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CC:ITA:7
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Date:
November 22, 2016

LEGEND

Holding =

Pship 1 =

Pship 2 =

Affiliate 1 =

Affiliate 2 =

Affiliate 3 =

Affiliate 4 =

Affiliate 5 =

3rd Party =

LTP1 =

LTP2 =

LTP3 =

LTP4 =

LTP5 =

Date 1 =

Date 2 =

Date 3 =

A =

B =

C =

D =

E =

F =

G =

H =

I =

J =

K =

L =

M =

N =

O =

P =

Q =

R =

S =

Dear :

This letter ruling responds to a letter dated May 27, 2016, and subsequent correspondence, submitted on behalf of Holding and Pship 1. Holding and Pship 1 are requesting a ruling regarding the federal income tax consequences for certain amortizable § 197 intangibles as a result of the consolidation of certain Pship 2 entities on Date 1 (the "Consolidation"), and Holding's arrangement with 3rd Party to combine Pship 2's operations and certain 3rd Party's operations on Date 2, into Pship 1.

FACTS

Holding and Pship 1 represent the facts are as follows:

Holding is a A corporation that is classified as an S corporation for federal income tax purposes. It uses the accrual method of accounting to calculate its taxable income and has a taxable year ending on B.

Pship1 is a A limited liability company that is classified as a partnership for federal income tax purposes. It uses an accrual method of accounting to calculate its taxable income and has a taxable year ending on B.

Holding's predecessor was formed in C, and Holding converted to its current S corporation status in D. Before Date 2, Holding was the parent of numerous entities that operate an E business (the "Holding Group"). Holding and its predecessor entities had conducted this E business since the F, and Holding and its affiliates had expanded the E business significantly from G through H through growth and acquisition.

Holding's structure was a result of state I laws, which generally require that a separate legal entity be licensed to operate an E business in a state. As a result of these laws, Holding generally had at least one legal entity in each state in which it operated. Certain of these entities were formed by Holding, and certain existing entities were acquired by one or more of its affiliates as a way to expand its business operations into new states.

Until Date 2, Holding owned a J percent interest in Pship 2 and an affiliate of Holding, Affiliate 1, owned the other K percent interest in Pship 2. Pship 2 is classified as a partnership for federal income tax purposes. In certain states, Pship 2 and Holding, directly or through lower-tier entities, together owned all of the interests in the operating entities before the Consolidation transactions.

Many of the entities that Holding and Pship 2 acquired were classified as partnerships for federal income tax purposes. In some cases, these partnerships were formed before August 10, 1993, and, thus, goodwill and intangible assets of these entities were subject to the anti-churning rules under § 197(f)(9) of the Internal Revenue Code. In the case of LTP1, LTP2, LTP3, LTP4, and LTP5, the lower-tier partnerships

owned by Holding and Pship 2 that are relevant to this letter ruling request (the "LTPs"), the LTPs were formed after August 10, 1993, but goodwill and intangible assets (along with other E assets) were contributed to the LTPs by a third party that owned such assets before August 10, 1993. As a result, these LTPs stepped into the shoes of the third party contributor with respect to any § 197 anti-churning taint to which such assets were subject.

When Holding or Pship 2 acquired an interest in an entity that was classified as a partnership (before and after the acquisition) from an unrelated seller, they ensured that the acquired partnership had a § 754 election in effect for the partnership's taxable year that included the purchase. As a result, Holding or Pship 2 received a § 743(b) adjustment with respect to the acquired interest in each LTP, and any § 743(b) adjustment that attached to intangible assets was not subject to the anti-churning rules under § 197(f)(9).

With respect to the LTPs that are the subject of this letter ruling request, all of the LTPs were, prior to the Consolidation, partnerships owned directly or indirectly by Holding and Pship 2. These separate interests were acquired at different times for various business reasons. The original § 743(b) adjustments attached to inventory, tangible personal property, goodwill, or going concern value. All of the past purchases of interests in these LTPs were made by Holding or Pship 2 from a seller that was not related to Holding, Pship 2, or any other Holding Group member within the meaning of the related party rules of § 197(f)(9)(C).

In H, Holding entered into an arrangement to aggregate its E businesses with the E businesses of 3rd Party. The arrangement ultimately involved the formation of Pship 1 on Date 3, with Pship 1 being a shell entity until the contribution of each party's E business to Pship 1 on Date 2. The parties agreed that Holding would contribute L percent of the capital of the partnership, and Holding's interest in the partnership's profits would decrease from M percent in the first year (N) to L percent in the O year and thereafter for business reasons that relate to the parties' agreement of the projected timing of earnings associated with the assets that each party would be contributing to Pship 1. The parties agreed that most of the entities contributed by each party will be a disregarded entity at the time of contribution. The one exception is that Pship 1 will own the stock of Affiliate 5, and the common partnership interests in LTP1.

Thus, this agreement provided that Holding would change its organizational structure from the structure with LTPs to one in which all entities were disregarded entities, except as noted above with respect to Affiliate 5 and LTP1. Holding and its affiliates executed this Consolidation on Date 1, pursuant to the following steps:

1. Affiliate 2 converted from a A corporation to a A LLC, Affiliate 3, by filing a certificate of conversion with the state;

2. Pship 2 redeemed Affiliate 1's K percent interest in Pship 2. This step caused Pship 2 to have a single owner immediately prior to the transfers to Pship 1; and
3. Holding made a capital contribution to Pship 2 consisting of (i) its P percent interest in LTP3, (ii) its O percent general partnership interest in LTP2, (iii) its R percent interest in Affiliate 3, (iv) its S percent interest in Affiliate 4, and (v) its R percent interest in Affiliate 5.

After these Consolidation steps, on Date 2, Holding contributed Pship 2 to Pship 1, and 3rd Party contributed disregarded entities that conduct its E business to Pship 1. As a result, Pship 1 owns all of the Pship 2's and 3rd Party's E operations through disregarded entities, except as noted above with respect to Affiliate 5 and LTP1.

The initial discussions and decisions to combine the Holding and 3rd Party businesses did not occur until H, and the prior purchases of the LTP interests by Holding and Pship 2 were unrelated to, and not made in contemplation of, the formation of the Pship 1 joint venture and the associated Consolidation transactions.

Further, Holding and Pship 1 hereby make the following additional representations in connection with this letter ruling request:

1. The LTPs were regarded as holding two types of assets before the Consolidation transactions:
   a. Pre-1993 § 197 intangible assets with tax bases that are unrelated to any § 743 adjustments and are subject to the anti-churning rules ("Pre-1993 Intangibles"); and
   b. Post-1993 amortizable § 197 intangible assets in the LTPs resulting from § 743(b) adjustments to intangible assets due to Holding and Pship 2's prior purchases of interests in the LTPs from unrelated persons. Pursuant to § 1.197-2(g)(3) and § 1.743-1(j) of the Income Tax Regulations, the parties treated these § 743(b) adjustments as separate assets that were newly-acquired amortizable § 197 intangible assets that were not subject to the anti-churning rules ("Post-1993 Intangibles").
2. The tax basis of assets held by each LTP (including the § 743(b) adjustments) was equal to Holding's direct or indirect tax bases in their interest in such LTP immediately before the Consolidation transactions. In addition, the tax basis of assets held by Pship 2 was equal to Holding's tax basis in its interest in Pship 2.
3. The Consolidation transactions involving Holding, Pship 2, and the LTPs were subject to § 721 and § 731 and, thus, Holding, Pship 2,

and the LTPs did not recognize taxable income, gain, loss, or deduction in connection with these transactions.

RULING REQUESTED

Holding and Pship 1 request the following ruling: Provided the LTPs held two separate intangibles at the time of the Consolidation transactions that involved a series of §§ 721 and 731 transfers made in connection with the conversion of the LTPs into disregarded entities, namely, (i) the Pre-1993 Intangibles, and (ii) the Post-1993 Intangibles, Pship 1 will be viewed as receiving these two separate § 197 intangible assets and should continue to amortize the Post-1993 Intangible.

ITEMS FOR WHICH NO RULING IS REQUESTED

Holding and Pship 1 do not request a ruling on the following matters:

1. Whether Pship 1 is a continuation of Pship 2;

2. The tax treatment of any tax basis or § 704(b) capital account not associated with the § 743(b) adjustments the LTPs had made with respect to Holding and Pship 2 before the Consolidation transactions;

3. The amortization period of the tax basis amounts attributable to the former § 743(b) adjustments; and

4. Any potential application of the § 1.743-1(h)(1) rule that says that a § 743(b) adjustment is tracked up through tiers of partnerships when an upper-tier partnership contributes property subject to a § 743 adjustment to a lower-tier partnership.

Further, Holding and Pship1 are not requesting any rulings relating to Affiliate 5 and LTP1.

LAW AND ANALYSIS

Section 197(a) provides that a taxpayer shall be entitled to an amortization deduction with respect to any amortizable § 197 intangible. For purposes of § 197, the term “amortizable § 197 intangible” is defined in § 197(c)(1) as meaning, in general, any § 197 intangible that is acquired by the taxpayer after August 10, 1993, and that is held in connection with the conduct of a trade or business or an activity described in § 212. Pursuant to § 197(c)(2), the term “amortizable § 197 intangible” does not include certain self-created intangibles.

Except as otherwise provided in § 197, the term "§ 197 intangible" is defined in § 197(d)(1) as meaning, among other things, (A) goodwill and (B) going concern value.

Section 197(f)(2)(A) provides that in the case of any § 197 intangible transferred in a transaction described in § 197(f)(2)(B), the transferee shall be treated as the transferor for purposes of applying § 197 with respect to so much of the adjusted basis in the hands of the transferee as does not exceed the adjusted basis in the hands of the transferor. Section 197(f)(2)(B) provides that the transactions described in § 197(f)(2) are (i) any transaction described in § 332, 351, 361, 721, 731, 1031, or 1033, and (ii) any transaction between members on the same affiliated group during any taxable year for which a consolidated return is made by such group.

Section 1.197-2(g)(2) provides the rules relating to §197(f)(2). If the rules under § 1.197-2(g)(2) apply to a § 197(f)(9) intangible (within the meaning of § 1.197-2(h)(1)(i)), § 1.197-2(g)(2)(i) provides that the intangible is, notwithstanding its treatment under § 1.197-2(g)(2), treated as an amortizable § 197 intangible only to the extent permitted under § 1.197-2(h).

Section 1.197-2(g)(2)(ii)(A) provides that if a § 197 intangible is transferred in a transaction described in § 1.197-2(g)(2)(ii)(C), the transfer is disregarded in determining: (1) whether, with respect to so much of the intangible's basis in the hands of the transferee as does not exceed its basis in the hands of the transferor, the intangible is an amortizable § 197 intangible; and (2) the amount of the deduction under § 197 with respect to such basis.

Section 1.197-2(g)(2)(ii)(B) provides that if the intangible described in § 1.197-2(g)(2)(ii)(A) was an amortizable § 197 intangible in the hands of the transferor, the transferee will continue to amortize its adjusted basis, to the extent it does not exceed the transferor's adjusted basis, ratably over the remainder of the transferor's 15-year amortization period. Further, the regulation provides that if the intangible was not an amortizable § 197 intangible in the hands of the transferor, the transferee's adjusted basis, to the extent it does not exceed the transferor's adjusted basis, cannot be amortized under § 197. The rules of § 1.197-2(g)(2)(ii) also apply to any subsequent transfers of the intangible in a transaction described in § 1.197-2(g)(2)(ii)(C).

Section § 1.197-2(g)(2)(ii)(C) specifically lists any transaction described in § 721 or § 731 as among the transactions covered by the rules of § 1.197-2(g)(2).

Section 1.197-2(g)(3) provides that any increase in the adjusted basis of a § 197 intangible under, among other things, § 743(b) (relating to the optional adjustment to the basis of partnership property after transfer of a partnership interest) is treated as a separate § 197 intangible. For purposes of determining the amortization period under § 197 with respect to the basis increase, the intangible is treated as having been acquired at the time of the transaction that causes the basis increase, except as provided in § 1.743-1(j)(4)(i)(B)(2). See, for example, Examples 16(iii) and 19 of § 1.197-2(k).

Section 197(f)(9) provides the anti-churning rules for purposes of § 197. Section 197(f)(9) provides that the term "amortizable § 197 intangible" shall not include any § 197 intangible that is described in § 197(d)(1)(A) or (B) (or for which depreciation or amortization would not have been allowable but for § 197) and that is acquired by the taxpayer after August 10, 1993, if: (i) the intangible was held or used at any time on or after July 25, 1991, and on or before August 10, 1993, by the taxpayer or a related person; (ii) the intangible was acquired from a person who held such intangible at any time on or after July 25, 1991, and on or before August 10, 1993, and, as part of the transaction, the user of such intangible does not change; or (iii) the taxpayer grants the right to use such intangible to a person (or a person related to such person) who held or used such intangible at any time on or after July 25, 1991, and on or before August 10, 1993. The term "related person" for purposes of § 197(f)(9) is defined in § 197(f)(9)(C).

Section 197(f)(9)(E) provides that with respect to any increase in the basis of partnership property under § 732, 734, or 743, determinations under § 197(f)(9) shall be made at the partner level and each partner shall be treated as having owned and used such partner's proportionate share of the partnership assets. *See* § 1.197-2(h)(12)(i).

Section 1.197-2(h) provides the rules relating to § 197(f)(9). Pursuant to § 1.197-2(h)(1)(i), § 1.197-2(h) applies to § 197(f)(9) intangibles. Section 1.197-2(h)(1)(i) further provides § 197(f)(9) intangibles are goodwill and going concern value that was held or used at any time during the transition period and any other § 197 intangible that was held or used at any time during the transition period and was not depreciable or amortizable under prior law.

Section 1.197-2(h)(4) provides that, for purposes of § 1.197-2(h), the transition period is July 25, 1991, if the acquiring taxpayer has made a valid retroactive election pursuant to § 1.197-1T, and the period beginning on July 25, 1991, and ending on August 10, 1993, in all other cases.

Section 1.197-2(h)(5)(ii) provides that the anti-churning rules of § 1.197-2(h) do not apply to the acquisition of a § 197(f)(9) intangible that was an amortizable § 197 intangible in the hands of the seller (or transferor), but only if the acquisition transaction and the transaction in which the seller (or transferor) acquired the intangible or interest therein are not part of a series of related transactions.

Section 1.197-2(h)(10) provides that if a person acquires a § 197(f)(9) intangible in a transaction described in § 1.197-2(g)(2) from a person in whose hands the intangible was an amortizable § 197 intangible, and immediately after the transaction (or series of transactions described in § 1.197-2(h)(6)(ii)(B)) in which such intangible is acquired, the person acquiring the § 197(f)(9) intangible is related to any person described in § 1.197-2(h)(2), the intangible is, notwithstanding its treatment under § 1.197-2(g)(2), treated as an amortizable § 197 intangible only to the extent permitted under § 1.197-2(h). (See, for example, § 1.197-2(h)(5)(ii)).

Section 1.197-2(h)(12)(v)(A) provides that, in general, the anti-churning rules of § 1.197-2(h) do not apply to an increase in the basis of a § 197 intangible under § 743(b) if the person acquiring the partnership interest is not related to the person transferring the partnership interest.

In this case, Holding and Pship1 represent that: (i) the LTPs held two separate intangibles at the time of the Consolidation transactions and these two separate intangibles are the Pre-1993 Intangibles and the Post-1993 Intangibles; (ii) the Consolidation transactions involving Holding, Pship2, and LTPs were subject to § 721 and § 731; and (iii) the prior purchases of the interests of each LTP by Holding and Pship2 were unrelated to, and not made in contemplation of, the formation of the Pship1 joint venture with 3rd Party and the associated Consolidation transactions. These representations are material ones. Accordingly, provided the contribution by Holding of Pship2 to Pship1 is governed by § 721, the adjusted basis of the Pre-1993 Intangibles in the hands of Pship1 does not exceed the adjusted basis of such intangibles in the hands of Pship2, and the adjusted basis of the Post-1993 Intangibles in the hands of Pship1 does not exceed the adjusted basis of such intangibles in the hands of Pship2, we conclude that Pship1 is viewed as receiving two separate intangibles, namely, the Pre-1993 Intangibles and the Post-1993 Intangibles, pursuant to § 197(f)(2) and § 1.197-2(g)(2) and (3), and that the anti-churning rules of § 197(f)(9) and § 1.197-2(h) do not apply to the Post-1993 Intangibles in the hands of Pship1.

CONCLUSION

Based solely on the facts and representations submitted and the law and analysis as set forth above, we conclude that provided the LTPs held two separate intangibles at the time of the Consolidation transactions that involved a series of §§ 721 and 731 transfers made in connection with the conversion of the LTPs into disregarded entities, namely, (i) the Pre-1993 Intangibles, and (ii) the Post-1993 Intangibles, Pship 1 will be viewed as receiving these two separate § 197 intangible assets and should continue to amortize the adjusted basis of the Post-1993 Intangibles.

Except as expressly set forth above, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the Code or regulations. Specifically, no opinion is expressed or implied concerning: (1) whether Pship 1 is a continuation of Pship 2; (2) the tax treatment of any tax basis or § 704(b) capital account not associated with the § 743(b) adjustments the LTPs had made with respect to Holding and Pship 2 before the Consolidation transactions; (3) whether the amortization period of the tax basis amounts attributable to the Post-1993 Intangibles are proper; (4) any potential application of the § 1.743-1(h)(1) rule that says that a § 743(b) adjustment is tracked up through tiers of partnerships when an upper-tier partnership contributes property subject to a § 743 adjustment to a lower-tier partnership; (5) whether each LTP held two separate intangibles at the time of the Consolidation transactions, namely, the Pre-1993 Intangibles and the Post-1993

Intangibles; (6) the Consolidation transactions involving Holding, Pship 2, and the LTPs were subject to § 721 and § 731; (7) whether the tax basis of assets held by each LTP (including the § 743(b) adjustments) was equal to Holding's direct or indirect tax bases in their interest in such LTP immediately before the Consolidation transactions; (8) whether the tax basis of assets held by Pship 2 was equal to Holding's tax basis in its interest in Pship 2; (9) the tax treatment of the purchases of the interests of each LTP by Holding and Pship2; (10) the tax treatment of any potential new intangibles created in connection with the Consolidation transactions; or (11) the tax treatment of the intangible assets, or any other assets, that 3rd Party contributed to Pship1 on Date 2.

A copy of this letter ruling must be attached to any federal income tax return to which it is relevant. A copy is enclosed for that purpose. Alternatively, a taxpayer filing its federal income tax return electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of the letter ruling.

The ruling contained in this letter ruling is based upon facts and representations submitted by Holding and Pship 1 with accompanying penalty of perjury statements executed by appropriate parties. While this office has not verified any of the material submitted in support of this letter ruling request, all material is subject to verification on examination.

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney, we are sending a copy of this letter to Taxpayer's authorized representative. We are also sending a copy of this letter to the appropriate operating division director.

Sincerely,

KATHLEEN REED

KATHLEEN REED
Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures (2):
copy of this letter
copy for section 6110 purposes