Internal Revenue Service

Number: **201210018**
Release Date: 3/9/2012

Index Number: 1502.13-01

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:B03
PLR-133277-11
Date:
December 07, 2011

LEGEND:

Parent =

Holding =

Sub 1 =

Seller 2 =

Buyer =

Seller 1 =

Business A =

y =

z =

Dear :

This letter responds to you're a letter from your authorized representative dated August 8, 2011, requesting rulings under the Commissioner's Discretionary Rule of §1.1502-13(c)(6)(ii)(D) of the Income Tax Regulations (the "Proposed Transaction"). The information submitted in that request is summarized 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.

SUMMARY OF FACTS

Parent is the common parent of an affiliated group of corporations that files a consolidated return for Federal income tax purposes. All members of the consolidated group use the accrual method of accounting. Parent, through its subsidiaries, is engaged primarily in Business A.

Parent indirectly owns all of the outstanding common stock of Holding. Holding owns all of the membership interests in Sub 1, an entity disregarded as separate from Holding for Federal income tax purposes. Holding also owns all of the outstanding common stock of Seller 2. Sub 1 and Seller 2 own the outstanding common stock of Buyer while Buyer and Seller 2 own the outstanding stock of Seller 1.

As a result of past restructurings, Seller 1 and Seller 2 are accounting for intercompany gain under the rules of §1.1502-13. Seller 2 was a seller of property to Buyer and has an intercompany gain of approximately $y. Seller 1 was a seller of property to Buyer, and has an intercompany gain of approximately $z. The property which was the subject of the intercompany sales exists as a block of stock (block 2 shares) that Buyer owns in Seller 1.

Parent proposes to effect a merger of Buyer into a disregarded entity of Seller 1 ("Proposed Transaction").

REPRESENTATIONS

The taxpayer has made the following representations:

a) The merger of Buyer into the disregarded entity of Seller 1 will qualify as a reorganization of Buyer into Seller 1 within the meaning of §368(a)(1)(A) and pursuant to §1.368-2(b)(1).

b) The effects of the intercompany transaction between Buyer and Seller 1 have not previously been reflected on the Parent group's consolidated return.

c) The Parent group has not derived, and no taxpayer will derive, any Federal income tax benefit from the intercompany transaction between Buyer and Seller 1 that gave rise to the intercompany gain or the redetermination of the intercompany gain (including any adjustment to basis in member stock under §1.1502-32).

RULINGS

Based solely on the facts and representations submitted, we rule as follows:

(1) Because Seller 1 will acquire its own stock, including the block 2 shares, in the merger, the merger will result in the elimination of the basis in the block 2 shares (§1.1502-13(f)(4)).

(2) The merger will not result in a successor asset to the block 2 shares of Seller 1 within the meaning of §1.1502-13(j)(1). Thus, no asset will reflect the basis of the intercompany gain that Buyer has in the block 2 shares.

(3) The merger will require Seller 1 and Seller 2 to account for their intercompany gains arising from the intercompany transactions with Buyer and with respect to the block 2 shares of Seller 1 stock under the matching rule of §§1.1502-13(c) and (f)(4).

(4) Seller 1’s intercompany gain will be redetermined to be excluded from gross income under the Commissioner’s Discretionary Rule of §1.1502-13(c)(6)(ii)(D). Accordingly, the gain will be excluded from Seller 1’s gross income for the Parent group’s consolidated return year that includes the day of the merger.

(5) The amount of Seller 1’s intercompany gain that is redetermined to be excluded from gross income will not be taken into account as earnings and profits of any member and will not be treated as tax-exempt income under §1.1502-32(b)(2)(ii).

CAVEATS

No opinion is requested and no opinion is expressed whether the merger of Buyer into the disregarded entity of Seller 1 will qualify as a reorganization of Buyer into Seller 1 within the meaning of §368(a)(1)(A). Additionally, no opinion is expressed concerning 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 Transaction that are not specifically covered by the above rulings.

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, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this ruling letter.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Lawrence M. Axelrod
Special Counsel to the Associate Chief Counsel (Corporate)

cc: