

**Internal Revenue Service**

Department of the Treasury  
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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:CORP:B03  
PLR-126188-09

Date:  
November 30, 2009

Common Parent =

Parent =

LossCo =

Checkbook =

Purchaser =

Certain Issues =

Date 1 =

Date 2 =

Date 3 =

a =

b =

c =

d =

Dear :

We respond to your authorized representative's request dated May 21, 2009, for rulings on the federal income tax consequences of a consummated transaction. Additional information was submitted in letters dated July 2, July 24, August 3, August 10, October 26, and November 20, 2009. The information submitted for consideration is summarized below.

Common Parent is the common parent of an affiliated group that files a consolidated income tax return. Common Parent owns all of the stock of Parent. Parent owns all of the member interests of LossCo, a limited liability company that has elected to be classified as a corporation for federal income tax purposes.

LossCo owns all of the member interests of Checkbook, a limited liability company that has elected to be classified as a corporation for federal income tax purposes. LossCo also owns directly or indirectly 100 percent of the member interests of several other limited liability companies that either have elected to be classified as corporations for federal income tax purposes or are treated as disregarded entities for federal income tax purposes. Included in this ownership chain is also the stock of one Subchapter C corporation ("Sub"). LossCo and all the entities that are owned directly and indirectly by LossCo that are classified as corporations for federal income tax purposes and Sub are collectively referred to as "Subgroup."

Checkbook acts as the "checkbook" for each member of Subgroup. In this role, Checkbook disburses all funds needed within Subgroup's business on behalf of Subgroup members. Likewise, it collects all funds on behalf of each Subgroup member. These funds are used by Subgroup members for purposes of acquiring materials and providing operating capital for use in their business. The funds that are collected by Checkbook for the members of Subgroup generally represent gross receipts from sales in the ordinary course of business. These transactions occur on a daily basis, with cash being moved back and forth between Checkbook and each member of Subgroup (the "Cash Sweeps"). No interest has been charged or paid on the Cash Sweeps. Generally, the "net" movement of cash from one Subgroup member to and from Checkbook would approximate the net income of that Subgroup member.

For what has been represented to be valid business reasons, taxpayer has consummated the following transaction:

- (i) On Date 1, Parent contributed \$ a of an overall \$ b note to LossCo, as a contribution to capital. LossCo was the original issuer of this note. Parent was the original holder of this note.
- (ii) On Date 1, Parent sold 100 percent of its member interests in LossCo to Purchaser, an unrelated limited liability company that has elected to be classified as a corporation for federal income tax purposes, in exchange for \$ c cash and voting common and non-voting preferred equity interests (estimated to be worth in excess of \$ d) (the "Purchase").
- (iii) On Date 2, a § 338(h)(10) election was made for the Purchase. As a result of this election, each of the other Subgroup members was deemed to be sold in a qualified stock purchase, and a § 338(h)(10) election was made for each of these members. As a result of the § 338(h)(10) elections, certain Subgroup members were deemed to liquidate under § 332 (the "Section 332 Liquidations").
- (iv) As a condition to and immediately following the overall transaction, Purchaser and Parent agreed to cause LossCo and its subsidiaries to file a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code. The expectation was that the bankruptcy would be completed in a successful and expedited fashion and that all equity of LossCo (as well as the newly-issued Purchaser equity) would retain its value through the bankruptcy filing. Purchaser's bankruptcy plan projected that there would be value in the LossCo business following Parent's resolution of Certain Issues. LossCo emerged from bankruptcy on Date 3 and was successful in resolving Certain Issues as anticipated at the time of the Purchase.

Taxpayer has made the following representations in connection with the transaction:

- (a) All the § 338(h)(10) elections were made in a timely and valid manner.
- (b) As of Date 1, and prior to the \$ a capital contribution by Parent, LossCo's balance sheet included liabilities of approximately \$ b. These liabilities exceeded the fair market value of LossCo's assets at that date.
- (c) LossCo was insolvent (as described in Rev. Rul. 2003-125, 2003-2 C.B. 1243) for federal income tax purposes.
- (d) LossCo's stock was worthless within the meaning of § 165(g)(1).
- (e) The Section 332 Liquidations qualified as § 332 liquidations for federal income tax purposes, and, pursuant to § 381, the attributes of each entity liquidated in the Section 332 Liquidations carried over to LossCo.

Based solely on the information submitted and the representations set forth above, we rule as follows:

- (1) Provided that the requirements of § 165(g) (taking into account the provisions of § 1.1502-80(c)) are satisfied, Parent may claim a worthless stock deduction under § 165(g)(3) upon the deemed liquidation of LossCo resulting from the § 338(h)(10) election with respect to the Purchase, subject to the application of § 1.1502-36. See Rev. Rul. 68-602, 1968-2 C.B. 135, and Rev. Rul. 2003-125, 2003-2 C.B. 1243.
- (2) For purposes of computing LossCo's "gross receipts" under § 165(g)(3)(B), LossCo will include in its aggregate gross receipts all amounts received in intercompany transactions that are described in § 1.1502-13 (as effective/applicable on or after July 12, 1995) ("Intercompany Transactions"), and such amounts from Intercompany Transactions will be treated as "gross receipts from passive sources" to the extent they are attributable to the Intercompany Transactions' counterparty's "gross receipts from passive sources." See §§ 1.1502-13(a), (b) and (c) (as effective/applicable on or after July 12, 1995). For purposes of these rulings, "gross receipts from passive sources" is defined as royalties, certain rents, dividends, certain interest, annuities, and gains from sales of stock and securities as defined in § 165(g)(3) and its regulations.
- (3) For purposes of computing LossCo's "gross receipts" under § 165(g)(3)(B), the Cash Sweeps will be characterized as if interest and dividend payments were made, as appropriate.
- (4) For purposes of computing LossCo's "gross receipts" under § 165(g)(3)(B), LossCo will take into account the historic gross receipts of the transferor corporations in the Section 332 Liquidations, provided, however, that LossCo will eliminate gross receipts from Intercompany Transactions with the transferor corporations, as appropriate, to prevent duplication.
- (5) In applying Ruling 2, above, for purposes of computing the "gross receipts from passive sources" of LossCo's counterparty in an Intercompany Transaction or any other counterparties in Intercompany Transactions, the counterparty will include in its aggregate gross receipts all amounts it received in Intercompany Transactions, and such amounts from Intercompany Transactions will be treated as "gross receipts from passive sources" to the extent they are attributable to its counterparty's "gross receipts from passive sources." In other words, LossCo's "gross receipts from passive sources" is determined by looking at all of LossCo's gross receipts from Intercompany Transactions (even if on its face the Intercompany Transaction appears not to be "gross receipts from passive sources") and sourcing the gross receipts based on LossCo's counterparty's

“gross receipts from passive sources.” Furthermore, LossCo’s counterparty in Intercompany Transactions (and LossCo’s counterparty’s counterparty, and so on until it reaches an ultimate counterparty) will apply a similar rule.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion was requested and no opinion is expressed concerning whether § 338 applies to any portion of the transaction, whether § 166 applies, whether Parent otherwise meets the requirements of § 165, whether any of the Section 332 Liquidations qualify under § 332, how basis adjustments under the consolidated return regulations should be made, whether the Cash Sweeps constitute debt or equity, or whether interest and dividends should actually be imputed for the Cash Sweeps other than as provided in Ruling 3, above.

This letter is directed only to the taxpayer(s) who requested 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 the letter ruling.

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

Sincerely,

Filiz A. Serbes  
Chief, Branch 3  
(Office of Associate Chief Counsel (Corporate))