

## Internal Revenue Service

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B05

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### LEGEND:

Taxpayer =

Business =

Sub1 =

Sub2 =

StateA =

StateB =

Date1 =

Date2 =

Date3 =

a =

b =

c =

d =

e =

f =

g =

i =

j =

m =

n =

o =

p =

Agency =

Exchange =

Junior Debt  
Obligations =

JurisdictionA =

New Term Loans =

Owner =

Petition Date =

Senior Secured  
Obligations =

Term Loan =

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

This letter responds to your February 26, 2010 request for rulings on certain federal income tax consequences of the series of proposed transactions described below (the "Proposed Transaction"). Additional information was submitted by letter dated May 11, 2010. The information provided in that request and in the 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 material 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**

Taxpayer is the common parent of an affiliated group of domestic corporations filing a consolidated federal income tax return on the basis of a calendar year and whose members each use an accrual method of accounting (the "Taxpayer Group"). Taxpayer Group owns and operates Business. Taxpayer is a holding company and directly owns all of the issued and outstanding stock of two domestic corporations, Sub1 and Sub2, both of which are members of Taxpayer Group. In addition, Sub1 and Sub2 own directly and indirectly interests in a variety of entities, including corporations (both members and non-members of Taxpayer Group), limited liability companies, and joint ventures.

As of Date1, Taxpayer had a shares of a single class of common stock outstanding, which prior to Date2 were publicly traded on the Exchange. Taxpayer's outstanding shares are owned approximately b percent by unrelated third parties, approximately c percent by Owner, and approximately d percent by Taxpayer's directors and officers. Taxpayer has no shares of preferred or preference stock outstanding.

On Petition Date, Taxpayer and its subsidiaries filed voluntary petitions in the United States Bankruptcy Court for JurisdictionA (the "Bankruptcy Court") seeking relief under Title 11 of the United States Bankruptcy Code. On Petition Date, Taxpayer had approximately \$e in third party debt and other liabilities. Taxpayer's third party debt is a mixture of senior secured and unsecured subordinated instruments, including Senior Secured Obligations and Junior Debt Obligations. Taxpayer and its subsidiaries jointly and severally, unconditionally and irrevocably, guaranteed complete payment and performance with respect to Term Loan. Substantially all of the assets of Taxpayer Group are pledged as security for Term Loan. Taxpayer modified Term Loan on Date3,

treating such modification as a deemed exchange for federal income tax purposes pursuant to Treas. Reg. § 1.1001-3.

In addition to Senior Secured Obligations and Junior Debt Obligations, various intercompany obligations exist between or among Taxpayer, Sub1, and Sub2 (the "Intercompany Notes"). For all of the Intercompany Notes, the applicable creditor's basis is equal to the adjusted issue price of each obligation.

### **Summary of Plan**

Pursuant an Agreement and Plan of Merger within the Approved Bankruptcy Plan, Taxpayer will merge downstream with and into Sub1, with Sub1 surviving the merger. Immediately after the effective date of such merger, Sub1 will own all the stock of Sub2, and Taxpayer's historic creditors will control Sub1. In connection with the merger, Sub1 will issue a combination of shares of Class A Common Stock, limited-vote Class B Common Stock (together with the Class A Common Stock, the "New Common Stock"), and/or Warrants to purchase shares of Class B Common Stock (together with the New Common Stock, the "New Equity").

Pursuant to the Approved Bankruptcy Plan, claims arising under the Senior Secured Obligations are classified as Senior Claims. The Senior Claims will be exchanged on a pro-rata basis for (i) the New Term Loans and (ii) a combination of New Common Stock and Warrants together representing f percent of the New Equity. Claims arising under the Junior Debt Obligations, and any other unsecured claims that are not an administrative, priority tax, or other priority claim will be classified as General Unsecured Claims. The General Unsecured Claims will be exchanged on a pro-rata basis for (i) a combination of New Common Stock and Warrants together representing g percent of the New Equity, and (ii) \$i in cash. The New Equity will be allocated to Senior Claim holders and General Unsecured Claim holders, respectively according to the "Equity Allocation Mechanism" described in Taxpayer's submission.

### **Transactions Preceding the Proposed Transaction**

Pursuant to the Approved Bankruptcy Plan, prior to the Proposed Transaction,

- (A) Taxpayer and Sub1 will offset Sub1's Intercompany Note to Taxpayer to the extent of Taxpayer's Intercompany Note to Sub1.
- (B) Sub1 will contribute Agency licenses currently held by Sub1 to a newly formed single member LLC wholly owned by Sub1.
- (C) Taxpayer will contribute at least \$i of Sub2's Intercompany Note to Taxpayer to the capital of Sub2.

(D) Taxpayer will contribute the entire amount of Sub1's Intercompany Note to Taxpayer (as reduced by the offset in Step A) to the capital of Sub1.

(E) Sub1 will change the state of its incorporation from StateA to StateB (the "Sub1 Reincorporation").

### **Proposed Transaction**

Pursuant to the Approved Bankruptcy Plan,

Taxpayer will merge downstream with and into Sub1 and Sub1 will survive the merger (the "Merger"). In the Merger, all of Taxpayer's assets will be transferred to Sub1, and Sub1 will assume any liabilities of Taxpayer that are not extinguished by order of the Bankruptcy Court (the "Assumed Liabilities").

As consideration in the Merger (the "Merger Consideration"):

(1) The Senior Claim holders will receive on a pro-rata basis, in respect of such claims, (i) the New Term Loans and (ii) a combination of New Common Stock and Warrants together representing f percent of the New Equity.

(2) The General Unsecured Claim holders will receive on a pro-rata basis, in respect of such claims, (i) a combination of New Common Stock and Warrants together representing g percent of the New Equity, and (ii) \$i in cash.

(3) The holders of common shares of Taxpayer will receive no consideration in respect of their shares, and such shares will be cancelled.

### **Post-Transaction Corporate and Capital Structure**

Following the Proposed Transaction, Sub1 will be the sole owner of Sub2. Sub1 and Sub2 each will continue their respective historic operations. The structures of the Sub1 subgroup and the Sub2 subgroup will remain unchanged with the exception of the creation of the new LLC intended to hold Agency licenses for Sub1.

Following the Proposed Transaction, Sub1 will have outstanding Class A Common Stock, limited-vote Class B Common Stock, and Warrants to purchase Class B Common Stock. The Class A Common Stock will be voting common stock. The Class B Common Stock will possess the same economic rights as the Class A Common Stock, but will be limited as to voting rights. Each share of Class B Common Stock will be convertible into shares of Class A Common Stock upon the satisfaction of certain Agency restrictions. The Warrants to purchase Class B Common Stock will have an exercise price of \$m per share and a term of n. The Warrants will not have voting rights, but will be freely transferable and will have equivalent distribution, tender, and consideration rights to the Class A and Class B Common Stock.

### **Equity Incentive Program**

Not less than 0 percent and no greater than 0 percent (on a fully diluted basis) of the issued and outstanding New Common Stock and New Common Stock issuable upon exercise of the Warrants will be reserved for issuance as options in connection with Sub1's equity incentive program.

### **Agency Trust**

In order to expedite the emergence of Sub1 from bankruptcy in the event Agency approval has not been granted, the Approved Bankruptcy Plan contemplates that Sub1 may emerge from bankruptcy upon the transfer of control from the debtors to a trust subject to continuing jurisdiction and oversight of the Bankruptcy Court pending Agency approval (the "Agency Trust").

### **Representations**

In connection with this ruling request, Taxpayer makes the following representations:

- a. Taxpayer will be under the jurisdiction of the Bankruptcy Court in a case under Title 11 of the Bankruptcy Code at the time of the Proposed Transaction.
- b. The Agreement and Plan of Merger that will be approved by the Bankruptcy Court as part of the Approved Bankruptcy Plan will constitute a plan of reorganization for purposes of section 368.
- c. In the Proposed Transaction, Sub1 will acquire more than 50 percent of the fair market value of the gross assets held by Taxpayer (including the stock of and intercompany interests in affiliates) as of the Petition Date and more than 70 percent of the fair market value of the operating assets held by Taxpayer (including the stock of and interests in affiliates) as of the Petition Date. For purposes of this representation, operating assets include stock in Sub2, stock in Sub1, the Sub2 Intercompany Note to Parent, and the Sub1 Intercompany Note to Parent and exclude cash, other accounts receivable, or investment assets, provided that Taxpayer will have previously transferred the Sub2 Intercompany Note to Parent and the Sub1 Intercompany Note to Parent as discussed herein.
- d. The Senior Claim holders, in their capacity as creditors, will be the most senior class of Taxpayer creditors to receive an equity interest in Sub1 in the Proposed Transaction, in the form of New Common Stock or Warrants.
- e. Taking into account (i) the value of the New Equity and New Term Loans to be received by the Senior Claim holders in respect of their Senior Claims, and (ii) the value of all consideration to be received by creditors of Taxpayer with

- claims that are equal and junior to that of the Senior Claim holders (the portion of the Senior Claims to which the New Common Stock and Warrants are allocable, together with claims junior to such Senior Claims, the “proprietary interests” of Taxpayer), at least 40 percent of the fair market value of the total consideration received by all such holders in respect of such proprietary interests of Taxpayer will consist of New Common Stock and Warrants.
- f. There is no plan or intention for Sub1, or for any party related to Sub1 (within the meaning of Treas. Reg. § 1.368-1(e)(4)), to redeem or acquire any New Common Stock or Warrants issued in the Proposed Transaction, either directly or through any transaction, agreement, or other arrangement with any other person.
  - g. The fair market value of the New Common Stock and Warrants and any other consideration to be received in the Proposed Transaction by the Senior Claim holders and the General Unsecured Claim holders will be approximately equal to the fair market value (at the time of the exchange) of such creditors’ claims constructively surrendered in exchange therefor.
  - h. The fair market value of the assets to be acquired by Sub1 in the Proposed Transaction will be approximately equal to the value of the consideration issued by Sub1 in exchange therefor.
  - i. Sub1 has no plan or intention to sell or otherwise dispose of any of the assets of Taxpayer acquired in the transaction, except for dispositions made in the ordinary course of business or in transfers described in section 368(a)(2)(C) or Treas. Reg. § 1.368-2(k).
  - j. Sub1 (or members of Sub1’s “qualified group,” within the meaning of Treas. Reg. § 1.368-1(d)) will continue the historic business of Taxpayer or use a significant portion of Taxpayer’s historic business assets in a business.
  - k. Sub1 has no plan or intention to liquidate or merge with or into another corporation subsequent to the Proposed Transaction.
  - l. The liabilities of Taxpayer to be assumed by Sub1 (within the meaning of section 357(d)) were incurred by Taxpayer in the ordinary course of its business.
  - m. Except for the Sub1 Intercompany Note to Parent, there is no inter-corporate indebtedness existing between Sub1 and Taxpayer that was acquired at a discount or was discounted. Except for the Transactions Preceding the Proposed Transaction, no intercompany indebtedness existing between Taxpayer and Sub1 will be settled (at a discount or otherwise).

- n. No two parties to the transaction are non-diversified “investment companies” as defined in section 368(a)(2)(F)(iii) and (iv).
- o. After taking into account the discharge and Transactions Preceding the Proposed Transaction, the total fair market value of the assets transferred by Taxpayer to Sub1 will exceed the sum of: (a) the amount of liabilities assumed (as determined under section 357(d)) by Sub1 in connection with the exchange; (b) the amount of liabilities owed to Sub1 by Taxpayer that were constructively discharged or extinguished in connection with the exchange; and (c) the amount of any money and the fair market value of any other property (other than stock permitted to be received under section 361 without the recognition of gain) received by Taxpayer in consideration for the transfer of assets to Sub1. The fair market value of the assets of Sub1 will exceed the amount of its liabilities immediately after the Proposed Transaction.
- p. Taxpayer and Sub1 will each pay its own expenses, if any, in connection with the Proposed Transaction.
- q. In the event the Agency Trust becomes effective, the Agency Trust will qualify as a liquidating trust within the meaning of Treas. Reg. § 301.7701-4(d).
- r. Taxpayer will treat the Sub1 Reincorporation as a tax-free reorganization under section 368(a)(1)(F) for all U.S. federal income tax purposes.
- s. Pursuant to the Proposed Transaction, Taxpayer will distribute all Merger Consideration received from Sub1 in the Merger to the Senior Claim holders and General Unsecured Claim holders.

### **Rulings**

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

1. The Proposed Transaction will constitute a reorganization within the meaning of section 368(a)(1)(G). Taxpayer and Sub1 will each be “a party to a reorganization” within the meaning of section 368(b).
2. No gain or loss will be recognized by Taxpayer on the transfer of all its assets to Sub1 in exchange for the Merger Consideration and the assumption of Assumed Liabilities (sections 361(a), 361(b)(1)(A), 361(b)(3), and 357(a)).
3. No gain or loss will be recognized by Sub1 upon the receipt of all of Taxpayer’s assets in exchange for the Merger Consideration (section 1032(a)).



4. The adjusted basis of Sub1's assets received from Taxpayer in the Proposed Transaction in the hands of Sub1 will be, in each instance, the same as the adjusted basis of such assets in the hands of Taxpayer immediately prior to the exchange (section 362(b)).
5. Sub1's holding period for the assets received from Taxpayer in the Proposed Transaction will include, in each instance, the holding period of those assets in the hands of Taxpayer immediately prior to the exchange (section 1223(2)).
6. No gain or loss will be recognized by Taxpayer upon the distribution of the Merger Consideration to the Senior Claim holders and General Unsecured Claim holders (section 361(c)).
7. Pursuant to section 381(a) and Treas. Reg. § 1.381(a)-1, Sub1 will succeed to and take into account the items described in section 381(c), subject to reduction with respect to excluded cancellation of indebtedness income of Taxpayer as required by section 108, section 1017, and Treas. Reg. §§ 1.1502-28 and 1.108-7(c). These items will be taken into account by Sub1 subject to applicable provisions and limitations, including the limitations specified in sections 381, 382, 383, 384, 904, 1502, and the regulations thereunder (Treas. Reg. § 1.381(b)-1(b)(1); Rev. Rul. 70-27, 1970-1 C.B. 83; and Rev. Rul. 80-144, 1980-1 C.B. 80).
8. With respect to the cancellation of indebtedness income that is treated as realized directly by Sub1 as a result of the Proposed Transaction and that is excluded from gross income under section 108(a), the liability floor of section 1017(b)(2) will be determined at Sub1 taking into account the bases of Sub1's assets and the amount of Sub1's liabilities immediately after all of the steps of the Proposed Transaction. Treas. Reg. § 1.1502-28(b)(9).
9. To the extent that a claim of any Taxpayer claimholder qualifies as a security (within the meaning of sections 354 and 356), no gain or loss will be recognized by such claimholder upon the receipt of New Common Stock, Warrants, or Sub1 securities in exchange for the claimholder's Taxpayer security, except that the claimholder may recognize ordinary income to the extent that the consideration is treated as received in satisfaction of accrued but unpaid interest (section 354(a)). If a Taxpayer claimholder also receives money or other property in exchange for his or her Taxpayer security (including Sub1 securities to the extent their principal amount exceeds that of the Taxpayer securities surrendered by the claimholder in the exchange), the claimholder will recognize gain in an amount not in excess of the fair market value of such money or other property (section 356(a)(1), section 356(d)). No loss will be recognized by such Taxpayer security holder (section 356(c)).
10. To the extent that a claim of any Taxpayer claimholder qualifies as a security (within the meaning of sections 354 and 356), the adjusted basis of the New

Common Stock, Warrants, and Sub1 securities received by a Taxpayer claimholder in exchange therefor will equal the adjusted basis of the Taxpayer security in the hands of the claimholder immediately before the distribution, less the fair market value of any money or other property distributed to the claimholder, plus any gain recognized by the claimholder (section 358(a)(1)). The basis of money or other property received by a Taxpayer claimholder will be the fair market value of such money or other property (section 358(a)(2)).

11. To the extent that a claim of any Taxpayer claimholder qualifies as a security (within the meaning of sections 354 and 356), the holding period of New Common Stock, Warrants, and Sub1 securities received by a claimholder in exchange for his or her Taxpayer security will include the period during which the claimholder has held the Taxpayer security exchanged therefor, provided such Taxpayer security was a capital asset in the hands of the holder (section 1223(1)).

### **Caveats**

No opinion is expressed about the federal income tax treatment of the Proposed Transaction under other provisions of the Code or regulations or about the federal income 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**

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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,

*Douglas C. Bates*

Douglas C. Bates  
Assistant to the Branch Chief, Branch 5  
Office of Associate Chief Counsel  
(Corporate)

cc: