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Department of the Treasury
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Date:
November 28, 2012

LEGEND

LLC1 =

LLC2 =

LLC3 =

State =

Date 1 =

Date 2 =

Date 3 =

Father =

Mother =

b =

c =

Dear :

We respond to your July 6, 2012, request for rulings regarding certain federal income tax consequences of a proposed transaction (defined below as the Proposed Transaction). The information submitted in that request and in subsequent correspondence is summarized below.

SUMMARY OF FACTS

LLC1, a limited liability company organized under the laws of State, elected to be treated as a corporation and made an S election effective Date 2. LLC1 is a holding company whose primary asset is a b percent membership interest in LLC3, a limited liability company organized under the laws of State that is treated as a partnership for federal tax purposes. LLC1's only other assets are its corporate office building and cash. LLC2, a limited liability company organized under the laws of State, elected to be treated as a corporation and made an S election effective Date 1. LLC2 owns the remaining c percent membership interest in LLC3. LLC2's only other asset is cash.

Father formed this group of companies and grew them into very successful businesses. Over many years, Father and Mother made gifts to their children and grandchildren or to various simple, complex, and grantor trusts for their benefit, including gifts of ownership interests in Father's companies. Both LLC1 and LLC2 were structured to have class A (voting) and class B (non-voting) shares of membership interests. Irrespective of the designation of the shares as A and B, all shares carry the same rights as to distributions, liquidation, profit and loss, etc., and are identical in all other aspects and rights, except that only class A shares have voting rights. When the present structure was adopted many years ago, the use of voting and non-voting shares was useful since the younger family members typically had more non-voting than voting shares.

LLC3 now states that this structure is no longer efficient. The members of LLC3 or their predecessors have, over time, contributed virtually all of their operating assets to LLC3 in exchange for the membership interests, since it was found that operating the business as an integrated unit made better economic sense, and also enabled Father to market the company's services in a more effective way. Now that Father has passed away, taxpayer states that the current structure of having two separate companies (each with both voting and non-voting shares) that in turn own LLC3, taxed as a partnership, has become both cumbersome and outdated, necessitating multiple levels of federal and state tax reporting and distributions up from LLC3 to LLC1 and LLC2, then by them to each of their shareholders and requiring LLC governance structures for all three entities under State law.

PROPOSED TRANSACTION

The taxpayer would like to restructure in order to eliminate state law governance redundancies and administrative time and expenses.

The following are the steps in the proposed transaction:

(i) Effective Date 3, LLC3 will make an entity classification election under § 301.7701-3 of the Procedure and Administration regulations to be taxed as a corporation (New LLC3).

(ii) Effective Date 3, LLC1 and LLC2 will merge downstream into New LLC3, with New LLC3 being the surviving entity. The class A and class B shares of LLC1 will be converted into one class of shares of New LLC3. The class A and class B shares of LLC2 will be converted into the same one class of shares of New LLC3. The conversion ratio will be determined by appraisal.

(iii) Effective Date 3, New LLC3 will make an S election.

REPRESENTATIONS

Taxpayer has made the following representations with respect to step (ii) of the Proposed Transaction:

(a) The fair market value of New LLC3 stock and other consideration, if any, received by the shareholders of LLC1 will be approximately equal to the fair market value of the stock of LLC1 surrendered in the exchange. The fair market value of New LLC3 stock and other consideration, if any, received by the shareholders of LLC2 will be approximately equal to the fair market value of the stock of LLC2 surrendered in the exchange.

(b) There is no plan or intention by the shareholders of LLC1 to sell, exchange, or otherwise dispose of the New LLC3 stock received in the transaction that would reduce their ownership of New LLC3 stock to a number of shares having a value of less than 40 percent of the value of all the formerly outstanding stock of LLC1. There is no plan or intention by the shareholders of LLC2 to sell, exchange, or otherwise dispose of the New LLC3 stock received in the transaction that would reduce their ownership of New LLC3 stock to a number of shares having a value of less than 40 percent of the value of all the formerly outstanding stock of LLC2.

(c) There is no plan or intention for New LLC3, or any person related (as

defined in § 1.368-1(e)(4) of the Income Tax Regulations) to New LLC3, to acquire or redeem any New LLC3 stock issued or deemed issued in the reorganization, either directly or through any transaction, agreement, or other arrangement with any other person.

(d) New LLC3 has no plan or intention to sell or otherwise dispose of any of the assets of LLC1 or LLC2 acquired in the transaction, except for dispositions made in the ordinary course of business or transfers described in section 368(a)(2)(C) of the Internal Revenue Code.

(e) The liabilities of LLC1 and LLC2 assumed (as described in section 357(d)) by New LLC3 were incurred by LLC1 and LLC2, respectively, in the ordinary course of their businesses and are associated with their respective assets transferred.

(f) LLC1, LLC2, LLC3, New LLC3, and the shareholders of LLC1 and LLC2 will pay their respective expenses, if any, incurred in connection with the transaction.

(g) There is no intercorporate indebtedness existing between LLC1 and New LLC3 that was issued, acquired, or will be settled at a discount. There is no intercorporate indebtedness existing between LLC2 and New LLC3 that was issued, acquired, or will be settled at a discount.

(h) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).

(i) Neither LLC1 nor LLC2 is under the jurisdiction of a court in a title 11 or similar case within the meaning of section 368(a)(3)(A).

(j) The total fair market value of the assets transferred to New LLC3 in the merger of LLC1 into New LLC3 will exceed the sum of (i) the amount of any liabilities assumed (as described in section 357(d)) by New LLC3 in the exchange and (ii) the amount of any liabilities owed to New LLC3 by LLC1 that are discharged or extinguished in connection with the exchange. The total fair market value of the assets transferred to New LLC3 in the merger of LLC2 into New LLC3 will exceed the sum of (i) the amount of any liabilities assumed (as described in section 357(d)) by New LLC3 in the exchange and (ii) the amount of any liabilities owed to New LLC3 by LLC2 that are discharged or extinguished in connection with the exchange. The fair market value of the assets of New LLC3 will exceed the amount of its liabilities immediately after the exchange.

RULINGS

Based solely on the information submitted and the representations set forth above, we rule as follows. With respect to the entity classification election in step (i) of the Proposed Transaction, we rule:

(1) Under Treas. Reg. § 301.7701-3(g)(1)(i), when LLC3 makes an election to be classified as an association, LLC3 is deemed to contribute all of its assets and liabilities to the association, New LLC3, in exchange for the stock in New LLC3 and, immediately thereafter, LLC3 is deemed to liquidate by distributing the stock of New LLC3 to LLC1 and LLC2. Under Treas. Reg. § 301.7701-3(g)(3)(i) and Situation 1 of Rev. Rul. 2009-15, 2009-1 C.B. 1035, this will be deemed to occur immediately before the close of the day before Date 3 so that LLC3 will be deemed not to own the stock in New LLC3 on Date 3, and New LLC3's initial taxable year will begin at the start of Date 3.

With respect to the downstream mergers of LLC1 and LLC2, respectively, into LLC3 in step (ii) of the Proposed Transaction, we have chosen to rule on each downstream merger separately for ease and clarity. Thus, we rule as follows:

(2) The merger of LLC1 into New LLC3, with New LLC3 surviving, will constitute a reorganization under section 368(a)(1)(A). LLC1 and New LLC3 each will be "a party to a reorganization" within the meaning of section 368(b).

(3) The shareholders of LLC1 will not recognize any gain or loss upon the exchange of their shares in LLC1 for New LLC3 shares (section 354(a)(1)).

(4) The basis of the New LLC3 shares in the hands of LLC1 shareholders immediately after the exchange will be the same as the aggregate basis of the LLC1 class A and class B shares in the hands of the shareholders immediately prior to the exchange (section 358(a)(1)).

(5) The holding period of the New LLC3 shares received by the LLC1 shareholders will include the holding period of the LLC1 shares surrendered in exchange therefor, provided that the LLC1 shares are held as capital assets on the date of the exchange (section 1223(1)).

(6) No gain or loss will be recognized by LLC1 upon the transfer of its assets, subject to liabilities, to New LLC3 in exchange for New LLC3 shares and the assumption by New LLC3 of the liabilities associated with the transferred assets (sections 361(a) and 357(a)).

(7) New LLC3 will not recognize any gain or loss on the receipt of the assets, subject to liabilities, of LLC1 in exchange for New LLC3 shares (section 1032(a)).

(8) The basis of each asset received by New LLC3 from LLC1 will be equal to the basis of such asset in the hands of LLC1 immediately prior to the transaction (section 362(b)).

(9) The holding period of each asset received by New LLC3 from LLC1 will include the period during which such asset was held by LLC1 (section 1223(2)).

(10) No gain or loss will be recognized by LLC1 on the distribution of the New LLC3 shares to its shareholders in exchange for their shares in LLC1 (section 361(c)).

(11) New LLC3 will succeed to and take into account the items of LLC1 described in section 381(c), subject to the conditions and limitations specified in sections 381, 382, 383, and 384, and the regulations thereunder (sections 381(a) and 1.381(a)-1).

(12) The merger of LLC2 into New LLC3, with New LLC3 surviving, will constitute a reorganization under section 368(a)(1)(A). LLC2 and New LLC3 each will be "a party to a reorganization" within the meaning of section 368(b).

(13) The shareholders of LLC2 will not recognize any gain or loss upon the exchange of their shares in LLC2 for New LLC3 shares (section 354(a)(1)).

(14) The basis of the New LLC3 shares in the hands of LLC2 shareholders immediately after the exchange will be the same as the aggregate basis of the LLC2 class A and class B shares in the hands of the shareholders immediately prior to the exchange (section 358(a)(1)).

(15) The holding period of the New LLC3 shares received by the LLC2 shareholders will include the holding period of the LLC2 shares surrendered in exchange therefor, provided that the LLC2 shares are held as capital assets on the date of the exchange (section 1223(1)).

(16) No gain or loss will be recognized by LLC2 upon the transfer of its assets, subject to liabilities, to New LLC3 in exchange for New LLC3 shares and the assumption by New LLC3 of the liabilities associated with the transferred assets (sections 361(a) and 357(a)).

(17) New LLC3 will not recognize any gain or loss on the receipt of the assets, subject to liabilities, of LLC2 in exchange for New LLC3 shares (section 1032(a)).

(18) The basis of each asset received by New LLC3 from LLC2 will be equal to the basis of such asset in the hands of LLC2 immediately prior to the transaction (section 362(b)).

(19) The holding period of each asset received by New LLC3 from LLC2 will include the period during which such asset was held by LLC2 (section 1223(2)).

(20) No gain or loss will be recognized by LLC2 on the distribution of the New LLC3 shares to its shareholders in exchange for their shares in LLC2 (section 361(c)).

(21) New LLC3 will succeed to and take into account the items of LLC2 described in section 381(c), subject to the conditions and limitations specified in sections 381, 382, 383, and 384, and the regulations thereunder (sections 381(a) and 1.381(a)-1).

With respect to the S election in step (iii) of the Proposed Transaction we rule as follows:

(22) LLC1's and LLC2's momentary ownership of the stock of New LLC3, as part of the reorganizations under section 368(a)(1)(A), will not cause New LLC3 to have an ineligible shareholder for any portion of its first taxable year under section 1361(b)(1)(B). Therefore, assuming New LLC3 will otherwise meet the requirements of a small business corporation under section 1361, New LLC3 will be eligible to make an S corporation election under section 1362(a) for its first taxable year.

(23) The S election to be made by New LLC3 will not cause LLC3's assets in the hands of New LLC3 to be taxed under section 1374. New LLC3 will be subject to section 1374 with respect to any asset transferred to New LLC3 from LLC1 or LLC2 in the downstream mergers to the same extent that LLC1 or LLC2 was subject to section 1374 with respect to such asset. For purposes of section 1374, New LLC3's recognition period will be reduced by the portion of LLC1's and LLC2's respective recognition periods that elapsed prior to the downstream mergers, and if their recognition periods had completely elapsed, New LLC3 will not be subject to section 1374 with respect to such assets (section 1374(d)(8) and Ann. 86-128, 1986-51 I.R.B. 22).

CAVEATS

Except as expressly provided herein, no opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code or regulations, or about the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction not specifically covered by the above rulings.

PROCEDURAL MATTERS

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.

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.

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,

Joy C. Spies
Joy C. Spies
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter
Copy of this letter for § 6110 purposes

cc: