

Internal Revenue Service

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LEGEND

Parent =

Taxpayer =

Corporation =

Titling Trust =

Company =

State A =

State B =

Dear :

This letter responds to your letter dated April 25, 2012, and subsequent submissions, requesting a private letter ruling under section 7701(h) of the Internal Revenue Code.

FACTS

General

Parent is a State A corporation. Parent is the common parent of an affiliated group of corporations (the "Affiliated Group"), which files a consolidated federal income tax return on a calendar year basis.

Taxpayer is a State B corporation. Taxpayer is a direct, wholly owned subsidiary of Parent and a member of the Affiliated Group.

Corporation is a State B corporation. Corporation is a member of the Affiliated Group. Taxpayer owns 100% of the outstanding shares of Corporation.

Titling Trust is a State B statutory trust. Corporation was the settlor and sole initial beneficiary of Titling Trust. For federal income tax purposes, the Affiliated Group treats Titling Trust as a disregarded entity, the assets of which are owned by Corporation.

Company is a State B limited liability company and wholly owned subsidiary of Taxpayer. For federal income tax purposes, the Affiliated Group treats Company as a disregarded entity whose assets and activities are held directly by Taxpayer

Each entity listed above uses the calendar year accounting period and the accrual method of accounting for maintaining its accounting books and records and filing its federal income tax return.

Taxpayer is a financial services company. Taxpayer's businesses include a division engaged in commercial lending and leasing ("CLL"). CLL's business units include an equipment finance business unit (the "EF business"), which provides financing for a wide array of business assets, including motor vehicles such as trucks, trailers and other transportation equipment (collectively, "motor vehicles"). The motor vehicle financing activities of the EF business include providing lease and loan financing to owner-operators and other end-users of new and used motor vehicles; providing lease and loan financing to manufacturers, vendors, dealers and fleet operators of motor vehicles; and acquiring leases and related equipment originated by unaffiliated companies that provide financing for motor vehicles.

The financial assets originated or acquired by the EF business include conventional loans, finance leases that are treated as loans for financial accounting and federal income tax purposes, and leases.

Each approved customer that leases a motor vehicle executes, as "Lessee," a Master Lease Agreement, and in some cases an Addendum to the Master Lease Agreement (the Master Lease Agreement and any applicable Addendum to the Master

Lease Agreement being collectively referred to as the “Master Lease Agreement”) with Taxpayer setting forth the general terms and conditions applicable to all lease schedules executed under and pursuant to such Master Lease Agreement. The Lessee then executes a separate schedule (a “Lease Schedule”), which in some cases includes an Addendum to a Lease Schedule (in either case, together with the applicable Master Lease Agreement, collectively a “MVLA”) with Taxpayer, Titling Trust, another affiliate of Taxpayer, or another titling trust owned by an affiliate of Taxpayer depending on the applicable Parent entity acting as lessor for such lease (“Lessor”). Each Lease Schedule incorporates the terms and conditions of the Master Lease Agreement and sets forth the applicable motor vehicles subject to the Lease Schedule, the lease term, lease rentals, and other specific terms and conditions of such Lease Schedule.

When a customer of the EF business seeks to lease a titled motor vehicle from Taxpayer, an initial decision will be made as to whether the Lessor under the Lease Schedule covering that titled vehicle will be Taxpayer, Titling Trust, another affiliate of Taxpayer, or another titling trust owned by an affiliate of Taxpayer. If Titling Trust is designated as the Lessor under the Lease Schedule, Titling Trust (acting through Taxpayer as its agent) generally either will issue a purchase order to the supplier of the titled motor vehicle or take an assignment of a purchase order for the titled motor vehicle previously issued by the customer to the supplier. Subject to the satisfaction of the conditions set forth in the purchase order or (as the case may be) purchase order assignment, Taxpayer (on behalf of Titling Trust) will pay the supplier for the titled motor vehicle.

When acquiring motor vehicles as an agent for Titling Trust, Taxpayer makes the payment directly to the manufacturer or dealer and creates an intercompany receivable from Titling Trust. In its capacity as servicer under the Titling Trust Servicing Agreement, Taxpayer applies all payments received from the customer to pay down the intercompany receivable created at acquisition of the motor vehicle. Taxpayer finances all purchases of motor vehicles out of operating capital or from the proceeds of fully recourse loans from unrelated financial institutions, regardless of whether it uses Titling Trust to acquire title to the motor vehicle. Under the terms of the MVLA, at the end of the motor vehicle lease term, the Lessee will, if applicable, either exercise any available purchase option under the MVLA or deliver the motor vehicle to Lessor, which will take possession of the vehicle and sell it for the best price obtainable.

Taxpayer represents that any amount borrowed by it to fund the initial acquisition of a motor vehicle subject to a MVLA from a manufacturer or dealer will be recourse debt that Taxpayer is personally liable to repay.

TRAC Leases

Most of the motor vehicle leases originated by the EF business are structured so that Taxpayer, Titling Trust, another affiliate of Taxpayer, or another titling trust owned by an affiliate of Taxpayer will be treated as owner and lessor for federal income tax purposes. Of these, a significant portion are leased to customers pursuant to Lease

Schedules that incorporate a terminal rental adjustment clause set forth in an addendum to either such Lease Schedule or an addendum to the Master Lease Agreement (in either case, such Lease Schedule being herein referred to as a "TRAC Lease"). The balance are leased pursuant to leases that do not include a terminal rental adjustment clause or functionally equivalent terms.

TRAC Leases (other than Split TRAC Leases, as defined below) require that Lessor pay Lessee upon termination of the lease and disposition of the leased motor vehicle, as a rental adjustment, an amount equal to the amount, if any, by which the net sales proceeds (gross sales proceeds of the motor vehicle less all disposition costs and expenses) exceed the projected termination value of the motor vehicle at lease end stated in the TRAC Lease (the "TRAC Amount"). If the net sales proceeds resulting from disposition of the motor vehicle are less than the TRAC Amount, Lessee must pay to Lessor, as a rental adjustment, the amount of the deficiency. Some TRAC Leases contain provisions that allocate a sharing between Lessor and Lessee of all or a portion of the amount due to the other party resulting from the difference between the net sales proceeds and the TRAC Amount, as applicable (a "Split TRAC Lease").

When entering into a TRAC Lease, Taxpayer or Lessor and Lessee enter into an addendum to the Master Lease Agreement or the applicable Lease Schedule that contains the TRAC provisions. In addition, Lessee signs and provides to Lessor a separate written statement (i) under which Lessee certifies, under penalties of perjury, that it intends that motor vehicles leased from Lessor under any lease agreement to which § 7701(h) applies will be used more than 50 percent in the trade or business of Lessee, and (ii) which states that Lessee has been advised that it will not be treated as the owner of the property subject to the agreements for federal income tax purposes (a "Lessee TRAC Certification").

Taxpayer represents that, if analyzed without regard to the terminal rental adjustment clause, each TRAC Lease created under the Master Lease Agreement (and any related MVLAs) will qualify as a lease for federal income tax purposes. In addition, Taxpayer represents that each TRAC Lease created under the Master Lease Agreement (and any related MVLAs) will contain a Lessee TRAC Certification that satisfies the requirements of § 7701(h)(2)(C) and will meet the requirements of § 7701(h)(2)(D).

Proposed Transaction

Taxpayer intends to continue seeking alternative sources of funding so that it can reduce its overall financing cost. In connection with that effort, Taxpayer intends to use receivables generated in its EF business to raise money by transferring the assets to a special purpose entity, which will issue debt instrument secured by the receivables and the future cash flows they are expected to generate (a "Subsequent Refinancing").

Specifically, Taxpayer will transfer loans and other financial assets originated in its EF business, including motor vehicle leases, to Company for cash. In the case of

motor vehicle leases in which Titling Trust is Lessor under the MVLA, Corporation will transfer special units of beneficial interest (“SUBIs”) issued by Titling Trust to Company. The SUBIs will represent full beneficial ownership of the motor vehicle leases. In return for the SUBIs, Corporation will receive cash equal to the fair market value of the underlying motor vehicles. The transfer of assets to Company will be made pursuant to a Receivables Sale Agreement.

Company will transfer all of the financial assets acquired from Taxpayer as well as the SUBIs acquired from Titling Trust to a wholly owned, special purpose subsidiary (“Issuer”). Issuer will be organized as a State B limited liability company. In return, Company will receive notes and 100% of the residual equity interests in Issuer. The transfer of assets to Issuer will be made pursuant to a Receivables Purchase and Sale Agreement.

Taxpayer intends Issuer and Company to be disregarded as entities separate from Taxpayer within the meaning of § 301.7701-3(b)(1)(ii) of the Procedure and Administration Regulations, such that all transfers between and among Taxpayer, Company, and Issuer will be disregarded for federal income tax purposes. For commercial law purposes, however, Company and Issuer are intended to be “bankruptcy remote” from Taxpayer, so that a future bankruptcy of Taxpayer or other members of the Affiliated Group would not result in the bankruptcy of Issuer.

Issuer will be the “Borrower” in the Subsequent Refinancing. Issuer will be a special purpose entity whose activities generally will be limited to: 1) executing and performing its obligations and exercising its rights under the terms of the Subsequent Refinancing and related transactions; 2) acquiring, transferring, financing, pledging, and otherwise dealing with certificates representing beneficial interests in the SUBIs; 3) dealing with transactions involving the motor vehicles and related MVLA's that will be designated to the SUBIs; 4) borrowing money to the extent contemplated by the Subsequent Refinancing; 5) negotiating, executing, or performing the obligations under any agreement relating to the foregoing activities; and 6) engaging in any lawful act or activity and exercising any powers permitted to limited liability companies organized under State B law that are related or incidental to and necessary, convenient or advisable for the accomplishment of the foregoing purposes.

Issuer will enter into a Servicing Agreement with Taxpayer. As servicer, Taxpayer will invoice the obligors, collect payments, and perform ancillary functions on behalf of Issuer. In addition, Taxpayer will identify assets originated by the EF business (including leased motor vehicles owned through Titling Trust) that are eligible to be acquired by Issuer for inclusion in the Subsequent Refinancing. Eligibility for inclusion in the Subsequent Refinancing will be based, in part, on customer concentration, credit ratings, asset type and location, and the term of the lease or loan. In the case of eligible assets held by Titling Trust, Taxpayer will direct Titling Trust to designate the assets to the SUBI, which will be issued to Corporation and sold to Company for cash. Issuer will use the funds acquired in the Subsequent Refinancing, together with its equity capital, to acquire the SUBIs and other assets from Company.

Amounts payable to Titling Trust in connection with its issuance of SUBIs to Company will be applied to repay Taxpayer for advances used to acquire the motor vehicles.

Company will transfer a fixed pool of assets to Issuer. Issuer will use the payments received on the debt instruments and leases it holds to pay principal and interest on the notes issued. Thus, as the EF customers pay the underlying obligations to Issuer, Issuer will repay the notes issued in the Subsequent Refinancing. Upon repayment of all the notes, Issuer will distribute any remaining assets to Company and liquidate.

As the EF business originates additional debt and lease obligations, Taxpayer will repeat the process by transferring the newly originated assets to Company, which will form a new Issuer to engage in a new Subsequent Refinancing.

Titling Trust

The use of Titling Trust to acquire and hold legal title to motor vehicles serves two important functions. First, the use of Titling Trust to hold motor vehicle leases eliminates the need to re-title motor vehicles multiple times by permitting the use of SUBIs to transfer beneficial ownership. Second, the use of Titling Trust to hold legal title to the motor vehicles avoids the need to qualify Issuer to do business in each jurisdiction in which vehicles are titled, thereby facilitating Taxpayer's ability to include motor vehicle leases in the Subsequent Refinancing.

Taxpayer created Corporation to enter into the documentation necessary to establish Titling Trust and other entities, to acquire a beneficial interest in the Titling Trust and such other entities, and to facilitate the acquisition, ownership, and disposition by Titling Trust and such other entities of loans, leases, receivables, vehicles, equipment, and other assets. Titling Trust is authorized to acquire cash, motor vehicles, and related MVLAs, to receive payments made under the leases, to sell or otherwise dispose of motor vehicles following the end of the leases, to hold motor vehicles certificates of title, and to own other related rights and proceeds (collectively "Trust Assets").

The beneficial interests Corporation holds in Titling Trust consist of an undivided trust interest ("UTI") and one or more special units of beneficial interests ("SUBIs"). The UTI and SUBIs and their related assets constitute separate "Sub-trusts." Under State B law, all liabilities of a Sub-trust generally are enforceable only against the assets designated to the Sub-trust.

Corporation, as the sole beneficial holder of the UTI, will cause Titling Trust to establish the SUBIs to be used in the Subsequent Refinancing. The SUBIs generally will represent beneficial interests in the portion of the Trust Assets that comprise a specific Sub-trust. The issuance of the SUBIs permit the transfer of beneficial ownership of the assets in a Sub-trust without having to re-title the motor vehicles and other assets in the Sub-trust.

As part of the Subsequent Refinancing, Titling Trust may issue SUBIs representing beneficial ownership of the Trust Assets held in one or more Sub-trusts to Company, which is wholly owned by Taxpayer and is a disregarded entity for federal income tax purposes. It is possible that Titling Trust may also issue SUBIs representing ownership of all Trust Assets held by specific Sub-trusts to unrelated third parties in syndication transactions. However, any SUBIs issued to Company in connection with the Subsequent Refinancing will represent beneficial ownership of 100% of the assets held in the Sub-trust to which the SUBIs relate.

Titling Trust's activities are limited to those specified in the Trust Agreement or any supplement to the Trust Agreement, or as may be directed by Corporation in its capacity as the UTI Beneficiary, in connection with financing transactions (including leases) undertaken by Company, Corporation, or other special purpose entities (such as Issuer) that are secured by assets of Titling Trust, by the UTI issued by Titling Trust, or by any SUBI; any sale, transfer or pledge by Company, Corporation or other special purpose entities (such as Issuer) of any interest in one or more SUBIs; other asset securitizations, secured loans or similar transactions involving Trust Assets; and similar activities.

RULINGS REQUESTED

Taxpayer requests rulings that the Master Lease Agreement (and related MVLAs) of each new TRAC Lease is a qualified motor vehicle operating agreement under § 7701(h)(2), and that qualification of the Master Lease Agreement (and the related MVLAs) of each new TRAC Lease as a lease for federal income tax purposes will be determined without regard to the TRAC provision of the MVLA.

RULINGS

Section 7701(h)(1) provides that in the case of a qualified motor vehicle operating agreement that contains a terminal rental adjustment clause, the agreement is treated as a lease if (but for such terminal rental adjustment clause) the agreement would be treated as a lease for Federal income tax purposes, and the lessee is not treated as the owner of the property subject to the agreement during the period the agreement is in effect.

Section 7701(h)(2)(A) defines a qualified motor vehicle operating agreement as any agreement with respect to a motor vehicle (including a trailer) that meets three requirements, set forth in subparagraphs (B), (C), and (D) of § 7701(h)(2).

First, § 7701(h)(2)(B) requires that, under the agreement, the sum of the amount the lessor is personally liable to repay, and the net fair market value of the lessor's interest in any property pledged as security for property subject to the agreement, equals or exceeds all amounts borrowed to finance the acquisition of property subject to the agreement. Any property pledged that is property subject to the agreement or

property directly or indirectly financed by indebtedness secured by property subject to the agreement is not taken into account.

Second, pursuant to § 7701(h)(2)(C), the agreement must contain a separate written statement signed by the lessee that the lessee certifies, under penalty of perjury, that it intends that more than 50 percent of the use of the property subject to the agreement is to be in a trade or business of the lessee, and that clearly and legibly states that the lessee has been advised that it would not be treated as the owner of the property subject to the agreement for federal income tax purposes.

Finally, § 7701(h)(2)(D) requires that the lessor must not know that the certification in § 7701(h)(2)(C) is false.

Taxpayer has represented that the Master Lease Agreement (and related MVLAs) of each new TRAC Lease will satisfy the requirements of §§ 7701(h)(2)(C) and (D). Further, whether Taxpayer is acting as principal in acquiring the motor vehicle for its own account or acting as agent in acquiring the motor vehicle for Titling Trust, Taxpayer will fund the entire acquisition price of the motor vehicle using operating capital or the proceeds of recourse debt. Thus, in either case, Taxpayer will be fully at risk on the acquisition price of the motor vehicles from the time of initial acquisition of the vehicle, whether legal title is held by Taxpayer directly or indirectly through Titling Trust.

Based on the facts and representations made by Taxpayer, and provided that : (1) Issuer borrows funds from lenders on a recourse basis; and (2) amounts received in lease payments and from the disposition of motor vehicles (using rental defaults consistent with historical experience) are expected to be sufficient to satisfy all obligations to lenders, we conclude that the Master Lease Agreement (and related MVLAs) of each new TRAC Lease will meet the definition of a “qualified motor vehicle operating agreement” under § 7701(h)(2) and the Subsequent Refinancing will not affect the application of § 7701(h)(2) to the TRAC leases. Accordingly, based on the foregoing facts, representations, and law, the Master Lease Agreement (and related MVLAs) of each new TRAC Lease will be a qualified motor vehicle operating agreement under § 7701(h)(2)). In addition, qualification of the Master Lease Agreement (and related MVLAs) of each new TRAC Lease as a lease for Federal income tax purposes will be determined without regard to the TRAC provision of the Master Lease Agreement.

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. Specifically, we express or imply no opinion concerning: (1) whether the Master Lease Agreement (and related MVLAs) is a true lease for Federal income tax purposes; (2) a situation in which Issuer borrows funds from lenders on a nonrecourse basis; and (3) a situation in which the amounts received in lease payments and from the disposition of motor vehicles (using rental default consistent with historical experience) are not expected to be sufficient to satisfy all obligations to lenders.

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.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 11.04 of Rev. Proc. 2012-1, 2012-1 I.R.B. 1, 50. However, when the criteria in section 11.06 of Rev. Proc. 2012-1, 2012-1 I.R.B. 1, 51 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

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

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.

Sincerely,

Willie E. Armstrong, Jr.
Senior Technician Reviewer, Branch 7
(Income Tax & Accounting)

cc: