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Refer Reply To:
CC:FIP:02
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Date:
November 5, 2009

LEGEND:

Parent =

Subsidiary 1 =

Subsidiary 2 =

Subsidiary 3 =

Subsidiary 4 =

LLC 1 =

LLC 2 =

LLC 3 =

LLC 4 =

LLC 5 =

LLC 6 =

Partnership 1 =

Partnership 2 =

Business A =

Business B =

Business C =

Business D =

State A =

State B =

x =

y =

z =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Act =

Dear :

This is in response to your letter dated July 22, 2009, and subsequent correspondence, requesting a ruling that a corporate restructuring of Parent's business will not result in a deemed exchange of debt pursuant to section 1001 of the Internal Revenue Code (the "Code"). Parent received a favorable ruling dated October 23, 2009 from the Office of Associate Chief Counsel (Corporate) that Parent's proposed restructuring transactions (as set forth below, the "Proposed Transactions") qualify as a reorganization under section 368(a)(1(D).

FACTS

Parent, a State A corporation, is a publicly traded corporation and the common parent of an affiliated group of corporations that files a consolidated Federal income tax return. Parent, directly and through its subsidiaries, engages in Businesses A, B, C, and D within the United States.

Parent owns all the common stock of Subsidiary 1, a State A corporation. Subsidiary 1 owns all the membership interests of LLC 1, a State A limited liability company that is a disregarded entity. LLC 1 owns all of the membership interests of LLC 2 and LLC 3. LLC 2 and LLC 3 are each State A limited liability companies that are disregarded entities. LLC 2 and LLC 3 own all the membership interests of LLC 4, a State A limited liability company that is a disregarded entity. LLC 1 and LLC 4 own all the partnership interests of Partnership 1, a State B general partnership. Partnership 1 owns all the stock of Subsidiary 2, a State A corporation. Subsidiary 2 owns all the stock of Subsidiary 3, a State A corporation. Partnership 1 also owns all the membership interests of LLC 5, a State A limited liability company that is a disregarded entity. Subsidiary 3 and LLC 5 each own a partial general partnership interest in Partnership 2, a State A limited partnership.

Subsidiary 1 has the following indebtedness (collectively referred to as the "Debt"): (1) outstanding publicly-traded loans in the form of senior unsecured notes and debentures (the "Senior Notes"); (2) three outstanding term loans (the "Term Loans"); and (3) a credit agreement with a revolving credit facility (the "Revolving Credit Facility").

Subsidiary 1 and certain of Subsidiary 1's subsidiaries (each a "Restricted Subsidiary") that engage in Businesses A and C entered into the Term Loans and the Revolving Credit Facility (collectively referred to as the "Credit Facilities"). The Credit Facilities are the direct obligations of Subsidiary 1, are guaranteed by most of the Restricted Subsidiaries, and are secured by a pledge of the ownership interests of most of the Restricted Subsidiaries. As contained in the credit agreement, dated Date 5 and amended and restated as of Date 6, and the pledge agreement, dated Date 5, the Credit Facilities contain certain restrictions against Subsidiary 1's and the Restricted Subsidiaries' ability to declare and pay dividends or make direct or indirect distributions of assets.

The Senior Notes have an aggregate principal amount of approximately x, as of Date 1, pay a market rate of interest semi-annually, and mature on Date 2. Under the general terms of the Senior Notes, contained in various indentures between Subsidiary 1 and the trustees to the Senior Notes, Subsidiary 1 is restricted from making any distributions in respect of its equity or subordinated debt that exceeds, in the aggregate, a certain amount (the "Restricted Payment Amount"). Prior to the distribution in step 6 below, the Restricted Payment Amount is estimated to be no less than y.

The Term Loans have an aggregate principal amount of approximately x, as of Date 1, pay a market rate of interest semi-annually, and mature between Date 3 and Date 4. As of Date 1, no amount was outstanding on the Revolving Credit Facility.

Subsidiary 1 entered into an agreement (referred to as the "Date 6 Modification") on Date 6 to extend the maturity date from Date 3 to Date 4 of approximately z of the outstanding principal amount of one of the Term Loans. The Date 6 Modification was made in exchange for a one-time fee paid to consenting lenders and an additional fee of a certain percentage per annum of the outstanding extended loan balance. Except for a modification to a representation in the credit agreement regarding the legal form of Subsidiary 1 and the Restricted Subsidiaries, the Date 6 Modification was independent and unrelated to Parent's Proposed Transactions and was effectuated without regard to whether any part of Parent's Proposed Transactions would occur. Subsidiary 1 intends to report on its 2009 Federal tax return that the Date 6 Modification was a significant modification pursuant to section 1.1001-3(e).

PROPOSED TRANSACTIONS

Parent proposes the following restructuring of its business:

Step 1: Subsidiary 1 will convert into a single-member State A limited liability company (LLC 6), a disregarded entity.

Step 2: LLC 2, LLC 3 and LLC 4 will each dissolve under state law.

Step 3: Subsidiary 4, a new State A corporation, will be formed. Partnership 1 will contribute to Subsidiary 4 all of the stock of Subsidiary 2 and all of the membership interests of LLC 5 in exchange for Subsidiary 4 Class A Common Stock and Subsidiary 4 Class B Common Stock (collectively referred to as the "Subsidiary 4 Stock").

Step 4: Partnership 1 will distribute the Subsidiary 4 Stock to LLC 1.

Step 5: LLC 1 will distribute the Subsidiary 4 Stock to LLC 6.

Step 6: LLC 6 will distribute Subsidiary 4 Stock to Parent.

Step 7: Parent will distribute the Subsidiary 4 Class A Common Stock pro rata to the holders of Parent Class A Common Stock and will distribute the Subsidiary 4 Class B Common Stock pro rata to the holders of the Parent Class B Common Stock.

The Proposed Transactions will qualify as a reorganization pursuant to section 368(a)(1)(D) of the Code. The conversion of Subsidiary 1 into LLC 6 will not involve the formation or merger of Subsidiary 1 with or into a new legal entity for State A law purposes.

After the completion of the Proposed Transactions, Parent will hold all of the membership interests in LLC 6, a limited liability company that will be disregarded as separate from its owner under section 301.7701-3(b)(1)(ii) of the Procedural Regulations. In addition, immediately after the Proposed Transactions, the assets and liabilities of LLC 6 will be the same as the assets and liabilities of Subsidiary 1 immediately prior to the Proposed Transactions.

The Proposed Transactions will not (i) change the yield on the Debt (as computed under section 1.1001-3(e)(2)(iii)); (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; or (v) alter the legal rights or obligations with respect to the Debt.

Pursuant to the Act, none of Debt holders' rights against Subsidiary 1, including with respect to payments and remedies, and none of Subsidiary 1's obligations and covenants to Debt holders will be altered in any manner by the Proposed Transactions. Following the Proposed Transactions, Debt holders will continue to have the same legal relationship with LLC 6 that they previously had with Subsidiary 1, which is as general unsecured recourse claimants having no greater preference than any other creditor. Additionally, under State A law, the Proposed Transactions will not result in the creation of any new legal rights or obligations between Debt holders and Parent. There are no provisions in the original terms of Debt that require the consent or approval of any holder of any series of the Debt in order for Subsidiary 1 to effectuate the Proposed Transactions.

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) of the Income Tax Regulations 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 1.1001-3(e)(4)(i)(B) provides that the substitution of a new obligor is not a significant modification if the acquiring corporation (within the meaning of section 381) becomes the new obligor pursuant to a transaction to which section 381(a) applies, the transaction does not result in a change in payment expectations, and the transaction does not result in a significant alteration. Section 1.1001-3(e)(4)(i)(C) provides that the substitution of a new obligor is not a significant modification if the new obligor acquires substantially all of the assets of the original obligor, the transaction does not result in a change in payment expectations, and the transaction does not result in a significant alteration.

A change in payment expectations occurs if either of the following occurs: (1) there is a substantial enhancement of the obligor's capacity to meet the payment obligations under a debt instrument and that capacity was primarily speculative prior to the modification and is adequate after the modification; or (2) there is a substantial impairment of the obligor's capacity to meet the payment obligations under the debt instrument that was adequate prior to the modification and is primarily speculative after the modification. Section 1.1001-3(e)(4)(vi). The preamble to the final regulations under section 1001 further clarifies that "there is no change in payment expectations . . . if the obligor has at least an adequate capacity to meet its payment obligations both before and after the modification." 61 Fed. Reg. 32926, 32929 (June 26, 1996).

Section 18-214(e) of the Act provides that for State A law purposes, the conversion of any other entity into a domestic limited liability company shall not be deemed to affect any obligations or liabilities of the other entity incurred prior to its conversion to a domestic limited liability company or the personal liability of any person incurred prior to such conversion. Moreover, section 18-214(f) of the Act provides, *inter alia*, that for purposes of State A law, 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 thenceforth attach to the domestic limited liability company 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). Pursuant to the Act, the conversion of Subsidiary 1 into LLC 6 will not affect the legal rights or obligations between Debt holders and Subsidiary 1 as a matter of State A law. Debt holders will continue to have exactly the same legal relationship with LLC 6 that they previously had with Subsidiary 1, viz., as general unsecured recourse claimants having no greater preference than any other creditor.

Pursuant to the Act, Debt holders' legal rights against LLC 6 with respect to payments and remedies will be the same legal rights that Debt holders had against Subsidiary 1. The obligations and covenants from LLC 6 to Debt holders will be the same as the obligations and covenants from Subsidiary 1 to Debt holders. In these circumstances, the substitution of LLC 6 as the new obligor of Subsidiary 1's Debt occurs pursuant to the Proposed Transactions, to which section 381 applies. Accordingly, under section 1.1001-3(e)(4)(i)(B), such change in obligor does not result in a significant modification.

CONCLUSION

On the basis of the facts and representations of Parent, we conclude that:

The conversion of Subsidiary 1 into LLC 6 as part of the Proposed Transactions does not result in a significant modification of the Debt for purposes of section 1.1001-3(e).

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 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. 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,

Thomas M. Preston
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Senior Counsel, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)