Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:2
PLR-119557-18

Date:
October 02, 2018

Legend

Old Parent =

New Parent =

Target Parent =

Target HoldCo =

Historic Group Members =

Loss Members =

Bankruptcy Court	=	
State A	=	
Date 1	=	
Date 2	=	
Emergence Date	=	
Year 1	=	
Year 2	=	
Year 3	=	
a	=	

Corporate Business Purpose =

Dear :

This letter responds to your request, dated June 15, 2018, submitted on behalf of New Parent, requesting a ruling under § 1504(a)(3)(B) of the Internal Revenue Code waiving the application of § 1504(a)(3)(A) with respect to Target Parent and certain of its affiliates. Additional information was received in a letter dated August 17, 2018. The material information submitted is summarized below.

Summary of Facts

Old Parent was a public State A corporation and the common parent of an affiliated group of corporations that joined in the filing of a consolidated federal income tax return (the “Old Parent Consolidated Group”). On Date 1, Old Parent and its affiliates filed a voluntary bankruptcy petition in the Bankruptcy Court. On Date 2, the Bankruptcy Court issued the order confirming the plan of reorganization of these entities (the “Plan”) and the Plan became effective on the Emergence Date.

On the Emergence Date, Old Parent and its affiliates emerged from Chapter 11 bankruptcy in a series of transactions pursuant to the Plan (the “Emergence Transactions”). In general, the Emergence Transactions consisted of three parts: (i) the internal restructuring of Old Parent’s subsidiaries (the “Internal Restructuring”); (ii) the “Target Transfer,” consisting of the taxable transfer of specified assets (including the stock of historic members of the Old Parent Consolidated Group, *i.e.*, the Historic Group Members) to, and the assumption of liabilities by, newly-formed Target Parent, in exchange for Target Parent stock and other consideration, including stock of Target HoldCo; and (iii) the recapitalization and reorganization of Old Parent into New Parent.

The Emergence Transactions were necessary for the business operations of Old Parent to emerge from bankruptcy and more specifically, to divide the Old Parent Consolidated Group’s assets and liabilities into two independent operating companies. Old Parent retained valuable assets subject only to specified liabilities, and Target Parent received the residual assets subject to all of the remaining liabilities, other than those resolved pursuant to the Plan.

As a result of the Emergence Transactions, New Parent became the § 381 successor to Old Parent and, pursuant to Treas. Reg. § 1.1502-75(d)(2)(i), the common parent of the Old Parent Consolidated Group (hereafter referred to as the “New Parent Consolidated Group”).

The Target Transfer caused Old Parent to recognize a capital loss of approximately $a million on the transfer of the stock of the Loss Members (the “Capital Loss”). No amount of the Capital Loss has been used by the New Parent Consolidated Group to reduce taxable income.

Target Parent, as the common parent of an affiliated group of corporations, has filed a consolidated federal income tax return (the “Target Parent Consolidated Group”) since the completion of the Emergence Transactions.

The Emergence Transactions created two self-sufficient companies. Since the completion of the Emergence Transactions, both the New Parent Consolidated Group and the Target Parent Consolidated Group have incurred net operating losses for the Year 1 and Year 2 taxable years.

Subsequent to the Emergence Transactions, New Parent and Target Parent, separately and independently, each undertook dispositions that were parts of the revival of its respective businesses. After such dispositions, certain of the Historic Group Members liquidated into Target Parent, and such liquidations were treated as tax-free pursuant to § 332, thereby causing Target Parent to become a § 381 successor to certain of the Historic Group Members.

In order to facilitate the Corporate Business Purpose, New Parent has agreed to acquire Target Parent and Target HoldCo in exchange for New Parent common stock (the “Transaction”). As a result of the Transaction, the New Parent Consolidated Group will acquire the Historic Group Members. In order to acquire Target Parent and Target HoldCo, New Parent intends to undertake the following steps in Year 3:

(i) New Parent will form Merger Sub 1, a State A corporation. Merger Sub 1 will form Merger Sub 2, a State A corporation.

(ii) Merger Sub 1 will merge with and into Target HoldCo, with Target HoldCo surviving. Shareholders of Target HoldCo will receive solely common stock in New Parent in exchange for their shares in Target HoldCo.

(iii) Immediately thereafter, Merger Sub 2 will merge with and into Target Parent, with Target Parent surviving. Shareholders of Target Parent (other than Target HoldCo) will receive solely common stock in New Parent in exchange for their shares in Target Parent.

At the completion of the Transaction, the Target Parent Consolidated Group will terminate. Target Parent, Target HoldCo, and certain of the Historic Group Members will become members of New Parent’s affiliated group. Absent relief pursuant to § 1504(a)(3)(B), Target Parent and the remaining of the Historic Group Members will be barred by § 1504(a)(3)(A) from joining in the filing of the New Parent Consolidated Group's consolidated return for Year 3.

Law

Section 1504(a)(3)(A) provides that, if a corporation is included in a consolidated federal income tax return filed by an affiliated group of corporations, and such corporation ceases to be a member of such group, such corporation (or any successor of such corporation) may not be included in any consolidated return filed by the affiliated group (or by another affiliated group with the same common parent or a successor of such common parent) before the 61st month beginning after its first taxable year in which it ceased to be a member of such affiliated group. Section 1504(a)(3)(A) therefore prevents Target Parent and certain of the Historic Group Members from being included in the consolidated return of the New Parent Consolidated Group before the 61st month after the taxable year that included the Emergence Date. However, § 1504(a)(3)(B) allows the Secretary to waive the application of § 1504(a)(3)(A) to any corporation for any period subject to such conditions as the Secretary may prescribe. Section 1504(a)(3)(A) was enacted by § 60(a) of the Tax Reform Act of 1984. The Conference Report states that the rule prohibiting consolidation after deconsolidation is an anti-abuse rule. H.R. Conf. Rep. No. 98-861, at 833 (1984).

Rev. Proc. 2002-32 grants an automatic waiver of the general rule of § 1504(a)(3)(A) for taxpayers who meet its requirements. Section 5 of Rev. Proc. 2002-32 specifies the information and representations to be included in a request for an automatic waiver. Section 5.14 of Rev. Proc. 2002-32 provides that the request must include a representation that the disaffiliation and subsequent consolidation has not provided and will not provide a benefit of a reduction in income, increase in loss, or any other deduction, credit, or allowance (a federal tax savings) that would not otherwise be secured or have been secured had the disaffiliation and subsequent consolidation not occurred, including, but not limited to, the use of a net operating loss or credit that would otherwise have expired, or the use of a loss recognized on a disposition of stock of the deconsolidated corporation or a predecessor of such corporation. Section 5.14 of Rev. Proc. 2002-32 further provides that in determining whether the disaffiliation and subsequent consolidation provided or will provide a federal tax savings, the net tax consequences to all parties, taking into account the time value of money, are considered.

Section 7 of Rev. Proc. 2002-32 provides that if a deconsolidated corporation cannot qualify for an automatic waiver, a waiver under § 1504(a)(3)(B) may only be obtained through a letter ruling request. Section 7 of Rev. Proc. 2002-32 further provides that the ruling request should include the information set forth in § 5 of Rev. Proc. 2002-32.

Representations

New Parent on behalf of itself and its affiliates has made the following representations in connection with the Transaction:

(1) No party to the Transaction (*i.e.*, New Parent, Target Parent, and Target HoldCo) is or has been an S corporation (within the meaning of § 1361(a)), a real estate investment trust (a "REIT"), or a regulated investment company (a "RIC"), an insurance company, a bank, a savings and loan association, a controlled foreign corporation (a "CFC"), or other corporation with a special U.S. federal tax status at any time during the period of disaffiliation, and no party to the Transaction (*i.e.*, New Parent, Target Parent, and Target HoldCo) plans to become or will become eligible to be such an entity.

(2) Except for obtaining a tax benefit in the form of the Capital Loss, the deconsolidation and reconsolidation of certain of the Historic Group Members has not provided and will not provide a benefit of a reduction in income, increase in loss, or any other deduction, credit, or allowance that would not otherwise be secured or have been secured had the disaffiliation and subsequent consolidation not occurred, including, but not limited to, the use of a net operating loss or credit that would have otherwise expired, or the use of a loss recognized on the disposition of stock of the deconsolidated corporation or a predecessor of such corporation. In determining whether the disaffiliation and subsequent consolidation provided or will provide a U.S. federal income tax savings, the net consequences to all parties, taking into account the time value of money, were considered.

(3) The Transaction will be carried out to facilitate the Corporate Business Purpose. Each step of the Transaction will be (i) motivated in whole or substantial part by bona fide business purposes unrelated to U.S. taxes and (ii) economically meaningful apart from any anticipated U.S. tax benefit.

Ruling

Based solely on the information and representations submitted, and conditioned upon the execution of the closing agreement attached hereto, we rule that pursuant to § 1504(a)(3)(B), the application of § 1504(a)(3)(A) is waived with respect to Target Parent and the Historic Group Members. Provided that Target HoldCo, Target Parent, and each of the Historic Group Members are otherwise includible in the consolidated return to be filed by the New Parent Consolidated Group, then Target HoldCo, Target Parent, and the Historic Group Members may be included in the New Parent Consolidated Group's consolidated return for the portion of the Year 3 tax year following the Transaction and subsequent tax years.

Closing Agreement

We have, accordingly, approved entering into a closing agreement in connection with the issuance of this letter ruling. The necessary closing agreement for New Parent has been prepared in triplicate and is enclosed. In pursuance of our practice with respect to such agreements, the agreement contains a stipulation to the effect that any change or modification of applicable statutes enacted subsequent to the date of this agreement and made applicable to the taxable period involved will render the agreement ineffective to the extent that it is dependent upon such statutes.

The closing agreement to be entered into between the Internal Revenue Service and New Parent, on behalf of itself and the New Parent Consolidated Group, provides that no reduction in income or other federal tax savings is allowable on a consolidated return filed by the New Parent Consolidated Group or any consolidated group of which New Parent (or its successor) becomes a member (as defined in § 1.1502-1(b)) with respect to any portion of the Capital Loss.

Procedural Statements

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Except as 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.

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, copies of this letter are being sent to your authorized representatives.

Sincerely,

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Robert H. Wellen
Associate Chief Counsel
Office of Associate Chief Counsel (Corporate)

cc: