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Date:
June 16, 2011

Taxpayer	=	
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Dear :

This letter responds to your July 26, 2010, request for rulings, as supplemented on August 10, 2010, August 30, 2010, September 2, 2010, October 11, 2010, and June 15, 2011, requesting a letter ruling addressing whether § 267(a)(1) disallows the recognition of any loss on the L asset transfer or the M asset transfer?

Conclusions

1. Section 368(a)(1)(G) does not apply to the L asset transfer or the M asset transfer.

2. The losses that result from the L asset transfer or the M asset transfer will not be disallowed under § 267(a)(1).

FACTS

Taxpayer, a privately held corporation organized under State 1 law, is the common parent of an affiliated group of domestic corporations filing a consolidated federal income tax return. Taxpayer and subsidiaries are engaged in Business A and operate Number 1 Business A properties, and Number 2 smaller Business A properties.

On Date 1, Taxpayer and certain affiliates filed voluntary petitions in the United States Bankruptcy Court for State 1 (the “Bankruptcy Court”) under Chapter 11 of Title 11 of the United States Code (“Chapter 11”). These Chapter 11 cases are being jointly administered by the Bankruptcy Court.

Taxpayer represents that it currently has two classes of outstanding common stock: (i) voting common stock that represents a de minimis amount of Taxpayer’s overall common stock, and (ii) non-voting common stock that represents virtually all of the economic value associated with Taxpayer’s common stock. The existence of both voting and non-voting common stock facilitates Taxpayer’s compliance with applicable regulatory requirements.

The shares of voting common stock of Taxpayer are owned by A, a State 1 limited liability company. On Date 2, A filed an election to be treated as a corporation for federal income tax purposes, effective as of Date 3. Prior to Date 3, A was treated as a partnership. The interests in A are owned in equal amounts by individuals B, C, and D.

Taxpayer’s outstanding shares of non-voting common stock are owned 24.1 percent by E, a State 1 LLC that is treated as a partnership for federal income tax purposes, and 75.9 percent by F, a State 1 corporation. E is owned 40 percent by each of B and C, 16.5 percent by G (the sister of B and C) and H (the spouse of G) as community property, and 3.5 percent by certain members of the management of Taxpayer. F is wholly owned by I, an LLC that is treated as a partnership for federal income tax purposes. I is owned by J (a collection of investment partnerships and their affiliates), K (a State 1 LLC that is treated as a partnership for federal income tax purposes), and certain members of the management of Taxpayer. K is owned 95 percent by B and C (through their respective revocable family trusts) and 5 percent by certain members of the management of Taxpayer. D owns a general partner interest in some of the members of J. Taxpayer represents that the Taxpayer management, B and C do not own an interest in J.

The interests in I are divided into Class A units, Class B units, and Class C units. The Class A units are owned by J, the Class B units are owned by K, and the Class C units are owned by certain members of the management of Taxpayer. Taxpayer represents that based on the total number of outstanding units, the units account for the following outstanding ownership in I: Class A units - 82.45 percent; Class B units - 14.55 percent; and Class C units - 3 percent.

Before Date 4, Taxpayer was a publicly traded company. In Date 4, I (through F) and E acquired all of the stock of Taxpayer from the public. The transaction was financed with loans from third-party lenders which include: L lenders, M lenders, and N lenders.

The L lenders include O, P, Q, and others (collectively L lenders). As part of the agreement, the L lenders have a first priority security interest in certain property owned by Taxpayer and its operating subsidiaries.

The M lenders include R, an affiliate of S, and T (collectively M lenders). The debt owed to the M lenders is secured by certain real estate and improvements thereon owned by Taxpayer and its operating subsidiaries.

Several loans were entered into pursuant to mezzanine financing, using a chain of LLCs. One mezzanine loan was made by the M lenders. However, the remaining mezzanine loans were made by other lenders which are unrelated to the M lenders. The N lenders include the M lenders (in their capacity as a lender of a Mezzanine loan) and other lenders, unrelated to the M lenders, making certain loans to the chain of LLCs. The N loans are secured by the equity interests in M, U, V, and W. M, U, V, and W are disregarded entities that are wholly owned by Taxpayer.

Taxpayer also had several types of publicly-traded unsecured bonds that were outstanding and due in Date 5, Date 6, and Date 7. Moreover, Taxpayer has other unsecured creditors that include employees, certain trade creditors, holders of L debt to the extent the debt is not adequately secured, and parties to contracts or leases that have or will be rejected by the Bankruptcy Court. These creditors and bond holders are hereinafter referred to as Unsecured Creditors.

As of Date 8, Taxpayer had outstanding debt owing to the following creditors: the L lenders, the M lenders, the N lenders, and the Unsecured Creditors.

On Date 9, the Bankruptcy Court confirmed a Chapter 11 plan of reorganization that provides for the execution of the proposed transaction (the “Bankruptcy Plan”). Under the Bankruptcy Plan, substantially all of Taxpayer’s assets will be acquired by X, a State 2 LLC that is treated as a partnership for federal income tax purposes. X will be directly owned by the M lenders; Y, a State 2 LLC, that is treated as a partnership for federal income tax purposes and owned by B and C; and one or more corporations owned by certain Unsecured Creditors. The Bankruptcy Plan will be effected through the following steps. Taxpayer represents that X will be taxable as a partnership for federal income tax purposes, and that Taxpayer is not aware of any plan or intention to change that status.

X and Z were formed to acquire the assets of Taxpayer. Z will have two classes of interests: (i) voting interests that will possess no economic rights with respect to Z, and (ii) non-voting interests that will possess all of the economic rights of Z. Taxpayer represents that Z will be a disregarded entity for federal income tax purposes.

The voting interests in Z will be issued to AA, a State 2 LLC, that will be owned indirectly by B and C; and the following individuals designated by the M lenders: BB and CC. Taxpayer represents that BB and CC own no economic interests in X or Z. The non-voting interests in Z will be owned by X. Taxpayer represents that AA is a voting arrangement and that AA is a disregarded entity for federal income tax purposes.

A number of direct and indirect wholly-owned subsidiaries of Z, all of which are disregarded for federal income tax purposes, have been formed. On the effective date of the Bankruptcy Plan (the "Effective Date"), Taxpayer represents that it will exchange the M assets to the M lenders in satisfaction of their existing debt, and the M lenders will contribute these assets to X. Thereafter all of the assets of M, including a portion of M's cash, (the "M Assets") will be transferred to Z and/or Z's designated subsidiary LLCs in their capacities as designees of the M lenders. X will then issue to the M lenders or their affiliates the X equity interests, approximately $a of new Z debt, and certain warrants to acquire X equity. The M lenders will own a 40 percent voting interest in X.

As part of the Bankruptcy Plan, Taxpayer and certain of its affiliates (the "L Sellers") will sell substantially all of their assets other than the M assets and certain joint venture interests (the "L Assets") to Z. The purchase price to be paid is approximately $b: $c in cash (consisting partly of cash of the L Sellers) and $d in new notes (the "Sales Proceeds"). After this transaction is complete, the Sales Proceeds will be distributed to the L lenders pursuant to the Bankruptcy Plan and the existing Taxpayer debt will be cancelled. Taxpayer represents that the L lenders that are not also affiliates of the M lenders will have no equity interest in X at the conclusion of the Bankruptcy Plan. To the extent any of the L lenders may also be Unsecured Creditors that receive Unsecured Holder Warrants, Taxpayer represents that it is not substantially certain that any of the warrants will be exercised.

B and C will contribute cash to Y. Y will use a portion of this cash to acquire interests in X, and certain warrants (Purchased Warrants) which are exercisable no earlier than the six and one-half year anniversary of the Effective Date or the time that X engages in a capital raising transaction. Y will use the remaining cash to acquire additional interests in X. These Purchased Warrants will give Y the right to purchase up to 1.66 percent of the total equity of X outstanding on the Effective Date, subject to certain adjustments. B and C will indirectly own a 45 percent interest in X at the conclusion of the Bankruptcy Plan and have Purchased Warrants to acquire up to an additional 1.66 percent of X.

J is expected to receive a cash payment from B and C to settle certain claims that J may have against them. Taxpayer represents that J will not receive any equity interests, options, warrants, or other direct or indirect economic interests in X, and that Taxpayer is not aware of any plan or intention for J to receive any equity interests, options, warrants, or other direct or indirect economic interests in X.

Certain Unsecured Creditors will receive a package of consideration, including warrants (Unsecured Holder Warrants) and investment rights. One or more newly organized domestic corporations or limited liability companies taxed as corporations for federal income tax purposes, collectively referred to as "Unsecured Holdcos," will be formed to hold the warrants and make the initial investment on behalf of the Unsecured

Creditors. Certain Unsecured Creditors (through Unsecured Holdcos) will be entitled to participate in a rights offering pursuant to which they could collectively purchase, at Plan Value, equity interests in X that represent up to approximately 15 percent of X. The Unsecured Holder Warrants issued to the Unsecured Holdcos will be exercisable for up to 2.5 percent of the total equity of X outstanding on the Effective Date, subject to certain adjustments, and various terms and conditions of the warrants. Taxpayer represents that it is not substantially certain that the Unsecured Holder Warrants will be exercised. Certain Unsecured Creditors will also be given the right to participate in future equity raises by X.

An Unsecured Creditor's purchase of Unsecured Holdco equity (but not the grant of Unsecured Holdcos' warrants) will be conditioned on compliance with a clearinghouse procedure pursuant to which the Unsecured Creditor provides information to representatives of X that will assist X in confirming that neither such Unsecured Creditor nor any person owning 5 percent or more of such Unsecured Creditor owns a direct or indirect investment in Taxpayer.

Taxpayer represents that the Unsecured Creditors that will hold a 5 percent or greater interest in an Unsecured Holdco (other than an Unsecured Holdco that will hold only Unsecured Holder warrants) and the M lenders (including L lenders that are affiliates of the M lenders) may own some Taxpayer stock constructively through their investment in persons invested in J. The value of such stock is less than 12.5 percent of the total value of the outstanding Taxpayer stock.

Three of the Unsecured Creditors (the "Put Parties") will be entitled to purchase (through Unsecured Holdcos) one-half of the equity interests in X offered to the Unsecured Creditors in the rights offering, provided that such Put Parties hold at least a minimum amount in aggregate principal amount of the unsecured senior notes of Taxpayer. The Put Parties consist of: Number 3 DD Funds, Number 4 EE Funds, and Number 4 FF funds. In addition, the Put Parties have delivered a firm and irrevocable commitment to purchase (through Unsecured Holdcos) any X equity that is offered to other Unsecured Creditors but not purchased by them.

With respect to the N lenders, X will issue warrants to one or more M lenders that will be transferred to the N lenders (the "N Warrants"). The terms of the N Warrants will be exercisable for up to 2.5 percent of the total equity of X outstanding on the Effective Date, subject to certain adjustments, and other terms and conditions. Taxpayer represents that it is not substantially certain that the N Warrants will be exercised.

With respect to the management of X, certain members of the management of X may be allowed to purchase equity in X. It will be a condition to any such person's acquisition of a direct or indirect interest in X equity that such interest would not cause X, the M lenders, or Taxpayer to be related for purposes of section 267.

LAW AND ANALYSIS

Reorganization under § 368(a)(1)(G)

Section 368(a)(1)(G) defines a tax-free reorganization as the transfer by a corporation of all or part of its assets to another corporation in a title 11 or similar case; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under sections 354, 355, or 356. Taxpayer represents that X will be taxable as a partnership for federal income tax purposes, and that Taxpayer is not aware of any plan or intention to change that status. Therefore, § 368(a)(1)(G) does not apply to the L asset transfer or the M asset transfer.

Loss disallowance under § 267(a)(1)

Taxpayer requests a ruling on whether the losses that result from the sale of the L assets and M assets will be disallowed under § 267(a)(1).

Section 267(a)(1) provides that no deduction shall be allowed in respect of any loss from the sale or exchange of property, directly or indirectly, between persons specified in any of the paragraphs of § 267(b). Section 267(a)(1) does not apply to any loss of the distributing corporation (or distribute) in the case of a distribution in complete liquidation.

Section 267(b)(10) provides that a corporation and a partnership are related persons for purposes of § 267 if the same persons own (A) more than 50 percent in value of the outstanding stock of the corporation, and (B) more than 50 percent of the capital interest, or the profits interest, in the partnership.

Section 267(c)(1) provides that in determining ownership of stock for purposes of § 267(b), stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries.

Sections 267(c)(2) provides that for purposes of determining ownership of stock, an individual shall be considered as owning the stock owned, directly or indirectly, by or for his family. Section 267(c)(4) provides that the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

Section 267(c)(3) provides that for purposes of determining ownership of stock, an individual owning (otherwise than by the application of § 267(c)(2)) any stock of a corporation shall be considered as owning the stock owned, directly or indirectly, by or for his partner.

Section 267(c)(5) provides that for purposes of determining ownership of stock, stock constructively owned by a person by reason of the application of § 267(c)(1) shall for purposes of applying § 267(c)(1), (c)(2), or (c)(3), be treated as actually owned by such person. However, stock constructively owned by an individual pursuant to § 267(c)(2) or (c)(3) shall not be treated as owned by him for the purpose of again applying either of such paragraphs in order to make another the constructive owner of such stock.

Section 267(e)(3) provides that for purposes of determining ownership of a capital interest or profits interest of a partnership, the principles of § 267(c) shall apply, except that: (1) § 267(c)(3) (partner attribution) shall not apply; and (2) interests owned (directly or indirectly) by or for a C corporation shall be considered as owned by or for any shareholder only if such shareholder owns (directly or indirectly) 5 percent or more in value of the stock of such corporation.

Under § 1.267(b)-1(b)(2), for an individual to be considered under § 267(c)(3) as owning the stock of a corporation owned either actually, or constructively under section 267(c)(1), by or for his partner, such individual must himself actually own, or constructively own under section 267(c)(1), stock of such corporation.

Section 1.267(b)-1(b)(1), which was promulgated prior to the enactment of § 267(b)(10), provides, in relevant part, that § 267 does not include members of a partnership and the partnership as related persons, such that transactions between partners and partnerships do not come within the meaning of § 267. Such transactions are governed by § 707 for the purposes of which the partnership is considered to be an entity separate from its partners.

Section 1.267(b)-1(b)(1) further provides that any transaction described in § 267(a) between a partnership and a person other than a partner shall be considered as occurring between the other person and the members of the partnership separately. Therefore, if the other person and a partner are within any one of the relationships specified in § 267(b), no deduction with respect to such transactions between the other person and the partnership shall be allowed: (i) to the related partner to the extent of his distributive share of partnership deductions for losses or unpaid expenses or interest resulting from such transaction, and (ii) to the other person to the extent the related partner acquires an interest in any property sold or exchanged with the partnership by such other person at a loss, or to the extent of the related partner's distributive share of the unpaid expenses or interest payable to the partnership by the other person as a result of the transaction.

Based on the facts and representations made by Taxpayer, § 267(a)(1) will not disallow the losses arising from the sale or exchange of the L assets or the M assets because Taxpayer is not a related person within the meaning of § 267(b) to the M lenders or to X. Loss disallowance under § 267(a)(1) would be required if the sale or exchange of L assets and M assets occurred between related persons, as specified in § 267(b)(10). In the instant case, the same persons do not own more than 50 percent in the value of the outstanding stock in Taxpayer and more than 50 percent in the value of the capital interest, or the profits interest, in X.

B and C own the shares in Taxpayer that are attributable to their respective ownership interests in A, E, and K. *See* § 267(c)(1). Under §§ 267(c)(2) and (c)(4), B and C and G constructively own the shares of their siblings. Therefore, under § 267(c)(1), (c)(2), and (c)(4), B and C own 33.8 percent of Taxpayer. Under § 267(c)(3), B and C will be attributed the shares of stock owned by their partners. B and C are partners with Taxpayer's management in E and K. Taxpayer represents that neither B nor C is a partner in any partnership (other than E, K, and another partnership that is not involved in this transaction) that includes any person who directly or indirectly owns an interest in Taxpayer. Therefore, under § 267(c)(3), B and C are attributed those shares in Taxpayer that are indirectly owned by Taxpayer's management. Taxpayer's management indirectly owns 2.4 percent of Taxpayer. In sum, B and C own 36.2 percent of Taxpayer stock under §§ 267(c)(1), (c)(2), (c)(3), and (c)(4).

Moreover, Taxpayer represents that the Unsecured Creditors that will own a 5 percent or greater interest in an Unsecured Holdco (other than an Unsecured Holdco that will hold only Unsecured Holder warrants) and the M lenders may own some Taxpayer stock constructively through their investment in persons invested in J. However, Taxpayer represents that the value of such stock owned by the Unsecured Creditors and M lenders is less than 12.5 percent of the total of the outstanding Taxpayer stock after applying the constructive ownership rules under § 267(c). Based on Taxpayer's representations, B, C, M lenders, and Unsecured Creditors do not own more than 48.7 percent of the value in Taxpayer's stock.

Taxpayer represents that the following parties do not own an interest, directly or constructively under section 267(e), in X on the Effective Date: the L lenders that are not also affiliates of the M lenders, J, and the members of the Taxpayer management that own an interest in Taxpayer.

Therefore, the loss on the sale of the L assets and M assets is not disallowed under § 267(a)(1) because there is no relationship established under § 267(b). The same persons do not own more than 50 percent in the value of Taxpayer and more than 50 percent in the capital interest, or profits interest in X. See § 267(b)(10). Moreover, the M lenders are not related to Taxpayer under § 267(b). Finally, since none of the partners in X is related to Taxpayer within the meaning of § 267(b), there will be no partial disallowance under § 1.267(b)-1(b).

PROCEDURAL STATEMENTS

We express no opinion on the tax effect of the proposed transaction under any other provision of the Code or Regulations, or the tax effect of any condition existing at the time of, or effect resulting from, the proposed transaction that is not specifically covered by the rulings set forth above. No opinion is expressed about the value of Taxpayer stock used to determine the ownership structure. In particular, we express no opinion on whether it is substantially certain that the Unsecured Holder Warrants and/or the N warrants will be exercised. We also express no opinion on whether the voting arrangement described above with respect to AA will cause Z to be treated as a partnership for federal tax purposes.

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 in this office, a copy of this letter is being sent to your authorized representatives.

The rulings contained in this letter are based on facts and representations submitted by 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

Sincerely,

Martin Scully, Jr.
Senior Counsel, Branch 6
(Income Tax & Accounting)

cc: