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Department of the Treasury  
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Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact: \_\_\_\_\_, ID No.

Telephone Number:

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CC:FIP:B01  
PLR-107719-22  
Date: October 3, 2022

**LEGEND**

Parent =  
LLC 1 =  
LLC 2 =  
LLC 3 =  
LLC 4 =  
Subsidiary 1 =  
Business A =

State A =  
State B =  
s =  
t =  
u =  
v =  
w =  
x =  
y =  
z =  
Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =  
Date 5 =  
Date 6 =  
Act =

Dear \_\_\_\_\_ :

This letter is in response to a letter dated April 1, 2022, and subsequent correspondence, requesting a ruling that the proposed transaction (defined below) will not result in a deemed exchange of debt pursuant to section 1001 of the Internal Revenue Code (the “Code”).

## FACTS

LLC 1 is a State A limited liability company that, through its subsidiaries and joint-ventures, is engaged in Business A. LLC 1 is wholly owned by LLC 2, a State A limited liability company. LLC 2 is wholly owned by LLC 3, a State A limited liability company. LLC 3 is s percent owned by LLC 4, a State A limited liability company, with the remaining interest held by a third party (“LLC 3 Investor”). For federal income tax purposes, LLC 3 is treated as a partnership, and LLC 1 and LLC 2 are entities that are disregarded as separate from LLC 3.

All of the common limited liability interests of LLC 4 are owned by Subsidiary 1, a State A limited liability company that has elected, effective as of Date 1, to be taxed as a corporation. LLC 4 also has preferred limited liability company interests outstanding, all of which are owned by a third party (“LLC 4 Investor”). For federal income tax purposes, LLC 4 is treated as a partnership.

Subsidiary 1 is owned by Parent, a State B corporation that is the common parent of an affiliated group of corporations filing a consolidated federal income tax return. As of Date 1, Subsidiary 1 is a member of Parent’s consolidated group.

As of Date 2, LLC 1 had outstanding, publicly-traded debt consisting of senior secured notes, three term loans (hereinafter, “Term Loan A,” “Term Loan B,” and “Term Loan C”), and unsecured notes (collectively referred to as the “Debt”). The Debt is held by third-parties that are not related (as determined under section 108(e)(4) of the Code) to LLC 1, LLC 2, LLC 3, LLC 4, Subsidiary 1, Parent, or any other member of Parent’s consolidated group.

The senior secured notes have an aggregate principal amount of approximately \$t, pay interest semi-annually at a rate of y percent, and mature on Date 3. Term Loan A has an aggregate principal amount of approximately \$u, pays a variable rate of interest quarterly, and matures on Date 4. Term Loan B has an aggregate principal amount of approximately \$v, pays a variable rate of interest quarterly, and matures on Date 5. Term Loan C has an aggregate principal amount of approximately \$w, pays a variable rate of interest quarterly, and matures on Date 5. The unsecured notes have an aggregate principal amount of approximately \$x, pay interest semi-annually at a rate of z percent, and mature on Date 6.

The Debt is recourse to LLC 1. The senior secured notes, Term Loan A, Term Loan B, and Term Loan C are (i) guaranteed by LLC 2 and by the domestic subsidiaries

of LLC 1 and (ii) secured by substantially all of the assets of LLC 1 and the guarantors. None of Parent, Subsidiary 1, LLC 4, or LLC 3 is an obligor or guarantor with respect to, or has pledged any assets to support, any of the Debt.

### Proposed Transaction

Parent and the entities described above intend to effect the following transaction steps (each step (1)-(3) below a "Step", and the Steps 1-3, collectively, the "Proposed Transaction").

1. LLC 3 will redeem the limited liability company interest of LLC 3 Investor for cash, as a result of which LLC 3 will become wholly-owned by LLC 4.
2. LLC 4 will redeem the preferred limited liability company interest of LLC 4 Investor for cash, as a result of which LLC 4 will become wholly-owned by Subsidiary 1.
3. LLC 1 will convert to a corporation ("Subsidiary 2") under the Act.

As a result of Step 1, for federal income tax purposes, LLC 3, LLC 2, and LLC 1 will become entities disregarded as separate from LLC 4. As a result of Step 2, for federal income tax purposes, LLC 4, LLC 3, LLC 2, and LLC 1 will become entities disregarded as separate from Subsidiary 1. As a result of Step 3, for federal income tax purposes, Subsidiary 2 will become a member of the Parent consolidated group.

Immediately after the closing date of the Proposed Transaction, the assets and liabilities of Subsidiary 2 will be the same as the assets and liabilities of LLC 1 immediately prior to the Proposed Transaction.

The Proposed Transaction, whether by operation of the terms of the Debt or otherwise, will not (i) change the yield on the Debt (as computed under section 1.1001-3(e)(2)(iii) of the Income Tax Regulations); (ii) change the specific timing of payments on the Debt; (iii) for State A law purposes, result in the addition or subtraction of co-obligors or guarantors to the Debt; (iv) change the priority of any of the Debt relative to other Debt; (v) change the collateral or security of the Debt; or (vi) otherwise alter the legal rights or obligations with respect to the Debt.

Pursuant to the Act, Subsidiary 2 will remain the same legal entity as LLC 1. None of the Debt holders' rights against LLC 1, including with respect to payments and remedies, and none of LLC 1's obligations and covenants to the Debt holders will be altered in any manner by the Proposed Transaction. Following the Proposed Transaction, the Debt holders will continue to have exactly the same legal relationship with Subsidiary 2 that they previously had with LLC 1. Additionally, under State A law, the Proposed Transaction will not result in the creation of any new legal rights or obligations between the Debt holders and Subsidiary 2. There are no provisions in the

original terms of the Debt that require the consent or approval of any holder of the Debt in order for LLC 4, LLC 3, and LLC 1 to effectuate the Proposed Transaction.

### **LAW AND ANALYSIS**

Section 1001 of the Code provides for recognition of gain or loss on the sale or exchange of property. Section 1.1001-1(a) provides that gain or loss is realized from the exchange of property for other property differing materially either in kind or in extent.

Section 1.1001-3(b) provides that a debt instrument differs materially in kind or in extent if it has undergone a “significant modification.” A significant modification of a debt instrument results in a “new” debt instrument that is deemed to be exchanged for the unmodified debt instrument.

Section 1.1001-3(c) provides rules for determining whether a change in the legal rights or obligations of a debt instrument is a modification. Pursuant to section 1.1001-3(c)(1)(i), a modification means any alteration, including any deletion or addition, in whole or in part, of a legal right or obligation of the issuer or a holder of a debt instrument, whether the alteration is evidenced by an express agreement (oral or written), conduct of the parties, or otherwise.

Section 1.1001-3(c)(1)(ii) provides that, except as provided in paragraph (c)(2), an alteration of a legal right or obligation that occurs by operation of the terms of the debt instrument is not a modification.

Section 1.1001-3(c)(2)(i) provides that an alteration that results in the substitution of a new obligor, the addition or deletion of a co-obligor, or a change (in whole or in part) in the recourse nature of the debt instrument (from recourse to nonrecourse or from nonrecourse to recourse) is a modification, even if the alteration occurs by operation of the terms of a debt instrument.

Section 1.1001-3(e) provides rules for determining whether a modification is significant. Section 1.1001-3(e)(4)(i)(A) provides that, except as provided in paragraphs (B), (C), or (D) of that section, the substitution of a new obligor on a recourse debt instrument is a significant modification.

Section 18-265(e) of the Act provides that for State A law purposes, the conversion of any entity into a domestic corporation shall not be deemed to affect any obligations or liabilities of the other entity incurred prior to its conversion to a domestic corporation or the personal liability of any person incurred prior to such conversion. Moreover, section 18-265(f) of the Act provides, inter alia, that for purposes of State A law, the domestic corporation shall be deemed to be the same entity as the converted other entity, all rights of creditors and liens upon any property of the other entity that has converted shall be preserved unimpaired, and all debts, liabilities and duties of the other entity that has converted shall remain attached to the domestic corporation and may be

enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

Generally, Federal tax law looks to State law to determine the legal entitlements to property. Aquilino v. United States, 363 U.S. 509, 513 (1930); Morgan v. Commissioner, 309 U.S. 78, 82 (1940). The legal rights or obligations referred to in section 1.1001-3(c) are rights and obligations that are determined under State law. Pursuant to the Act, the conversion of LLC 1 into Subsidiary 2 will not affect the legal rights or obligations between Debt holders and LLC 1 because, as a matter of State A law, Subsidiary 2 will remain the same legal entity as LLC 1. Debt holders will continue to have exactly the same legal relationship with Subsidiary 2 that they previously had with LLC 1.

Pursuant to the Act, Debt holders' legal rights against Subsidiary 2 with respect to payments and remedies will be the same legal rights that Debt holders had against LLC 1. The obligations and covenants from Subsidiary 2 to Debt holders will be the same as the obligations and covenants from LLC 1 to Debt holders. In these circumstances, the Proposed Transaction will not effect an alteration that results in either a change of obligor or a change in the recourse nature of the Debt for purposes of section 1.1001-3(c)(2)(i).

### **CONCLUSION**

On the basis of the facts and representations of Parent, Subsidiary 1, LLC 4, and LLC 3, we conclude that:

The Proposed Transaction will not result in a modification of the Debt under section 1.1001-3.

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.

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 the letter ruling.

The ruling contained in this letter is 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,

Michael Chin  
Senior Technician Reviewer, Branch 1  
Office of the Associate Chief Counsel  
(Financial Institutions & Products)

Enclosure:  
Copy for section 6110 purposes

cc: