

**Internal Revenue Service**

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CC:CORP:B02

PLR-139142-09

Date:

November 13, 2009

LEGEND

Parent =

Target =

Merger Sub =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

PLR-139142-09

FHoldCo =

LLC 1 =

LLC 2 =

LLC 3 =

Selected  
Entities =

Newco =

Exchange =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Business A =

PLR-139142-09

Business B =

Business C =

Business D =

Business E =

State A =

State B =

Country A =

Country B =

Country C =

Country D =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

o =

p =

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

This letter responds to your request, dated August 27, 2009, submitted by your authorized representatives on behalf of Parent and its affiliates, requesting rulings on certain federal income tax consequences of a series of transactions (collectively, the "Transactions"). The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties 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**

Parent, a widely held State A corporation, is the common parent of an affiliated group of corporations (the "Parent Group") that files a consolidated U.S. federal income tax return. The authorized capital stock of Parent consists of a shares of voting common stock, and b shares of preferred stock. As of Date 1, c shares of the common stock and d shares of the preferred stock were outstanding. Parent's common stock is listed on the Exchange.

Parent is engaged primarily in Business A and Business B, but also operates several other businesses, including Business C and Business D. Parent conducts these businesses directly, and indirectly through domestic and foreign subsidiaries.

Target is a State A corporation that is treated as a corporation for U.S. federal income tax purposes. The authorized capital stock of Target consists of e shares of voting common stock, and f shares of preferred stock. As of Date 2, g shares of the common stock were outstanding, and h shares of the preferred stock were outstanding. Prior to the Target Acquisition (defined below), Target's common stock was listed on the Exchange.

Target is currently engaged in three primary businesses: Business A, Business B and Business E. Business B accounted for less than j percent of Target's net revenues in the year ended on Date 3. Target conducts these businesses directly, and indirectly through its domestic subsidiaries (the "Target Domestic Subsidiaries") and its foreign subsidiaries (the "Target Foreign Subsidiaries"). Target and the Target Domestic Subsidiaries directly hold Target's U.S.-based workforce and certain other valuable assets.

Target's operations in Country B were indirectly conducted primarily by Sub 1, a Country A company that is treated as a corporation for U.S. federal income tax purposes. Target wholly owns Sub 1. Target's operations in Country C were indirectly conducted primarily by Sub 2, a Country D company that is treated as a corporation for U.S. federal income tax purposes, and LLC 3, a State A limited liability company disregarded from Sub 3 for U.S. Federal income tax purposes. Sub 2 is wholly owned by Sub 4, a State B corporation, which is wholly owned by Sub 5, a State A corporation, which Target wholly owns. LLC 3 is wholly owned by Sub 3, a State A corporation, which Target wholly owns. Sub 1, Sub 2 and LLC 3 are, collectively, the "Selected Entities."

FHoldCo, a Country A limited partnership that is treated as a corporation for U.S. federal income tax purposes, is wholly owned, directly and indirectly, by Parent. FHoldCo is the principal holding company for Parent's foreign operations and is engaged in activities, including Business A, through its direct and indirect subsidiaries. Parent is treated for U.S. federal income tax purposes as having j percent of the voting power in the selection of FHoldCo's general partners, and as directly owning k percent of FHoldCo by value.

### **Transactions**

The following transactions have been completed or will take place.

On Date 4, Parent, Target and Merger Sub, a direct wholly owned subsidiary of Parent, entered into a merger agreement, pursuant to which newly formed Merger Sub would merge with and into Target with Target surviving (the "Target Acquisition"). The merger was approved by Target's shareholders on Date 5 and closed on Date 6. As a result of the merger, Target shareholders received \$l in cash and m of a share of Parent common stock for each share of Target common stock owned. The total amount of Parent stock issued to the Target shareholders was approximately n% of the total amount of consideration received in the Target Acquisition.

The Target Acquisition was accomplished in the following manner:

- (i) Parent formed a U.S. limited liability company that is disregarded from Parent for U.S. federal income tax purposes ("LLC 1"). Parent transferred its stock in Merger Sub to LLC 1 and FHoldCo.

- (ii) Each of FHoldCo and LLC 1 provided a portion of the acquisition consideration necessary to acquire Target. Approximately \$0 of the acquisition consideration provided by FHoldCo was loaned by Parent (the "FHoldCo Loan"). FHoldCo should have sufficient earnings and cash flow to pay principal and interest on the FHoldCo Loan in full, on a current basis. The FHoldCo Loan will be repaid solely by FHoldCo from its own assets and earnings, distributions or loans from its subsidiaries, or by borrowing from an unrelated third party. In this regard, FHoldCo and its subsidiaries have sufficient liquid assets, net of any amounts on deposit from foreign affiliates that are not subsidiaries of FHoldCo, to repay fully the FHoldCo Loan.
- (iii) In the Target Acquisition, Merger Sub merged with and into Target with Target surviving. Thereafter, LLC 1 and FHoldCo owned all of the outstanding stock of Target in proportion to their relative contributions to the acquisition consideration.

In order to facilitate the integration of Parent's and Target's operations, Parent has proposed (and has partially completed) the following transactions.

#### Target Reincorporation and Merger

- (iv) LLC 1 and FHoldCo will form a new domestic corporation ("Newco"), to which they will contribute all of their interests in Target. Soon thereafter, as part of the same plan, Target will convert into a domestic limited liability company ("LLC 2") which will be treated as a disregarded entity for U.S. federal income tax purposes (the transactions executed pursuant to this step are collectively referred to herein as the "Target Reincorporation").
- (v) Certain of the Selected Entities will distribute cash dividends to their owners.
- (vi) Sub 4 will distribute Sub 2 to Sub 5, which will distribute Sub 2 to LLC 2. Sub 3 will distribute LLC 3 to LLC 2 (collectively, the "Distributions"). LLC 2 will distribute the Selected Entities to Newco.
- (vii) Prior to Date 7, and pursuant to a plan of merger, Newco will merge with and into LLC 1 with LLC 1 surviving (the "Merger"). In the Merger, LLC 1 will acquire all of Newco's assets (other than the Selected Entities) in exchange for its Newco stock. In the Merger, FHoldCo will receive \$0 of Parent stock and all of the Selected Entities, in exchange for its Newco stock.

- (viii) Parent, FHoldCo, the Newco Domestic Subsidiaries (formerly, the Target Domestic Subsidiaries), and the Newco Foreign Subsidiaries (formerly, the Target Foreign Subsidiaries), including the Selected Entities, will engage in other transactions prior to and following the Merger in order to facilitate the integration of Newco's (formerly, Target's) foreign operations into Parent's foreign operations and to minimize foreign taxes.

## **Representations**

### The Target Acquisition

Parent makes the following representations with respect to the Target Acquisition described in steps (i) through (iii) above.

- (a) To the best knowledge of Parent, after due inquiry based on publicly available information, there is no Target shareholder (other than members of Parent's affiliated group as defined in section 338(h)(5)), the ownership of whose stock would, under section 318(a) (other than paragraph (4) thereof), be attributed to either Parent or FHoldCo. The amount of Target stock owned by members of Parent's affiliated group prior to the Target Acquisition was less than 1% of all of Target's outstanding stock, and such stock was cancelled for no consideration in the merger of MergerSub into Target.
- (b) Merger Sub was formed solely for the purpose of facilitating the acquisition of Target and did not engage in any activities other than those related to the Target Acquisition.
- (c) The amount of cash provided by FHoldCo in the Target Acquisition is intended to equal the fair market value of the Parent stock and the Selected Entities received by FHoldCo (as described in step vii above).
- (d) The amount of cash and the fair market value of the Parent stock provided by Parent (through LLC 1) in the Target Acquisition is intended to equal the fair market value of Target's assets other than the Selected Entities transferred by Newco to LLC 1 in the Merger (as described in step vii above), reduced by the value of the Parent stock received by FHoldCo (as described in step vii above).
- (e) Following the Target Acquisition, neither Parent nor FHoldCo will make an election pursuant to section 338 with respect to the stock of Target.

### The Target Reincorporation

Parent makes the following representations with respect to the Target Reincorporation described in step (iv) above.

- (f) At all times prior to the deemed acquisition of the Target assets by Newco in the Target Reincorporation: (i) Newco will have engaged in no business activity; (ii) Newco will have had no federal income tax attributes; and (iii) Newco will have held no assets (except for the stock of Target (see step iv above) and a nominal amount of assets held to facilitate its organization).
- (g) The fair market value of the Newco stock received by each of Parent (through LLC 1) and FHoldCo in the Target Reincorporation will be approximately equal to the fair market value of the Target stock surrendered in exchange therefor.
- (h) Except pursuant to the Merger, there is no plan or intention by Parent (through LLC 1) or FHoldCo to sell, exchange or otherwise dispose of any of the Newco stock received in the Target Reincorporation.
- (i) Immediately following the Target Reincorporation, Parent (through LLC 1) and FHoldCo will own all of the outstanding Newco stock, and will own such stock solely by reason of their ownership of Target stock immediately prior to the Target Reincorporation.
- (j) Newco has no plan or intention to issue additional shares of its stock following the Target Reincorporation.
- (k) Immediately following the Target Reincorporation, Newco (through LLC 2) will possess the same assets and liabilities, except for a nominal amount of assets held to facilitate its organization, as those possessed by Target immediately prior to the Target Reincorporation.
- (l) At the time of the Target Reincorporation, Target will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Target.
- (m) Except pursuant to the Merger, Newco has no plan or intention to reacquire any of its stock issued in the Target Reincorporation.
- (n) Newco has no plan or intention to sell or otherwise dispose of any of the assets of Target deemed acquired in the Target Reincorporation, except for dispositions pursuant to the Merger, dispositions made in the ordinary course of business, transfers described in Treas. Reg. § 1.368-2(k), or

divestitures of certain assets related to Target's Business B as required to obtain regulatory approvals for the Target Acquisition.

- (o) The liabilities of Target treated as assumed (as determined under section 357(d)) by Newco, plus the liabilities, if any, to which the Target assets are subject were incurred by Target in the ordinary course of its business and are associated with the assets deemed transferred.
- (p) Parent and FHoldCo will pay their respective expenses, if any, incurred in connection with the Target Reincorporation.
- (q) Target is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).

#### The Merger

Parent makes the following representations with respect to the Merger described in step (vii) above.

- (r) The Merger is being effected pursuant to the laws of State A and will qualify as a statutory merger under applicable State A law. Pursuant to the Plan of Merger, by operation of law, the following will occur simultaneously at the effective time of the Merger: (i) all of the assets held by Newco immediately before the Merger (other than those distributed to FHoldCo in the Merger) and all of the liabilities of Newco immediately before the Merger (except to the extent such liabilities are satisfied or discharged in the Merger or are nonrecourse liabilities to which assets distributed in the Merger are subject) will become the assets and liabilities of LLC 1; and (ii) Newco will cease its separate legal existence for all purposes.
- (s) The total fair market value of the assets of Newco transferred to Parent (through LLC 1) in the Merger less the amount of any liabilities assumed by Parent (through LLC 1) in connection therewith will be approximately equal to the fair market value of the Newco stock surrendered by Parent (through LLC 1) in the exchange. The fair market value of the Parent stock and the Selected Entities received by FHoldCo in the Merger will be approximately equal to the fair market value of the Newco stock surrendered by FHoldCo in the exchange.
- (t) The total net fair market value of the assets of Newco transferred to Parent (through LLC 1) in the Merger will equal or exceed 40 percent of the total net fair market value of the assets of Newco prior to the Merger.

- (u) There is no plan or intention by FHoldCo to sell, exchange, or otherwise dispose of any of the Parent stock received in the Merger.
- (v) Neither Parent nor any person related (within the meaning of Treas. Reg. § 1.368-1(e)(4)) to Parent has any plan or intention to reacquire any Parent stock issued in the Merger.
- (w) Parent has no plan or intention to sell or otherwise dispose of any of the assets of Newco acquired in the Merger, except for dispositions made in the ordinary course of business, transfers described in section 368(a)(2)(C) or Treas. Reg. § 1.368-2(k), or divestitures of the assets related to Target's Business B as required to obtain regulatory approvals for the Target Acquisition.
- (x) The liabilities of Newco assumed (as determined under section 357(d)) by Parent (through LLC 1) and the liabilities to which the transferred assets of Newco are subject were incurred by Newco (or by Target prior to the Target Reincorporation) in the ordinary course of its business and are associated with the assets transferred.
- (y) Following the Merger, Parent, either directly or through members of its qualified group (within the meaning of Treas. Reg. § 1.368-1(d)(4)(ii)), will continue the historic business of Newco (which was conducted by Target prior to the Target Reincorporation) or use a significant portion of Newco's historic business assets (which were held by Target prior to the Target Reincorporation) in a business.
- (z) Parent, Newco, and FHoldCo will pay their respective expenses, if any, incurred in connection with the Merger.
- (aa) There is no intercorporate indebtedness existing between Newco and Parent that was issued, acquired, or will be settled at a discount.
- (bb) No two parties to the Merger are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (cc) Newco is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).
- (dd) Immediately before the Merger, the total fair market value of the assets of Newco transferred to Parent (through LLC 1) will exceed the sum of: (i) the amount of any liabilities assumed (as determined under section 357(d)) by Parent (through LLC 1) in connection with the Merger; (ii) the amount of any liabilities owed to Parent by Newco that is discharged or extinguished in connection with the Merger; and (iii) the amount of any

money and the fair market value of any other property (other than stock permitted to be received under section 361(a) without the recognition of gain) received by Newco in connection with the Merger.

- (ee) Immediately after the Merger, the fair market value of Parent's assets will exceed the amount of its liabilities.

### **Rulings**

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

#### The Target Acquisition

- (1) The Target Acquisition constitutes a qualified stock purchase by Parent and FHoldCo under section 338(d)(3).

#### The Distributions

- (2) Each of Sub 3, Sub 4, and Sub 5 will recognize gain on the Distributions to the extent that the fair market value of the Selected Entity distributed by such subsidiary exceeds its basis in such Selected Entity. Section 311(b). Sub 3, Sub 4, and Sub 5 will not recognize any loss with respect to any Selected Entity distributed. Section 311(a).

#### The Target Reincorporation

- (3) For U.S. federal income tax purposes, the Target Reincorporation described in step (iv) above will be treated as a transfer by Target of its assets to Newco in exchange for stock of Newco and the assumption by Newco of Target's liabilities. The Target Reincorporation will constitute a reorganization within the meaning of section 368(a)(1)(F). Target and Newco each will be "a party to a reorganization" under section 368(b).
- (4) No gain or loss will be recognized by Target on the deemed transfer of its assets to Newco in exchange for the deemed issuance of Newco stock and the deemed assumption by Newco of the liabilities of Target. Sections 361(a) and 357(a).
- (5) No gain or loss will be recognized by Newco on the deemed receipt of Target's assets in exchange for the deemed issuance of Newco stock. Section 1032(a).

- (6) The basis of each Target asset deemed received by Newco will be the same as the basis of such asset in the hands of Target immediately before the Target Reincorporation. Section 362(b).
- (7) The holding period of each Target asset deemed received by Newco will include the period during which such asset was held by Target. Section 1223(2).
- (8) No gain or loss will be recognized by Target on the deemed distribution of Newco stock to Parent and FHoldCo. Section 361(c)(1).
- (9) No gain or loss will be recognized by either Parent or FHoldCo on the deemed receipt of Newco stock in exchange for their Target stock. Section 354(a).
- (10) The basis of the Newco stock received by each of Parent and FHoldCo will be the same as the basis of the Target stock surrendered in exchange therefor. Section 358(a).
- (11) The holding period of the Newco stock received by each of Parent and FHoldCo will include the holding period of the Target stock surrendered in exchange therefor, provided that the Target stock was held as a capital asset on the date of the Target Reincorporation. Section 1223(1).
- (12) Newco will succeed to and take into account the items of Target described in Section 381(c). Section 381(a). Newco will be treated as Target would have been treated (for purposes of section 381) had the Target Reincorporation not occurred. Treas. Reg. § 1.381(b)-1(a)(2).

#### The Merger

- (13) Provided that the Merger qualifies as a statutory merger under applicable state law, the Merger will constitute a reorganization within the meaning of section 368(a)(1)(A). Newco and Parent each will be “a party to a reorganization” within the meaning of section 368(b).
- (14) No gain or loss will be recognized by Newco on the transfer of its assets to Parent in exchange for the deemed issuance of Parent stock and the assumption by Parent of the liabilities of Newco. Sections 361(a) and 357(a).
- (15) No gain or loss will be recognized by Parent on the receipt of the assets of Newco in exchange for Parent stock. Section 1032(a).

- (16) The basis of each Newco asset received by Parent will be the same as the basis of such asset in the hands of Newco immediately before the Merger. Section 362(b).
- (17) The holding period of each Newco asset received by Parent will include the period during which such asset was held by Newco. Section 1223(2).
- (18) No gain or loss will be recognized by Newco on the actual or deemed distribution of Parent stock to Parent and FHoldCo. Section 361(c)(1). Newco will recognize gain, if any, on the distribution of the Selected Entities to FHoldCo as if such property had been sold to FHoldCo at its fair market value. Section 361(c)(2).
- (19) No gain or loss will be recognized by Parent on the deemed receipt of Parent stock in exchange for its Newco stock. Section 354(a).
- (20) FHoldCo will determine the amount of its gain, if any, with respect to the receipt of the Parent stock and the Selected Entities in exchange for the Newco stock under the provisions of sections 354 and 356 (and not under sections 301 and 302). Gain, if any, will be recognized by FHoldCo on the exchange of its Newco stock for the Parent Stock and Selected Entities in the Merger, but not in excess of the fair market value of the Selected Entities. Section 356(a)(1). If the exchange has the effect of the distribution of a dividend (determined with the application of section 318(a)), then the amount of the gain recognized that is not in excess of FHoldCo's ratable share of the undistributed earnings and profits of Newco will be treated as a dividend, and the remainder, if any, of the gain recognized will be treated as gain from the exchange of property. Section 356(a)(2). No loss will be recognized on the exchange. Section 356(c).
- (21) The distribution of the Selected Entities to FHoldCo in the Merger is not subject to section 304.
- (22) The basis of the Parent stock received by FHoldCo will be the same as the basis of the Newco stock surrendered in exchange therefor, decreased by the fair market value of the Selected Entities received by FHoldCo in the exchange, and increased by the amount of gain, if any, recognized by FHoldCo on the exchange. Section 358(a)(1). The basis of the Selected Entities received by FHoldCo will be their fair market value. Section 358(a)(2).
- (23) The holding period of the Parent stock received by FHoldCo will include the holding period of the Newco stock surrendered in exchange therefor, provided that the Newco stock was held as a capital asset on the date of

the Merger. Section 1223(1). FHoldCo's holding period with respect to the Selected Entities will begin on the date of the Merger.

- (24) Parent will succeed to and take into account, as of the close of the date of the Merger, the items of Newco described in section 381(c) subject to the conditions and limitations specified in sections 381, 382, 383, and 384, and the regulations thereunder. Section 381(a).

### **Caveats**

No opinion is expressed about the tax treatment of the Transactions 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 Transactions that are not specifically covered by the above rulings. In particular, we express no opinion regarding the federal income tax consequences of the cash dividends described in step (v) above, or the integration transactions generally described in step (viii) above.

### **Procedural Statements**

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter must be attached to any federal 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.

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

Sincerely,

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Frances L. Kelly

Assistant Branch Chief, Branch 2  
(Corporate)