Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Refer Reply To:
CC:CORP:B02
PLR-134486-09
Date:
January 14, 2010

Legend

a =

b =

c =

Date 1 =

Date 2 =

Foreign Parent =

Parent =

Partnership 1 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Unplanned Disposition =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Dear :

This letter is in response to your authorized representative's letter dated July 23, 2009, requesting rulings with respect to a proposed transaction. Additional information was received in letters dated October 15, 2009, November 25, 2009, December 28, 2009, and January 12, 2010. The material information is summarized below.

Facts

Parent is the common parent of a consolidated group that has a calendar taxable year (the "Parent Consolidated Group"). Parent is a wholly owned indirect subsidiary of Foreign Parent. Parent owns approximately a percent of the stock of Sub 1. The remaining stock of Sub 1 is owned by various other direct and indirect subsidiaries of

Foreign Parent. Sub 2 is a wholly owned (through a disregarded entity) subsidiary of Sub 1. Sub 3 is a wholly owned subsidiary of Sub 2. Sub 3 owns approximately b percent of the equity interests in Partnership 1. Sub 3 has an outstanding intercompany debt owed to Sub 2 with a principal amount of c.

At the beginning of Year 1, Sub 3 was a wholly owned subsidiary of Sub 5, Sub 5 was a wholly owned subsidiary of Sub 4, and Sub 4 was a wholly owned subsidiary of Sub 2. During Year 1, Sub 5 distributed 100 percent of the stock of Sub 3 to Sub 4. Sub 4 immediately distributed such stock to Sub 2 (such distributions, the "Year 1 Distributions"). At the time of the Year 1 Distributions, Sub 3 held a significant interest in Partnership 1.

In the next year (before July 12, 1995), through a series of transactions (the "Reorganization"), Sub 1 became the successor common parent to the consolidated group (the "Sub 1 Consolidated Group") of which Sub 2 had been the former common parent. Sub 1 previously received a private letter ruling, dated Date 1, relating to the Reorganization. Rulings were received that, among other things: the exchange of interests in Sub 2 received by Sub 1 for stock of Sub 2 was a reorganization within the meaning of § 368(a)(1)(E); neither Sub 1 nor Sub 2 recognized gain or loss in such exchange; and Sub 1 took a tax basis in its newly issued Sub 2 stock equal to Sub 2's net inside basis in its assets under § 1.1502-31T(a) of the Income Tax Regulations, as then in effect.

Sub 1 previously received a private letter ruling, dated Date 2, granting Sub 1 an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file the election provided by § 1.1502-13(l)(3), which permits taxpayers to apply the intercompany transaction regulations issued on July 12, 1995, to certain stock elimination transactions (i.e., those transactions described in § 1.1502-13(l)(3)(ii)) that occurred in a year to which prior law would otherwise apply. Sub 1 filed the election within the time prescribed in the private letter ruling.
In Year 2 (a taxable year beginning after July 12, 1995), Sub 4 merged into a disregarded entity owned by Sub 2. In Year 3, Sub 5 merged into the same disregarded entity owned by Sub 2.

In Year 4, Foreign Parent owned a percent of the stock of Sub 1 and caused that stock and certain other assets to be contributed to Parent in a transaction that was treated as qualifying for nonrecognition treatment under § 351. After this transaction (the "Year 4 Combination"), Parent became the common parent of the Sub 1 Consolidated Group.

Proposed Transaction

It is proposed that Sub 3 will convert into a single-member LLC ("Sub 3 LLC") that will be a disregarded entity for federal income tax purposes (the "Sub 3 Conversion").

Representations

The following representations have been made in connection with the Sub 3 Conversion, taking into account Sub 3 LLC's disregarded entity status following the Sub 3 Conversion.

(a) Sub 2 and Sub 3 will adopt resolutions contemplating the Sub 3 Conversion (the "Plan"), and the Sub 3 Conversion will occur pursuant to such Plan.

(b) Sub 2, on the date of the adoption of the Plan, and at all times until the effective time of the Sub 3 Conversion, will be the owner of at least 80 percent of the total combined voting power of all classes of stock of Sub 3 entitled to vote and the owner of at least 80 percent of the total value of all classes of stock (excluding nonvoting stock that is limited and preferred as to dividends and otherwise meets the requirements of § 1504(a)(4)).

(c) No shares of stock of Sub 3 will have been redeemed during the 3 years preceding the adoption of the Plan.

(d) All distributions from Sub 3 to Sub 2 pursuant to the Plan will be made within a single taxable year of Sub 3.

(e) At the effective time of the Sub 3 Conversion, Sub 3 will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and distributing its remaining assets to Sub 2.

(f) Sub 3 will retain no assets following the Sub 3 Conversion.

(g) Sub 3 has not acquired any assets in nontaxable transactions within the 3-year period preceding adoption of the Plan.

(h) Other than in any Unplanned Disposition, no assets of Sub 3 have been, or will be, disposed of by Sub 3 or Sub 2 except for dispositions in the ordinary course of business and dispositions occurring more than 3 years prior to adoption of the Plan.

(i) The Sub 3 Conversion will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation of any of the businesses or assets of Sub 3, if (i) the recipient corporation is the alter ego of Sub 3 and (ii) persons holding, directly or indirectly, more than 20 percent in value of the stock of Sub 3 also hold, directly or indirectly, more than 20 percent in value of the stock in the recipient corporation. For purposes of this representation, ownership will be determined by application of the constructive ownership rule of § 318(a) as modified by § 304(c)(3).

(j) Prior to adoption of the Plan, no assets of Sub 3 will have been distributed in kind, transferred, or sold to Sub 2, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than 3 years prior to adoption of the Plan.

(k) Sub 3 will report all earned income represented by assets that will be distributed to its shareholders such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

(l) The fair market value of the assets of Sub 3 will exceed its liabilities both at the date of the adoption of the Plan and immediately prior to the effective time of the Sub 3 Conversion.

(m) Sub 2 is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.

(n) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the Sub 3 Conversion have been fully disclosed.

(o) Sub 2 has owned 100 percent of the stock of Sub 3 since the Year 1 Distributions (including at the time of the Reorganization) and has not transferred, sold, distributed, or otherwise disposed of any stock in Sub 3 during this period.

(p) Sub 1 has owned 100 percent of the stock of Sub 2 since the Reorganization and has not transferred, sold, distributed, or otherwise disposed of any stock in Sub 2 during this period.

(q) As a result of the Year 4 Combination and pursuant to § 1.1502-75(d)(3), the Sub 1 Consolidated Group was deemed to continue in existence and Parent succeeded Sub 1 as the common parent of such continuing consolidated group.

(r) The mergers of Sub 4 and Sub 5 qualified for U.S. federal income tax purposes as liquidations of Sub 4 and Sub 5, respectively, into Sub 2 governed by §§ 332 and 337, and such transactions were reported in a manner consistent with such treatment.

Rulings

Based solely on the information submitted and the representations made, we rule as follows regarding the Sub 3 Conversion:

(1) No gain or loss will be recognized by Sub 2 as a result of the Sub 3 Conversion.

(2) No gain or loss will be recognized by Sub 3 as a result of the Sub 3 Conversion.

(3) The tax basis of each asset received by Sub 2, through Sub 3 LLC, in the Sub 3 Conversion will equal the tax basis of such asset in the hands of Sub 3 immediately before the Sub 3 Conversion.

(4) The holding period of each asset received by Sub 2, through Sub 3 LLC, in the Sub 3 Conversion will include the holding period of such asset in the hands of Sub 3 (§ 1223).

(5) Sub 2, through Sub 3 LLC, will succeed to and take into account as of the close of the effective date of the Sub 3 Conversion the items of Sub 3 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383, and 384 and the regulations thereunder (§ 381(a); § 1.381(a)-1).

(6) The Parent Consolidated Group, as the continuation of the Sub 1 Consolidated Group, succeeded to the § 1.1502-13(l)(3) election made by the Sub 1 Consolidated Group.

(7) Pursuant to § 1.1502-13(j)(1), the stock of Sub 2 that was received by Sub 1 in the Reorganization is a successor asset to the stock of Sub 3 that was held by Sub 2 at that time.

(8) Pursuant to § 1.1502-13(j), the Sub 3 Conversion will not cause any member of the Parent Consolidated Group to include in income any gain or loss attributable to an intercompany transaction involving the Sub 3 stock that occurred before the Reorganization.

Caveats

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.

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.

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.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 11.04 of Rev. Proc. 2009-1, 2009-1 I.R.B. 1, 48. However, when the criteria in section 11.06 of Rev. Proc. 2009-1, 2009-1 I.R.B. 1, 49 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

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.

Sincerely,

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