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Person To Contact:

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Telephone Number:

Refer Reply To:
CC:CORP:B05
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Date:
January 05, 2012

Legend:

Holdco =

Parent =

Target Parent =

Target Sub =

New Target Sub =

Business A =

State A =

State B =

† =

Date 1 =

Dear :

This letter is in response to your August 30, 2011 request for rulings regarding certain federal income tax consequences of a series of transactions. The information submitted in that request and in later correspondence is summarized below.

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.

Facts

Holdco, a State A corporation, is a privately owned holding company and the common parent of an affiliated group of corporations that includes Parent, Target Parent, and Target Sub, and files a consolidated federal income tax return. Holdco owns all of the issued and outstanding shares of Parent, a State A corporation. Parent is a holding company that owns all of the issued and outstanding shares of Target Parent, a State A corporation. Target Parent owns all of the issued and outstanding shares of Target Sub, a State B corporation. Target Sub, along with various domestic and foreign entities directly and indirectly owned by Target Sub, is engaged in Business A.

Prior to Date 1, Target Parent was a publicly traded corporation that was the common parent of an affiliated group of corporations that included Target Sub. On Date 1, Parent acquired all of the outstanding shares of Target Parent in a transaction that did not constitute a qualified stock purchase within the meaning of section 338(d)(3) (the "Target Parent Acquisition").

Following the Target Parent Acquisition, Holdco determined that it would be advantageous to combine Target Parent and Target Sub for the purpose of achieving operating efficiencies, eliminating brand confusion, and certain other business objectives. Accordingly, Holdco has proposed the transactions described below.

Proposed Transaction

To achieve the business purpose described above, Holdco has proposed the following steps (collectively, the "Proposed Transaction"):

1. Parent will transfer all of its shares of Target Parent to Target Parent in exchange for newly issued shares of Target Parent (the "Share Exchange").

2. Immediately after the Share Exchange, Parent will convert to a limited liability company (“LLC”) under State A law (the “Conversion”). The Share Exchange and the Conversion are collectively referred to as the “Parent Reorganization”.
3. Immediately after the Parent Reorganization, Target Parent will merge under State A law with and into Target Sub, with Target Sub surviving, in exchange for Target Sub’s assumption of Target Parent’s liabilities and t shares of Target Sub common stock (the “Downstream Merger”);
4. Following the Downstream Merger, Target Sub will change its name to New Target Sub (the “Name Change”).

Additionally, in connection with the Proposed Transaction, it is anticipated that certain entities that are directly and indirectly wholly owned by Target Sub will be merged or liquidated (the “Subsidiary Liquidations”).

Representations

The following representations were made with respect to the Parent Reorganization:

- (a) Immediately prior to the effective date of the Parent Reorganization, Parent’s only assets will be shares of Target Parent.
- (b) Pursuant to the Share Exchange, Parent will transfer 100 percent of its assets to Target Parent in exchange for new shares of Target Parent.
- (c) No liabilities of Parent will be assumed (as determined under section 357(d)) by Target Parent in connection with the Share Exchange.
- (d) The fair market value of the Target Parent stock to be received by Parent will be approximately equal to the fair market value of the assets exchanged with Target Parent.
- (e) Prior to the Conversion, Parent was treated as a corporation for US federal tax purposes under Treas. Reg. § 301.7701-2(b)(1).
- (f) Following the Conversion, Parent will be treated as a disregarded entity for US federal tax purposes under Treas. Reg. § 301.7701-3(b)(1)(ii).
- (g) Following the Parent Reorganization, Holdco will be treated as owning directly all of the Target Parent shares.
- (h) Aside from the Downstream Merger, there is no plan or intention by Target Parent (or any related person, as defined in Treas. Reg. § 1.368-1(e)(4)) to acquire any of the Target Parent stock received by Holdco in the Parent

Reorganization.

- (i) Target Parent 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 Parent immediately prior to the Parent Reorganization. For purposes of this representation, amounts paid by Parent to shareholders who receive cash or other property, amounts used by Parent to pay its reorganization expenses, and all redemptions and distributions (except for regular, normal dividends) made by Parent immediately preceding the Parent Reorganization will be included as assets of Parent held immediately prior to the Parent Reorganization.
- (j) Aside from the Downstream Merger, Target Parent has no plan or intention to sell or otherwise dispose of any of the assets of Parent acquired in the Parent Reorganization, 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).
- (k) At the time the Parent Reorganization will be effective, the fair market value of the assets of Parent will exceed the sum of (i) any liabilities of Parent that will be assumed (as determined under section 357(d)) by Target Parent (whether indebtedness or other forms of obligations, including contingent obligations), (ii) the amount of any liabilities to which the transferred assets of Parent will be subject on the date the Parent Reorganization is effective, and (iii) the amount of any money or the fair market value of any other property (other than stock permitted to be received under section 361(a) without the recognition of gain) to be received by Parent in the exchange.
- (l) Immediately after the Parent Reorganization will be effective, the fair market value of the assets of Target Parent will exceed the amount of its liabilities (including the liabilities of any disregarded entities), whether indebtedness or other forms of obligations, including contingent obligations.
- (m) At the time the Parent Reorganization will be effective, the aggregate fair market value of the assets to be transferred by Parent to Target Parent will equal or exceed the aggregate adjusted basis of such assets
- (n) The Parent Reorganization will be undertaken pursuant to a plan of reorganization.
- (o) Following the Parent Reorganization, Target Parent will continue an historic business of Parent, or use a significant portion of Parent's historic business assets in a business.
- (p) After the Parent Reorganization, Holdco will be in control of Target Parent within the meaning of section 368(a)(2)(H)(i).

- (q) At the time of the Parent Reorganization, Target Parent will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Target Parent that, if exercised or converted, would affect Holdco's acquisition or retention of control of Target Parent, as defined in section 368(a)(2)(H)(i).
- (r) Holdco, Parent, and Target Parent will pay their respective expenses, if any, incurred in connection with the Parent Reorganization.
- (s) There will be no intercompany indebtedness existing between Parent and Target Parent that will be issued, acquired, or settled at a discount.
- (t) No two parties to the Parent Reorganization will be investment companies within the meaning of section 368(a)(2)(F)(iii) and (iv).
- (u) At least 40 percent of the proprietary interest in Parent will be exchanged for Target Parent shares and will be preserved within the meaning of Treas. Reg. § 1.368-1(e).
- (v) The Parent Reorganization will be undertaken for a valid corporate business purpose.
- (w) Parent is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).

The following representations were made with respect to the Downstream Merger:

- (x) Pursuant to the Downstream Merger, the following will occur simultaneously by operation of the applicable State A merger statute: (i) Target Parent will merge with and into Target Sub, with Target Parent ceasing to exist as a separate legal entity and Target Sub as the surviving legal entity; (ii) 100 percent of the assets and liabilities of Target Parent immediately before the Downstream Merger will be effective will become the assets and liabilities of Target Sub; and (iii) 100 percent of the issued and outstanding shares of Target Parent immediately before the Downstream Merger will be effective will be converted into shares of Target Sub.
- (y) The fair market value of the Target Sub stock to be received by Holdco will be approximately equal to the fair market value of the Target Parent stock to be surrendered in the Downstream Merger.
- (z) There is no plan or intention of Target Sub (or any related person, as defined in Treas. Reg. § 1.368-1(e)(4)) to acquire any of the Target Sub stock received by Holdco in exchange for its Target Parent stock in connection with the Downstream Merger.

- (aa) Target Sub has no plan or intention to sell or otherwise dispose of any of the assets of Target Parent acquired in the Downstream Merger, 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).
- (bb) The liabilities of Target Parent to be assumed (within the meaning of section 357(d)) by Target Sub were incurred by Target Parent in the ordinary course of business or in the Target Parent Acquisition, and are associated with the assets transferred.
- (cc) At the time the Downstream Merger will be effective, the fair market value of the assets of Target Parent will exceed the sum of (i) any liabilities of Target Parent that will be assumed (as determined under section 357(d)) by Target Sub (whether indebtedness or other forms of obligations, including contingent obligations), (ii) the amount of any liabilities to which the transferred assets of Target Parent will be subject on the date the Downstream Merger is effective, and (iii) the amount of any money or the fair market value of any other property (other than stock permitted to be received under section 361(a) without recognition of gain) to be received by Target Parent in the exchange.
- (dd) Immediately after the Downstream Merger will be effective, the fair market value of the assets of Target Sub will exceed the amount of its liabilities (including the liabilities of any disregarded entities), whether indebtedness or other forms of obligations, including contingent obligations.
- (ee) At the time the Downstream Merger will be effective, the aggregate fair market value of the assets to be transferred by Target Parent to Target Sub will equal or exceed the aggregate adjusted basis of such assets.
- (ff) The Downstream Merger will be undertaken pursuant to a plan of reorganization.
- (gg) Following the Downstream Merger, Target Sub will continue an historic business of Target Parent, or use a significant portion of Target Parent's historic business assets in a business.
- (hh) After the Downstream Merger, Holdco will be in control of Target Sub within the meaning of section 368(a)(2)(H)(i).
- (ii) At the time of the Downstream Merger, Target Sub will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Target Sub that, if exercised or converted, would affect Holdco's acquisition or retention of control of Target Sub, as defined in section 368(a)(2)(H)(i).
- (jj) Holdco, Target Parent, and Target Sub will pay their respective expenses, if

- any, incurred in connection with the Downstream Merger.
- (kk) There will be no intercompany indebtedness existing between Target Parent and Target Sub that will be issued, acquired, or settled at a discount.
 - (ll) No two parties to the Downstream Merger will be investment companies within the meaning of section 368(a)(2)(F)(iii) and (iv).
 - (mm) At least 40 percent of the proprietary interest in Target Parent will be exchanged for Target Sub shares and will be preserved within the meaning of Treas. Reg. § 1.368-1(e).
 - (nn) The Downstream Merger will be undertaken for a valid corporate business purpose.
 - (oo) Target Parent is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).

Rulings

Based solely on the information submitted and the representations made above, we rule as follows regarding the Parent Reorganization:

1. For US federal income tax purposes, the Parent Reorganization will be treated as (i) a transfer by Parent of all of its assets to Target Parent solely in exchange for Target Parent stock, (ii) the distribution by Parent of all of the Target Parent stock to Holdco in exchange for all of Holdco's stock in Parent, and (iii) the dissolution of Parent.
2. The Parent Reorganization will qualify as a reorganization within the meaning of section 368(a)(1)(D). Parent and Target Parent will each be a "party to a reorganization" within the meaning of section 368(b).
3. Parent will recognize no gain or loss on the transfer of its assets to Target Parent in exchange for Target Parent stock in the Parent Reorganization (section 361(a)).
4. Target Parent will recognize no gain or loss on its receipt of Parent's assets in exchange for Target Parent stock in the Parent Reorganization (section 1032(a)).
5. Parent will recognize no gain or loss on the distribution of the Target Parent stock to Holdco in the Parent Reorganization (section 361(c)(1)).

6. Holdco will recognize no gain or loss on its exchange of Parent stock for Target Parent stock in the Parent Reorganization (section 354(a)(1)).
7. Holdco's basis in the Target Parent stock received in the Parent Reorganization will be equal to the basis of the Parent stock exchanged therefor in the Parent Reorganization (section 358(a)(1) and Treas. Reg. § 1.358-2(a)).
8. Holdco's holding period for the Target Parent stock received in the Parent Reorganization will include the period during which Holdco held the Parent stock exchanged therefor, provided that such Parent stock is held as a capital asset in the hands of Holdco on the date of the Parent Reorganization (section 1223(1)).
9. Target Parent will succeed to and take into account the items of Parent described in section 381(c) (section 381(a) and Treas. Reg. § 1.381(a)-1). These will be taken into account by Target Parent subject to the conditions and limitations specified in sections 381, 382, 383, and 384, and the regulations thereunder.

Based solely on the information submitted and the representations made above, we rule as follows regarding the Downstream Merger:

10. Provided that the Downstream Merger qualifies as a statutory merger in accordance with applicable state law, the Downstream Merger will qualify as a reorganization within the meaning of section 368(a)(1)(A). Target Parent and Target Sub will each be a "party to a reorganization" within the meaning of section 368(b).
11. Target Parent will recognize no gain or loss on the transfer of its assets to Target Sub in exchange for Target Sub stock and Target Sub's assumption of Target Parent liabilities in the Downstream Merger (sections 361(a) and 357(a)).
12. Target Sub will recognize no gain or loss on its receipt of Target Parent's assets in exchange for Target Sub stock in the Downstream Merger (section 1032(a)).
13. Target Parent will recognize no gain or loss on the distribution of the Target Sub stock to Holdco in the Downstream Merger (section 361(c)(1)).
14. Holdco will recognize no gain or loss on its exchange of Target Parent stock for Target Sub stock in the Downstream Merger (section 354(a)(1)).

15. Holdco's basis in the Target Sub stock received in the Downstream Merger will be equal to the basis of the Target Parent stock exchanged therefor in the Downstream Merger (section 358(a)(1) and Treas. Reg. § 1.358-2(a)).
16. Holdco's holding period for the Target Sub stock received in the Downstream Merger will include the period during which Holdco held the Target Parent stock exchanged therefor, provided that such Target Parent stock is held as a capital asset in the hands of Holdco on the date of the Downstream Merger (section 1223(1)).
17. Target Sub will succeed to and take into account the items of Target Parent described in section 381(c) (section 381(a) and Treas. Reg. § 1.381(a)-1). These will be taken into account by Target Sub subject to the conditions and limitations specified in sections 381, 382, 383, and 384, and the regulations thereunder.

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.

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,

Isaac W. Zimbalist
Isaac W. Zimbalist
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Corporate)

cc: