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:BO1
PLR-134223-09

Date:
November 12, 2009

LEGEND

Company	=
Sub 1	=
Sub 2	=
FSub	=
LLC	=
State 1	=
State 2	=
Country Y	=
Business X	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=

Date 5	=
Date 6	=
Date 7	=
Date 8	=
a	=
b	=
c	=
d	=
e	=
f	=
g	=
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i	=
j	=
k	=
l	=
m	=
n	=

Dear

We respond to your letter dated July 20 , and subsequent correspondence, in which you requested a ruling as to certain federal income tax consequences of the transaction discussed below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty 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.

FACTS

The information submitted for consideration is as follows: Company, a State 1 corporation based in State 2, is an accrual basis taxpayer and a holding company that serves as the common parent of an affiliated group of corporations (the "Affiliated Corporations") for which it files a consolidated federal income tax return. Company, together with its affiliates and subsidiaries, is engaged in Business X.

The Affiliated Corporations were formed at the end of the day on Date 1 (the "First Change Date") when Company acquired 100% of the issued and outstanding capital stock of Sub1 (the "Acquisition"), a State 1 corporation. At all times since immediately before the First Change Date, Sub1 has owned 100% of the issued and outstanding equity interests in Sub2, a limited liability company organized under the laws of State 1 and treated as a corporation for U.S. federal income tax purposes, and Sub2 has owned 100% of the issued and outstanding limited shares of FSub (the "Limited Shares"), an entity formed under the laws of Country Y and treated as a corporation for U.S. federal income tax purposes. FSub is and has always been a controlled foreign corporation within the meaning of Section 957(a) of the Internal Revenue Code of 1986 (the "Code"). On Date 2 (the "Second Change Date") the Affiliated Corporations had a second ownership change within the meaning of Section 382 (the "Second Ownership Change") pursuant to Section 165(g).

On Date 3 (the "Petition Date"), certain domestic subsidiaries and affiliates of Company, including Sub1 and Sub2 (collectively, the "Debtors"), filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code. On Date 4, the Debtors filed a disclosure statement and joint plan of reorganization (the “Plan”) with the bankruptcy court. The court entered an order confirming the Plan on Date 5. The Debtors will consummate the Plan on Date 6 (the "Effective Date").

The confirmed Plan provides that, on the Effective Date, Sub2 will transfer certain of its assets, including the Limited Shares, to LLC, a newly-formed domestic limited liability company wholly owned by Sub2 and disregarded as an entity separate from its owner for U.S. federal income tax purposes. Immediately thereafter, Sub2 will transfer to the Affiliated Corporations' creditors (the "Creditors"), in full satisfaction of their claims (the "Claims"), 100% of the outstanding limited liability company interests in LLC in a fully taxable transaction (the "Exchange"). As a consequence of the Exchange, under the principles set forth in Rev. Rul. 99-5,1999-1 C.B. 434 (January 15, 1999), Sub2 will recognize gain of approximately $a (the "Exchange Gain") in respect of its disposition of the Limited Shares. Company expects that $b of the Exchange Gain will be included in gross income as a dividend pursuant to Section 1248(a).

REPRESENTATIONS

The taxpayer has made the following representations with respect to the proposed transactions:

1. Company, Sub1 and Sub2 currently are (and have been since the Acquisition) members of the same affiliated group (*i.e.*, the Affiliated Corporations) for which Company files a consolidated federal income tax return.

2. Sub2 was a member of an unrelated group of affiliated corporations on the First Change Date.

3. Sub2 has owned 100% of the Limited Shares at all times since Date7, a date before the First Change Date.

4. As of the First Change Date, there was an aggregate NOL of approximately $c (the "$c NOL"). The Affiliated Corporation had additional NOLs of approximately $d that arose as of the Second Change Date.

5. The Affiliated Corporations' utilization of the $c NOL is subject to a subgroup Section 382 limitation (*i.e.*, the Subgroup Section 382 Limitation) of $e (not taking into account any adjustments under 382(h)).

6. The Affiliated Corporations' utilization of all NOLs (including the $c NOL) other than those accrued by the Affiliated Corporations after the Second Change Date is subject to a consolidated Section 382 limitation (*i.e.*, the Consolidated Section 382 Limitation) of $f (not taking into account any adjustments under 382(h)).

7. In identifying built-in items for purposes of Section 382, Company intends to apply the "338 Approach" set forth in Notice 2003-65, 2003-2 C.B. 747 (September 12, 2003).

8. On the First Change Date there was an ownership change (within the meaning of Section 382(g) and as determined under Treas. Regs. §1.1502-92(b)(ii)) with respect to the unrelated group of affiliated corporations acquired by Company on the First Change Date.

9. The unrelated group of affiliated corporations acquired by Company constituted a "loss subgroup" within the meaning of Treas. Regs. §1.1502-91(d)(1) as of the First Change Date.

10. On the First Change Date, the unrelated group of affiliated corporations acquired by Company had a NUBIG (within the meaning of Section 382(h)(3)(A)(i) and as determined in accordance with Treas. Regs. §1.1502-91(g)) of approximately $g, an amount greater than $10 million. In computing the amount of NUBIG, the following assets were not taken into account: unrealized built-in-gain or loss on stock (including stock described in Section 1504(a)(4) and Treas. Regs. §§ 1.382(f)(18)(ii) and (iii)) of another member included in the Affiliated Corporations, cash, cash items or any marketable security which had a value that did not substantially differ from its adjusted basis. Section 382(h)(3)(B)(ii) and Treas. Regs. §1.1502-91(g)(1).

11. On the First Change Date, the fair market value ("FMV") of the Limited Shares was approximately $h and Sub2's adjusted basis in the Limited Shares was approximately $i. The excess of the FMV of the Limited Shares on the First Change Date over Sub2's adjusted basis in the Limited Shares at that time was approximately $j (such excess amount, the "First FSub NUBIG").

12. The Affiliated Corporations had an ownership change (within the meaning of Section 382(g) and as determined under Treas. Regs. §1.1502-92(b)(ii)) pursuant to Section 165(g) on the Second Change Date.

13. The Affiliated Corporations constitute a "loss group" within the meaning of Treas. Regs. §1.1502-91(c)(1) as of the Second Change Date.

14. On the Second Change Date, the Affiliated Corporations had a NUBIG (within the meaning of Section 382(h)(3)(A)(i) and as determined in accordance with Treas. Regs. §1.1502-91(g)) of approximately $k, an amount greater than $10 million. In computing the amount of NUBIG, the following assets were not taken into account: unrealized built-in-gain or loss on stock (including stock described in Section 1504(a)(4) and Treas. Regs. §§ 1.382(f)(18)(ii) and (iii)) of another member included in the Affiliated Corporations, cash, cash items or any marketable security which had a value that did not substantially differ from its adjusted basis. Section 382(h)(3)(B)(ii) and Treas. Regs. §1.1502-91(g)(1).

15. On the Second Change Date, the FMV of the Limited Shares was approximately $l and Sub2's adjusted basis in the Limited Shares was approximately $m. The excess of the FMV of the Limited Shares on the Second Change Date over Sub2's adjusted basis in the Limited Shares at that time was $n (such excess amount, the "Second FSub NUBIG").

16. The Exchange will occur within the taxable year of the Affiliated Corporations ending Date 8.

17. The exchange of Creditors' Claims for interests in LLC will be for FMV based on terms and conditions arrived at by the parties bargaining at arm's length.

18. The Exchange Gain is expected to be approximately $a.

19. Approximately $b of the Exchange Gain is expected to be included as gross income as a dividend pursuant to Section 1248(a).

20. Affiliated Corporations have had no ownership change (within the meaning of Section 382(g) and as determined under Treas. Regs. §1.1502-92(b)(ii)) since the Second Change Date and prior to the Plan.

21. No election will be made on the Effective Date (and, to the best knowledge of the management of Company, no consent will be given to make a retroactive election after the Effective Date) to classify LLC as an association under Treas. Reg. §301.7701-3 as of the Effective Date.

RULINGS

Based solely on the information submitted and the representations set forth above, we rule as follows:

The Exchange Gain, including any portion of the Exchange Gain included as gross income as a dividend pursuant to Section 1248(a), will be treated as "recognized built-in gain" as defined in Section 382(h) for purposes of computing (1) the Subgroup Section 382 Limitation to the extent such Exchange Gain does not exceed the First FSub NUBIG, and (2) the Consolidated Section 382 Limitation to the extent such Exchange Gain does not exceed the Second FSub NUBIG.

CAVEATS

We express no opinion about the tax treatment of the proposed transaction under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding the computation of foreign taxes deemed paid in connection with the proposed transactions or any applicable limitations on the taxpayer's use of foreign tax credits, including under Sections 383 and 904 and the Treasury Regulations thereunder.

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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, any taxpayer filing its return electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of this letter ruling.

In accordance with the power of attorney on file in this office, a copy of this ruling letter will be sent to the taxpayer and other authorized representatives.

Sincerely,

Mark S. Jennings
Chief, Branch 1
Office of Associate Chief Counsel (Corporate)