

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201306008**
Release Date: 2/8/2013

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

Index Number: 1504.00-00, 1504.01-00

, ID No.
Telephone Number:

Refer Reply To:
CC:CORP:B05
PLR-122561-12
Date:
November 14, 2012

Parent =

Sub =

Department =

Rehabilitator =

Business =

Plan Sponsor Share =

Agreement =

Authorized Holder =

State A =

Court =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

a =

b =

c =

Dear :

This letter responds to your authorized representatives' letter dated May 24, 2012 requesting rulings under section 1504 of the Internal Revenue Code. The information provided in that letter 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. This office has not verified any of the material submitted in support of the request for rulings, but such material is subject to verification on examination.

Summary of Facts

Parent is the common parent of an affiliated group of corporations that joins in the filing of a consolidated U.S. federal income tax return. Parent's group includes Sub. Sub currently has two classes of stock outstanding. Parent owns all of the outstanding common stock of Sub, and third parties hold all of the outstanding preferred stock. Sub is a State A Business company, and is subject to regulation by Department.

The preferred stock in Sub is limited and preferred as to dividends and does not participate in corporate growth to any significant extent and is not convertible into another class of stock. At issuance, the preferred stock was also not entitled to vote in the election of Sub's directors. Sub's charter provides that if Sub fails to pay dividends for a consecutive months (the "Dividend Condition"), the preferred stock will be granted voting rights, subject to the provisions of State A law (the "Law Condition"). Sub failed to pay dividends for a consecutive months as of Date 1. The taxpayer provided a letter from the Department which states that, under State A law, the conversion of Sub's class of nonvoting preferred stock into voting stock cannot occur without the Department's approval. Neither the preferred shareholders nor Sub has requested the Department's approval, and the Department has indicated that no approval will be forthcoming if requested.

On Date 2, Parent filed for Chapter 11 bankruptcy. On Date 3, the bankruptcy court confirmed Parent's plan of reorganization (the "Bankruptcy Plan"), which will become effective at a future date. Sub agreed to be the sponsor of the Bankruptcy Plan. Pursuant to the Bankruptcy Plan, Parent will issue to Sub (or Sub's designee) the Plan Sponsor Share in satisfaction of an intercompany claim held by Sub in an amount of \$b. Sub intends to designate a trust (the "Plan Sponsor Stock Trust"), of which Sub is the sole beneficiary as the holder of the Plan Sponsor Share. The trustee of the Plan Sponsor Stock Trust, which is intended to be treated as a grantor trust for federal income tax purposes, will hold and own the Plan Sponsor Share in the trust and exercise the voting rights and other rights relating to the Plan Sponsor Share, in each case in accordance with the terms of a trust agreement with Sub.

In connection with Parent's Chapter 11 reorganization, Parent and Sub will enter into the Agreement (collectively, the rights afforded by the Plan Sponsor Share and the Agreement are the "Consent Rights"). Generally, the Consent Rights are designed to prevent Parent from taking certain actions without the prior written consent of Sub.

As part of the Bankruptcy Plan, Parent will amend its corporate charter, which will result in a modified governance structure following the effective date of the Bankruptcy Plan (the "Parent Modified Governance Structure"). Under the Modified Governance Structure, Parent's board of directors (the "Parent Board") will be reduced to c directors who will serve staggered terms. At the expiration of any director's term or upon the occurrence of any other vacancy in the Parent Board, the then-current Parent Board shall nominate candidates to fill the vacancy. Pursuant to Parent's amended corporate charter, such candidates may consist only of directors serving on Sub's board of directors or as then-current executive officers of Sub, and may include then-current directors serving on the Parent Board. Parent's stockholders shall elect new directors, by a majority of those voting, from the pool of candidates.

On Date 4, by order of the Court, the Rehabilitator was appointed and Sub entered into a court-supervised rehabilitation proceeding pursuant to State A law (the "Rehabilitation

Proceeding”), whereupon the Rehabilitator took control of Sub, and Sub’s Board of Directors (the “Sub Board”) resigned. On Date 5, the Rehabilitator filed a proposed Plan of Rehabilitation for Sub (the “Rehabilitation Plan”), which is subject to approval by the Court. The Rehabilitation Plan contemplates that, upon termination of the Rehabilitation Proceeding, (i) a new Sub Board will be appointed by the Rehabilitator, subject to the approval of the Department as Sub’s regulator and (ii) Sub’s existing charter and by-laws will be amended and restated to provide for, among other things, the make-up and manner of election of the Sub Board following the Rehabilitation Proceeding. Under the amended and restated charter, the Sub Board will consist of seven members, each serving a staggered three-year term. The Sub Board will appoint a nominating committee, consisting of at least two of its own members. At the expiration of any director’s term or the occurrence of any other vacancy on the Sub Board, the nominating committee will nominate two candidates to fill the vacancy. The Department must approve all such candidates. Parent, as Sub’s sole common shareholder, shall elect new directors of Sub from the pool of candidates nominated by the nominating committee of the Sub Board and approved by the Department.

Representations

The taxpayer makes the following representations:

- (a) Each of Parent and Sub is an includible corporation within the meaning of section 1504(b).
- (b) When issued, the Sub preferred stock qualified under section 1504(a)(4).
- (c) Under State A law, the Sub’s class of nonvoting preferred stock cannot obtain the right to vote for directors of Sub without prior approval from Department.
- (d) Based upon information provided by the Department regarding the identity of the holders of the Sub preferred stock, no holder of such stock has been or is considered an Authorized Holder since Date 1.

Rulings

Based solely on the information and representations submitted, we rule as follows:

- (1) Sub’s failure to pay dividends for a consecutive months has not caused the Sub preferred stock to be treated as stock “entitled to vote” under section 1504(a)(4) at any time.
- (2) Neither the changes in Sub’s corporate governance under the Rehabilitation Plan, nor the Parent Modified Governance Structure that will be in effect following the effective date of the Bankruptcy Plan, nor the Consent Rights that will be held

by Sub (or Plan Sponsor Stock Trust) following the effective date of the Bankruptcy Plan, will cause Sub to become deconsolidated from Parent for federal income tax purposes.

Caveat

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 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.

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 representatives.

Sincerely,

Marie C. Milnes-Vasquez

Marie C. Milnes-Vasquez
Acting Chief, Branch 4
Office of Associate Chief Counsel
(Corporate)

cc: