Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:

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Refer Reply To:
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Date:
December 16, 2015

Legend

Parent =

Sub1 =

Sub2 =

Sub3 =

Business A =

Year 1 =

Year 2 =

Year 3 =

Percentage A =

Percentage B =

Dear :

This letter responds to your representative's letter dated July 31, 2015, requesting rulings under the Commissioner's Discretionary Rule of § 1.1502-13(c)(6)(ii)(D) of the Income Tax Regulations. The material information submitted in that letter and in subsequent 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. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the facts, representations, and other information may be required as part of the audit process

Facts

Parent is the common parent of an affiliated group (the "Parent Group") that files a consolidated return for U.S. Federal income tax purposes. All members of the Parent Group use the accrual method of accounting. Parent, through its subsidiaries, is engaged in Business A. Sub2 is Parent's principal operating subsidiary.

Parent owns all of the stock of Sub1 and Percentage A of the stock of Sub2. Sub1 owns the remaining Percentage B of Sub2 stock. Sub1 owns all of the outstanding stock of Sub3. Prior to its acquisition by the Parent Group in Year 2, the predecessor of Sub1 was the common parent of an affiliated group (the "Sub1 Group") that filed a consolidated return for U.S. Federal income tax purposes.

As a result of past restructurings, Sub1, Sub2 and Sub3 are accounting for two intercompany gains under the rules of Treas. Reg. § 1.1502-13. The first intercompany gain was the result of a distribution of stock of a member of the Sub1 Group in Year 1 (the "Year 1 Distribution") by Sub3 to the predecessor of Sub1 in a transaction to which section 311(b) applied (the "First Intercompany Gain").

The second intercompany gain was the result of a distribution of stock of a member of the Parent Group in Year 3 (the "Year 3 Distribution") by a predecessor of Sub2 in a transaction to which section 311(b) applied (the "Second Intercompany Gain" and, together with the First Intercompany Gain, the "Intercompany Gains").

Sub1, as the successor to the common parent of the Sub1 Group, was the buying member with respect to the First Intercompany Gain (B1). Sub1 was also the buying member with respect to the Second Intercompany Gain (B2). Sub3 was the selling member with respect to the First Intercompany Gain (S1), and Sub2 was the successor selling member with respect to the Second Intercompany Gain (S2). Shares of Sub2 stock owned by Sub1 reflect both Intercompany Gains.

To date, the Intercompany Gains have not been taken into account under Treas. Reg. § 1.1502-13.

Proposed Transactions

The following steps are proposed (collectively, the "Proposed Transactions"):

(i) Sub1 will merge into Sub2 in a transaction intended to qualify as a reorganization under section 368(a)(1)(A) (the "Downstream Merger").

(ii) Immediately thereafter, Sub3 will merge into Sub2 in a transaction intended to qualify as a reorganization under section 368(a)(1)(A) (the "Upstream Merger").

Representations

Parent has made the following representations in connection with the Proposed Transactions:

(a) The Downstream Merger will qualify as a reorganization within the meaning of section 368(a)(1)(A).

(b) The Upstream Merger will qualify as a reorganization within the meaning of section 368(a)(1)(A), a liquidation under section 332, or both.

(c) The effects of the Year 1 Distribution have not previously been reflected on the Sub1 Group's consolidated return or the Parent Group's consolidated return.

(d) Neither the Sub1 Group nor the Parent Group has derived, and no taxpayer will derive, any Federal income tax benefit from the Year 1 Distribution that gave rise to the First Intercompany Gain.

(e) The effects of the Year 3 Distribution have not previously been reflected on the Parent Group's consolidated return.

(f) The Parent Group has not derived, and no taxpayer will derive, any Federal income tax benefit from the Year 3 Distribution that gave rise to the Second Intercompany Gain.

Rulings

Based solely on the information submitted and on the representations made, we rule as follows on the Proposed Transactions:

(1) The Intercompany Gains from the first and second intercompany transactions will not be reflected in the basis of any asset of Sub1, Sub2 or Sub3, other than the stock of the distributed members.

(2) The First Intercompany Gain will be redetermined to be excluded from gross income under the Commissioner's Discretionary Rule of Treas. Reg. § 1.1502-13(c)(6)(ii)(D). Accordingly, the First Intercompany Gain will be excluded from Sub3's gross income for the Parent Group's consolidated income tax return year that includes the day of the Upstream Merger.

(3) The amount of the First 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 Treas. Reg. § 1.1502-32(b)(2)(ii).

(4) The Second Intercompany Gain will be redetermined to be excluded from gross income under the Commissioner's Discretionary Rule of Treas. Reg. § 1.1502-13(c)(6)(ii)(D). Accordingly, the Second Intercompany Gain will be excluded from Sub2's gross income for the Parent Group's consolidated income tax return year that includes the day of the Downstream Merger.

(5) The amount of the Second 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 Treas. Reg. § 1.1502-32(b)(2)(ii).

Caveats

No opinion is expressed or implied about the federal income tax consequences of any other aspect of any transaction or item discussed or referenced in this letter, or the federal income tax treatment of any conditions existing at the time of, or effects resulting from the Proposed Transactions that are not specifically covered by the above rulings. Specifically, we express no opinion about whether the Downstream Merger will qualify as a reorganization under section 368(a)(1)(A), or whether the Upstream Merger will qualify as a reorganization under 368(a)(1)(A), a liquidation under section 332, or both.

Procedural Statements

This ruling is directed only to the taxpayer who requested 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 representatives.

Sincerely,

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

cc: