

Internal Revenue Service

Department of the Treasury
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April 29, 2019

LEGEND

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

DE 1 =

DE 2 =

DE 3 =

DE 4 =

Newco =

Business 1 =

Business 2 =

Bankruptcy Court =

State A =

State B =

State C =

Year 1 =

Year 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

a =

b =

c =

d =

e =

f =

g =

h =

Dear :

This letter responds to your authorized representatives' letter dated September 28, 2018, requesting rulings under section 1502 of the Internal Revenue Code with respect to certain tax consequences of the Proposed Transaction (defined below). The information provided in that request is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties 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.

SUMMARY OF FACTS

Parent is a State A corporation and the common parent of an affiliated group of corporations that join in the filing of a U.S. consolidated federal income tax return (the "Parent Consolidated Group"). The Parent Consolidated Group is currently engaged in two distinct business segments: (i) Business 1 and (ii) Business 2.

The relevant corporate structure of the Parent Consolidated Group prior to the Proposed Transaction is as follows:

Parent wholly owns DE 2, which in turn, wholly owns DE 1. DE 1 and DE 2 are State A limited liability companies that are disregarded for federal income tax purposes.

DE 1 wholly owns Sub 1, a State B corporation. In turn, Sub 1 wholly owns (i) Sub 2, a State C corporation, and (ii) multiple directly and indirectly owned subsidiaries.

Sub 2 wholly owns multiple directly and indirectly owned subsidiaries (the "Business 1 Subs"). Certain Business 1 Subs are debtors to third-party creditors. The underlying assets and operations of Business 1 are held and operated by the Business 1 Subs, and by Sub 1 and certain of its subsidiaries (other than the Business 1 Subs).

Sub 2 also owns, directly and indirectly, through its ownership of DE 3 and DE 4, approximately a% by value and b% by vote, of the issued and outstanding shares of Sub 3, a State A corporation. DE 3 and DE 4 are State A limited liability companies that are disregarded for federal income tax purposes. The remaining c% by value and d% by vote of the issued and outstanding shares of Sub 3 are publicly traded. Sub 3, in turn, wholly owns Sub 4, a State A corporation. The underlying assets and operations of Business 2 are held and operated by Sub 3 and its subsidiaries (the "Sub 3 Subgroup"), and by Sub 1 and certain of its subsidiaries (other than members of the Sub 3 Subgroup).

Prior to the Proposed Transaction, Sub 2 has an excess loss account within the meaning of Treas. Reg. § 1.1502-19(a)(2) ("ELA") in its Sub 3 stock (including the

shares held through DE 3 and DE 4) (the “Sub 3 ELA”) of approximately \$e. The Sub 3 ELA was generated as a result of an intercompany dividend that Sub 3 made to Sub 2 in Year 2, and has been further adjusted by additional intercompany dividends made to Sub 2 and investment adjustments under Treas. Reg. § 1.1502-32 in subsequent years.

Prior to the Proposed Transaction, Sub 3 has an ELA in its Sub 4 stock (the “Sub 4 ELA”) of approximately \$f. The Sub 4 ELA was generated as a result of an intercompany dividend that Sub 4 made to Sub 3 in Year 2, and has been further adjusted by investment adjustments under Treas. Reg. § 1.1502-32 in subsequent years.

As of Date 1, Sub 1 and certain of the Business 1 Subs were obligated on approximately \$g of long-term debt. Sub 2 is a guarantor with respect to a portion of this debt. In addition, as of Date 1, Sub 1 was obligated on an intercompany note to Sub 3 (the “Intercompany Note”). On Date 2, Parent and certain of its subsidiaries filed for relief under Chapter 11 of the Bankruptcy Code with the Bankruptcy Court. On Date 3, the Bankruptcy Court confirmed Parent’s plan of reorganization (the “Plan”).

PROPOSED TRANSACTION

For what are represented by Parent to be valid business reasons, and in connection with the Plan, Parent desires to undertake the following steps, some of which have already occurred (the “Proposed Transaction”):

- (i) On Date 4, Sub 2 formed NewCo, a State A corporation.
- (ii) DE 3 and DE 4 distributed all of their Sub 3 stock to Sub 2.
- (iii) Sub 4 will convert to a State A limited liability company that will be treated as disregarded entity for federal income tax purposes (the “Sub 4 Conversion”).
- (iv) Sub 2 will be released from its guarantee of Sub 1’s indebtedness.
- (v) Sub 2 will contribute all of the stock of the Business 1 Subs to NewCo in exchange for the common stock and non-voting preferred stock of NewCo (the “Business 1 Subs Transfer”).
- (vi) Pursuant to a pre-arranged and binding commitment, Sub 2 will sell the non-voting preferred stock of NewCo to one or more third parties in exchange for cash (the “NewCo Preferred Stock Sale,” and together with the Business 1 Subs Transfer, the “NewCo Transfer”).
- (vii) Sub 2 will distribute the common stock of NewCo, and the cash proceeds of the NewCo Preferred Stock Sale, to Sub 1.

(viii) Sub 1 and its subsidiaries will transfer certain assets used in Business 2 to the Sub 3 Subgroup, and the Sub 3 Subgroup will transfer certain assets used in Business 1, if any, to Sub 1 and its subsidiaries.

(ix) Sub 3 will merge with and into Sub 2 pursuant to a statutory merger under applicable state law, with Sub 2 surviving the statutory merger (the "Sub 3 Merger"). The public shareholders of Sub 3 will receive common stock of Sub 2 as consideration in the Sub 3 Merger.

(x) Sub 2 (as successor to Sub 3) is estimated to receive approximately \$h as its recovery under the Plan with respect to the Intercompany Note.

(xi) Sub 2 will issue non-voting preferred stock to one or more third parties for cash (the "Sub 2 Preferred Stock Issuance").

(xii) Parent will contribute newly issued common stock and/or warrants to Sub 1.

(xiii) Sub 1 may, but will not necessarily, contribute consideration to one or more of its subsidiaries to be distributed to certain creditors under the Plan (the "Contribution").

(xiv) Certain Business 1 Subs that are issuers of third-party debt will each issue an intercompany note to Sub 1 in an amount not greater than the value Sub 1 will pay to certain creditors with respect to claims that are allocated to such certain Business 1 Subs for tax purposes, reduced by the amount of consideration contributed to such certain Business 1 Subs in the Contribution.

(xv) Sub 1 will transfer consideration, which includes all of the common stock of Sub 2 held by Sub 1, to certain creditors pursuant to the Plan. To the extent that Sub 1 contributes consideration to any subsidiary pursuant to the Contribution, such subsidiary will distribute such consideration to certain creditors pursuant to the Plan. No right of subrogation or contribution shall arise in favor of any subsidiary of Sub 1 with respect to or on account of any distributions under the Plan.

REPRESENTATIONS

(i) The Sub 3 ELA and Sub 4 ELA existed before the Proposed Transaction was contemplated.

(ii) The Sub 4 Conversion will qualify as a complete liquidation under section 332.

(iii) The fair market value of the assets of Sub 4 will exceed the amount of liabilities both immediately before and immediately after the Sub 4 Conversion.

(iv) Sub 2 will recognize gain or loss (to the extent permitted by Treas. Reg. § 1.1502-36) in the Newco Transfer under section 1001.

(v) The Sub 3 Merger will qualify as a complete liquidation under section 332 with respect to Sub 2, and a reorganization under section 368(a)(1)(A) with respect to Sub 3's public shareholders.

(vi) The fair market value of the assets of Sub 3 will exceed the amount of its liabilities both immediately before and immediately after the Sub 3 Merger.

(vii) If the Sub 3 ELA and/or the Sub 4 ELA were taken into account under Treas. Reg. § 1.1502-19, the only federal tax consequence identified by Parent is that the corresponding gain might result in positive investment adjustments, which would be factored into any Treas. Reg. § 1.1502-36 analysis (and the relevant impacts of other provisions of the Code or regulations as a result of such adjustments) in connection with the transfer of the stock of Sub 2.

RULINGS

Based solely on the information and representation submitted, we rule as follows with respect to the Proposed Transaction:

(i) The Sub 3 ELA will be eliminated without the recognition of gain as a result of the Sub 3 Merger. Treas. Reg. § 1.1502-19(b)(2).

(ii) The Sub 4 ELA will be eliminated without recognition of gain as a result of the Sub 4 Conversion. Treas. Reg. § 1.1502-19(b)(2).

CAVEATS

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. In particular, no opinion is expressed concerning any aspect of any transaction or item occurring as part of the Plan, whether prior to or following the Proposed Transaction, or the effect of any such transaction or item on the rulings above.

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.

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 this letter ruling.

Sincerely,

~~*Gerald B. Flemings*~~

Gerald B. Fleming
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel (Corporate)