Internal Revenue Service

Number: **201103032**
Release Date: 1/21/2011

Index Number: 368.03-00, 368.01-00

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:B4
PLR-133255-10

Date:
October 05, 2010

Legend
Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

LLC 1 =

LLC 2 =

Partnership 1 =

Partnership 2 =

Country =

State =

b =

c =

d =

Business A =

Business B =

Business C =

Business D =

Dear :

This letter responds to your August 13, 2010, request for rulings on certain Federal income tax consequences of a proposed transaction described below. The information submitted in that letter and later correspondence is summarized below.

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.

Summary of Facts

Parent is a publicly traded corporation and the common parent of an affiliated group that files a consolidated Federal income tax return with its eligible members on a calendar year basis. Parent and its affiliates engage in Business A. Parent owns all of the outstanding stock of Sub 1 and all of the membership interests of LLC 1, an entity disregarded as separate from its owner under § 301.7701-3 of the Administrative and Procedure Regulations (a "disregarded entity"). Parent also owns, directly and indirectly, all of the outstanding stock of other domestic and Country subsidiaries (the "Parent Group"). All entities discussed herein are treated as corporations for federal income tax purposes unless otherwise stated.

LLC 1 owns all of the outstanding shares of Sub 2. Sub 2 is a holding company that owns all of the outstanding shares of Sub 3 and Sub 4. Sub 4 engages directly in Business D. Sub 4 has outstanding indebtedness owed to Sub 2 and Sub 3 and may have other indebtedness owed to domestic or Country members of the Parent Group arising from ordinary course transactions (the "Sub 4 Indebtedness"). Sub 4 owns a b percent partnership interest in Partnership 1, which is treated as a partnership for federal income tax purposes, and all of the stock of Sub 5. Sub 5 is a holding company whose primary asset is its c-percent interest in Partnership 2, which is engaged in Business B and is treated as a partnership for U.S. federal income tax purposes. Sub 4 owns the remaining d-percent interest in Partnership 2. Sub 5 has outstanding indebtedness owed to Sub 4 and may have other indebtedness owed to domestic and Country members of the Parent Group arising from ordinary course transactions (the "Sub 5 Indebtedness").

Sub 3 engages in Business C and owns all of the outstanding interests in LLC 2, a disregarded entity. Sub 3 has outstanding indebtedness owed to Sub 2 and Partnership 1 and may have other indebtedness owed to domestic and Country members of the Parent Group arising from ordinary course transactions (the "Sub 3 Indebtedness").

Parent and certain of its domestic subsidiaries have filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code. In addition, Parent and certain of its Country subsidiaries have also sought creditor protection under the Companies' Creditors Arrangement Act in Country (collectively, the "Creditor Protection Proceedings").

Proposed Transaction

For what have been represented as valid business purposes, the following steps have been proposed (collectively, the "Proposed Transaction"):

(i) LLC 1 will merge with and into Parent.

(ii) LLC 2 will merge with and into Sub 3.

(iii) Consistent with Representation (j) below, Sub 2 will contribute all or part of the Sub 4 Indebtedness to the capital of Sub 4 (the "Sub 4 Indebtedness Contribution"). Prior to this step, all or part of the Sub 4 Indebtedness owed to other members of the Parent Group will be distributed or contributed to Sub 2, as the case may be, or otherwise satisfied with cash (the "Sub 4 Indebtedness Distribution").

(iv) Consistent with Representation (j) below, Sub 2 will contribute all or part of its portion of the Sub 3 Indebtedness to the capital of Sub 3 (the "Sub 3 Indebtedness Contribution"). Prior to this step, all or part of the Sub 4 Indebtedness owed to any other member of the Parent Group, will be distributed or contributed to Sub 2, as the case may be, or otherwise satisfied with cash (the "Sub 3 Indebtedness Distribution"). The remaining portion of the Sub 3 Indebtedness, which is held by Partnership 1, will be satisfied (with Parent stock) or otherwise cancelled as part of the Parent Group's emergence from the Creditor Protection Proceedings (which will occur prior to the Proposed Transaction) (together with the Sub 3 Indebtedness Distribution, the "Sub 3 Indebtedness Resolution").

(v) Sub 2 will transfer all of the stock of Sub 3 and Sub 4 to Parent in exchange for shares of Parent common voting stock. Sub 2 will vote the Parent shares in proportion to the votes cast by Parent's other shareholders -- i.e., it will vote the Parent shares in a manner that does not affect the result of a matter put to a shareholder vote (such result being determined with reference only to the vote of the other Parent shareholders).

(vi) Sub 3 and Sub 4 each will convert into a State limited liability company (respectively, "Sub 3 LLC" and "Sub 4 LLC") and each will be treated as disregarded entities of Parent.

(vii) Consistent with Representation (aa) below, Parent (through Sub 4 LLC) will contribute the Sub 5 Indebtedness to the capital of Sub 5 (the "Sub 5 Indebtedness Contribution"). Prior to this step, all or part of the Sub 5 Indebtedness owed to any other member of the Parent Group will be distributed to Parent or otherwise satisfied with cash (the "Sub 5 Indebtedness Distribution").

(viii) Pursuant to State law, Sub 5 will merge with and into Sub 1, with Sub 1 surviving the merger. No Sub 1 stock will actually be issued in the merger.

(ix) Sub 4 LLC will contribute its d-percent interest in Partnership 2 to Sub 1, resulting in a termination of Partnership 2 as a partnership (since Sub 1 will then own all interests in Partnership 2).

Steps (iii) through (vi) are hereinafter referred to as the "Sub 3 Restructuring" and the "Sub 4 Restructuring," as relevant. Steps (vii) through (ix) are hereinafter referred to as the "Sub 5 Restructuring." The Sub 5 Restructuring will be effected pursuant to the laws of State and will qualify as a statutory merger under applicable State law. Pursuant to the plan of merger, by operation of law, the following will occur

simultaneously at the effective time of the Sub 5 Restructuring: (i) all of the assets held by Sub 5 immediately before the Sub 5 Restructuring and all of the liabilities of Sub 5 immediately before the Sub 5 Restructuring (except to the extent any liabilities are satisfied or discharged in the Sub 5 Restructuring) will become the assets and liabilities of Sub 1, and (ii) Sub 5 will cease its separate legal existence for all purposes.

Representations

Sub 3 Restructuring and Sub 4 Restructuring

Parent makes the following representations for the Sub 3 Restructuring and the Sub 4 Restructuring:

(a) The fair market value of the shares of Parent that will be received by Sub 2, the sole shareholder of Sub 3 and Sub 4, will be approximately equal to the fair market value of the shares of Sub 3 and Sub 4 to be surrendered in exchange therefor. No property, other than the shares of Parent voting stock, will be issued by Parent to Sub 3 or Sub 4 as consideration with respect to the Sub 3 Restructuring and the Sub 4 Restructuring, respectively.

(b) Parent has no plan or intention to reacquire, directly or through a related person (within the meaning of § 1.368-1(e)(3) of the Income Tax Regulations), any of its voting stock issued in the Sub 3 Restructuring or the Sub 4 Restructuring.

(c) As part of the Sub 3 Restructuring or the Sub 4 Restructuring, neither Parent nor any person related to Parent (as defined in § 1.368-1(e)(4)) will have acquired, directly or through any transaction, agreement or arrangement with any other person, Sub 3 or Sub 4 shares with consideration other than Parent voting stock.

(d) All of the proprietary interest in Sub 3 and Sub 4 will be exchanged for Parent voting stock and will be preserved within the meaning of § 1.368-1(e)(1)(i).

(e) Parent will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by Sub 3 and Sub 4, respectively, immediately prior to the Sub 3 Restructuring and the Sub 4 Restructuring. For purposes of this representation, amounts used by Sub 3 or Sub 4 to pay their respective reorganization expenses, and all redemptions and distributions (except for regular, normal dividends) made by Sub 3 or Sub 4 immediately preceding the transfer will be included as assets of Sub 3 or Sub 4, as relevant, held immediately prior to the Sub 3 Restructuring and the Sub 4 Restructuring.

(f) Parent has no plan or intention to sell or otherwise dispose of any of the assets of Sub 3 and Sub 4 to be acquired in the Sub 3 Restructuring or the Sub 4 Restructuring, except for dispositions made in the ordinary course of business or transfers described in § 368(a)(2)(C) of the Internal Revenue Code (the “Code”) and related regulations.

(g) Sub 3 and Sub 4 each will distribute (or be deemed to distribute) the Parent stock received in the Sub 3 Restructuring and the Sub 4 Restructuring, and its other properties, in pursuance of the plan of reorganization.

(h) The liabilities of Sub 3 and Sub 4 deemed to be assumed (as determined under § 357(d)) by Parent were incurred, respectively, by Sub 3 and Sub 4 in the ordinary course of their respective business.

(i) The aggregate fair market value of the property deemed to be transferred to Parent by each of Sub 3 and Sub 4 will exceed the amount of liabilities of Sub 3 and Sub 4, respectively, immediately before the Sub 3 Restructuring and the Sub 4 Restructuring (including any liabilities cancelled, extinguished, or assumed (as determined under § 357(d)) in connection with the exchange).

(j) The aggregate fair market value of the assets of Parent will equal or exceed the amount of its liabilities immediately after the Sub 3 Restructuring and the Sub 4 Restructuring.

(k) Following each of the Sub 3 Restructuring and the Sub 4 Restructuring, Parent either directly or through one or more members of Parent's qualified group (within the meaning of § 1.368-1(d)(4)(ii)) will continue the historic business of Sub 3 and Sub 4, respectively, or use a significant portion of Sub 3's and Sub 4's respective historic business assets in a business.

(l) Parent, Sub 2, Sub 3, and Sub 4 will pay their respective expenses, if any, incurred in connection with the Sub 3 Restructuring and the Sub 4 Restructuring.

(m) At the time of each of the Sub 3 Restructuring and the Sub 4 Restructuring, there will be no intercompany indebtedness existing between Parent and either Sub 3 or Sub 4, as relevant, that was issued, acquired, or settled at a discount.

(n) The Sub 3 Restructuring and the Sub 4 Restructuring each will be undertaken pursuant to a plan of reorganization.

(o) No party to the Sub 3 Restructuring or the Sub 4 Restructuring will be an investment company within the meaning of § 368(a)(2)(F)(iii) and (iv).

(p) There is no plan to liquidate Sub 2.

Sub 5 Restructuring

Parent makes the following representations regarding the Sub 5 Restructuring:

(q) The fair market value of the Sub 1 stock deemed to be received by Parent will be approximately equal to the fair market value of the Sub 5 stock to be surrendered in the Sub 5 Restructuring.

(r) At least 40 percent of the proprietary interest in Sub 5 will be deemed to be exchanged for Sub 1 membership interests and will be preserved within the meaning of Treas. Reg. §1.368-1(e).

(s) There is no plan or intention by Sub 1 (or any related person, as defined in § 1.368-1(e)(4)) to acquire any of the Sub 1 stock deemed received by Parent (through Sub 4 LLC) in exchange for its Sub 5 stock in connection with the Sub 5 Restructuring.

(t) Sub 1 has no plan or intention to sell or otherwise dispose of any of the assets of Sub 5 acquired in the Sub 5 Restructuring, except for dispositions made in the ordinary course of business or transfers allowed under § 368(a)(2)(C) and the regulations thereunder.

(u) The liabilities of Sub 5 to be assumed (within the meaning of § 357(d)) by Sub 1 were incurred by Sub 5 in the ordinary course of business.

(v) The Sub 5 Restructuring will be undertaken pursuant to a plan of reorganization.

(w) Following the Sub 5 Restructuring, Sub 1 will continue an historic business of Sub 5, namely, Partnership 2's Business B.

(x) Parent, Sub 1, and Sub 5 will pay their respective expenses, if any, incurred in connection with the Sub 5 Restructuring.

(y) There will be no intercompany indebtedness existing between Sub 1 and Sub 5 that was issued, acquired, or settled at a discount.

(z) No two parties to the Sub 5 Restructuring will be investment companies within the meaning of § 368(a)(2)(F)(iii) and (iv).

(aa) The total fair market value of the assets of Sub 5 to be transferred to Sub 1 will exceed the amount of liabilities assumed (within the meaning of § 357(d)) by Sub 1. The fair market value of the assets of Sub 1 will exceed the amount of its liabilities immediately after the Sub 5 Restructuring.

Rulings

Sub 3 Restructuring and Sub 4 Restructuring

Based solely on the information submitted and the representations made, we rule as follows on the Sub 3 Restructuring and the Sub 4 Restructuring:

(1) For U.S. federal income tax purposes, the Sub 3 Restructuring and the Sub 4 Restructuring will be treated as a transfer by each of Sub 3 and Sub 4 of substantially all of their respective assets to Parent solely in exchange for Parent voting stock and the assumption by Parent of the respective liabilities of each of Sub 3 and

Sub 4. Both Sub 3 and Sub 4 then will be viewed as making a liquidating distribution of such Parent voting stock to Sub 2, thereby cancelling Sub 2's stock interests in each of Sub 3 and Sub 4.

(2) The Sub 3 Restructuring and the Sub 4 Restructuring each will qualify as a reorganization under § 368(a)(1)(C). Sub 3, Sub 4, and Parent will each be "a party to a reorganization" under § 368(b).

(3) No gain or loss will be recognized by Sub 2 upon its exchange of the stock of Sub 3 and Sub 4, respectively, for voting stock of Parent (§ 354(a)).

(4) No gain or loss will be recognized by Sub 3 or Sub 4 upon their respective transfers of assets to Parent in exchange for voting stock of Parent and the assumption by Parent of Sub 3's and Sub 4's respective liabilities (§§ 361(a) and 357(a); Rev. Rul. 78-330, 1978-2 C.B.).

(5) No gain or loss will be recognized by Parent upon the receipt of Sub 3 and Sub 4 assets, respectively, in exchange for Parent stock (§ 1032(a)).

(6) No gain or loss will be recognized by Sub 3 or Sub 4 on their respective distributions of the Parent stock to Sub 2 (§ 361(c)).

(7) The basis of each asset of Sub 3 and Sub 4, respectively, held by Parent will be the same as the basis of that asset in the hands of Sub 3 or Sub 4 immediately prior to the Sub 3 Restructuring and the Sub 4 Restructuring (§ 362(b)).

(8) The basis of the Parent common stock received by Sub 2 will be the same as the basis of the Sub 3 and Sub 4 shares for which each will be exchanged (§ 358(a)).

(9) Provided the Sub 3 and Sub 4 shares are held as capital assets at the time of the Sub 3 Restructuring and the Sub 4 Restructuring, respectively, the holding period of the Parent common stock received in exchange therefor will include the respective holding periods of the Sub 3 or Sub 4 shares (§ 1223(1)).

(10) The holding period of each asset of Sub 3 and Sub 4, respectively, held by Parent will include the holding period of that asset in the hands of Sub 3 or Sub 4 (§ 1223(2)).

(11) Parent will succeed to and take into account the respective tax attributes of each of Sub 3 and Sub 4 described in § 381(c) (§ 381(a) and § 1.381(a)-1). These items will be taken into account by Parent subject to the conditions and limitations specified in §§ 381, 382, 383 and 384 and the Regulations thereunder.

Sub 5 Restructuring

(12) Provided that the Sub 5 Restructuring qualifies as a statutory merger under applicable state law, the Sub 5 Restructuring will qualify as a reorganization under § 368(a)(1)(A). Sub 5 and Sub 1 will each be "a party to a reorganization" under § 368(b).

(13) No gain or loss will be recognized by Parent upon its constructive exchange of the shares of Sub 5 stock for deemed shares of Sub 1 stock (§ 354(a)).

(14) No gain or loss will be recognized by Sub 5 upon the transfer of its assets to Sub 1 in constructive exchange for deemed stock of Sub 1 and the assumption by Sub 1 of the Sub 5 liabilities (§§ 361(a) and 357(a)).

(15) No gain or loss will be recognized by Sub 1 upon the receipt of Sub 5 assets in constructive exchange for Sub 1 stock (§ 1032(a)).

(16) No gain or loss will be recognized to Sub 5 on the deemed distribution of the Sub 1 stock to Parent (§ 361(c)).

(17) The basis of each asset of Sub 5 held by Sub 1 will be the same as the basis of that asset in the hands of Sub 5 immediately prior to the Sub 5 Restructuring (§ 362(b)).

(18) The basis of the Sub 1 common stock deemed received by Parent will be the same as the basis of the Sub 5 stock surrendered (§ 358(a); § 1.358-2).

(19) The holding period of each asset of Sub 5 held by Sub 1 will include the holding period of that asset in the hands of Sub 5 (§ 1223(2)).

(20) Sub 1 will succeed to and take into account the tax attributes of Sub 5 described in § 381(c) (§ 381(a) and § 1.381(a)-1). These items will be taken into account by Sub 1 subject to the conditions and limitations specified in §§ 381, 382, 383 and 384 and the Regulations thereunder.

Caveat

Except as expressly provided herein, no opinion is expressed or implied concerning the federal income tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, we express no opinion regarding the federal income tax consequences of:

(i) the Sub 3 Indebtedness Contribution (as described in step (iv));

(ii) the Sub 3 Indebtedness Resolution (as described in step (iv))

(iii) the Sub 4 Indebtedness Contribution (as described in step (iii));

(iv) the Sub 4 Indebtedness Distribution (as described in step (iii));

(v) the Sub 5 Indebtedness Contribution (as described in step (vii)); and,

(vi) the Sub 5 Indebtedness Distribution (as described in step (vii)).

Procedural

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. 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

_____

Lewis K Brickates
Branch Chief, Branch 4
Associate Chief Counsel (Corporate)