



Dear \_\_\_\_\_ :

This letter responds to a letter from your authorized representative dated March 7, 2012, requesting rulings under §1.1502-13(c)(6)(ii)(C)(1) 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**

Prior to 1995, Old Common Parent owned all of the stock of Purchaser which was a member of Old Common Parent's consolidated group ("Old Group"). On Date 1, Purchaser acquired all the outstanding common and preferred shares of Target from an unrelated party for cash. On Date 2, Old Common Parent acquired from Purchaser all of the common shares of Target along with certain accounts receivable in exchange for cash. This Date 2 sale created deferred intercompany gain (the "DIG Transaction"). As a result of the DIG Transaction, Target recognized gain under §1001; however, pursuant to former §1.1502-13, the gain was deferred (the "Target DIG").

For its taxable year which included July 12, 1995, Old Common Parent did not file an election under §1.1502-13(l)(3) which would have allowed the group to apply current intercompany transaction regulations to "stock elimination transactions" (as defined in §1.1502-13(l)(3)(ii)). Without the election, former §1.1502-13, as in effect for years beginning prior to July 12, 1995, would apply.

As a result of additional corporate restructuring, Old Group terminated on Date 3. At the end of the day on Date 3, New Group was the consolidated group which included Purchaser and Target as members. Despite this restructuring, Target's gain from the DIG Transaction continued to be deferred.

New Group continued in existence and Target's gain from the DIG Transaction continued to be deferred despite a number of additional corporate restructurings. On the day after Date 4, New Common Parent became the common parent of New Group in a tax-free transaction and Purchaser merged upstream into New Common Parent in a tax-free liquidation ("Purchaser Liquidation"). These two transactions on Date 4 were addressed in a letter ruling dated January 14, 2011 (Control Number PLR-137716-10, LTR 201115014).

Old Common Parent did not designate a substitute agent for Old Group under former §1.1502-77 and Rev. Proc. 2002-43, 2002-2 C.B. 99. On Date 5, Target was accepted by the Service as the substitute agent for Old Group.

On or about the date of this letter, a private letter ruling (Control Number PLR-110290-12) was issued by this office ("9100 Letter") granting Target an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election under §1.1502-13(l)(3) on behalf of Old Group.

### **PROPOSED TRANSACTION**

Target proposes to merge upstream into New Common Parent (the "Target Liquidation").

### **REPRESENTATIONS**

The taxpayer has made the following representations:

- a) The Target Liquidation will qualify as a tax-free liquidation under §§332 and 337.
- b) Immediately before the Target Liquidation, New Common Parent will own 100 percent of the outstanding stock of Target.
- c) As a result of the Target Liquidation, New Common Parent's basis in the Target stock will be eliminated without the recognition of gain or loss (and such eliminated basis will not be reflected in the basis of any successor asset).
- d) The effects of the DIG Transaction have not previously been reflected, directly or indirectly, on Old Group's or New Group's consolidated return and will not be reflected, directly or indirectly, on New Group's consolidated return within the meaning of §1.1502-13(c)(6)(ii)(C)(1)(iv).
- e) Old Group or New Group has not and will not derive, any Federal income tax benefit (within the meaning of §1.1502-13(c)(6)(ii)(C)(1)(iv)) from the DIG Transaction or the redetermination of the Target DIG (including any adjustment to basis in member stock under §1.1502-32). For purposes of this representation, New Common Parent has taken into consideration any potential benefits with successor assets to the Target DIG.
- f) Following the Purchaser Merger, the Target DIG continued to be deferred under former §1.1502-13T(f)(1) and New Common Parent succeeded to the Target DIG under former §1.1502-13T(c)(1).

## RULINGS

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

- (1) New Common Parent's intercompany gain from the Target DIG will be redetermined to be excluded from gross income under §1.1502-13(c)(6)(ii)(C)(1). Accordingly, the gain will be excluded from New Common Parent's gross income for New Group's consolidated return year that includes the day of the Target Liquidation.
- (2) The amount of New Common Parent'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.

## CAVEATS

No opinion is requested and no opinion is expressed whether the Target Liquidation will qualify as tax free under §§332 and 337. The above rulings are conditioned upon the fact that all the requirements of the 9100 Letter have been satisfied and an effective election has been filed under §1.1502-13(l)(3), as discussed above. 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, copies of this letter are being sent to your authorized representatives.

Sincerely,

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

cc: