the Year 1 taxable year.

Caveats

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 Statement

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.

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 with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Filiz A. Serbes
Chief, Branch 3
Office of the Associate Chief Counsel (Corporate)