

## Internal Revenue Service

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Date:  
September 28, 2011

### LEGEND

Oldco =

Business A =

Business B =

State X =

Month 1 =

Year 1 =

Exchange =

Dear :

This letter ruling responds to your July 12, 2011 request, submitted by your authorized representative, for rulings on certain federal income tax consequences of a proposed transaction. The information provided 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

Oldco is a publicly traded State X corporation that was incorporated in Month 1 of Year 1. Oldco has only a single class of stock outstanding, and such stock is widely held and publicly traded on the Exchange.

The business operations of Oldco are held in a single legal entity and consist of two distinct activities, Business A and Business B. In order to focus on and grow Business A and to conduct both Business A and Business B as corporate subsidiaries on a going forward basis, Oldco wishes to reorganize its corporate structure from that of a single domestic operating corporation to that of a domestic holding company with Business A and Business B each owned and operated in a separate, wholly owned domestic subsidiary.

### PROPOSED TRANSACTION

To accomplish the business purposes described above, Oldco proposes to implement the following transaction (the "Proposed Transaction"):

- (i) A new State X corporation ("Holdco") will be formed as a wholly owned subsidiary of Oldco.
- (ii) Holdco will form a new transitory State X corporation ("Merger Sub").
- (iii) Merger Sub will merge with and into Oldco with Oldco as the surviving legal entity and Merger Sub ceasing to exist. In the merger, the Oldco shareholders will exchange their Oldco shares for Holdco shares. The Holdco shares will be identical in terms and number to the Oldco shares. Immediately following this step, Holdco will own all of the outstanding stock of Oldco.
- (iv) Pursuant to State X law, Oldco will convert to a limited liability company ("Oldco LLC") that is intended to be treated as a disregarded entity for federal income tax purposes. Steps (i) through (iv) are, collectively, referred to as the "Reorganization."
- (v) Oldco LLC will form a new State X corporation ("Newco 1") and transfer the assets and liabilities associated with Business B to Newco 1 in exchange for all of the issued and outstanding shares of stock of Newco 1 (the "Contribution").

- (vi) Oldco LLC will distribute to Holdco all of the issued and outstanding shares of stock of Newco 1.
- (vii) Oldco LLC will convert back to a corporation ("Newco 2") pursuant to the State X elective conversion statutes by reincorporating under State X law (the "Reincorporation"). Following this step, Newco 2 will hold the assets and liabilities associated with Business A.

Immediately following step (iv) (and following each subsequent step), the former Oldco shareholders will own all of the outstanding common stock of Holdco having the same designations, rights, powers and preferences, and the qualifications, limitations, and restrictions as the converted Oldco shares, and will hold such shares in equal proportion to their interest in Oldco prior to the Proposed Transaction. Following the Proposed Transaction, Holdco will elect to file a consolidated U.S. federal income tax return with its subsidiaries, Newco 1 and Newco 2.

## REPRESENTATIONS

Oldco makes the following representations with respect to the Proposed Transaction:

### The Reorganization

- (a) The shareholders of Oldco will receive solely Holdco stock in the Reorganization.
- (b) The fair market value of the Holdco stock received by each Oldco shareholder will be approximately equal to the fair market value of the Oldco stock surrendered in the exchange.
- (c) Following the Reorganization, the shareholders of Oldco will own all of the outstanding Holdco stock and will own such stock solely by reason of their ownership of Oldco stock immediately prior to the transaction.
- (d) Following the Reorganization, each shareholder of Oldco will hold the same percentage of stock in Holdco as the percentage of stock such shareholder previously held in Oldco.
- (e) Immediately after step (iv), Holdco (through Oldco LLC) will hold all the assets held by Oldco immediately prior to the Reorganization. The assets used to pay expenses will be less than one percent of the fair market value of the net assets of Oldco immediately prior to the Reorganization. No assets will be distributed, and there will be no dissenting shareholders.

- (f) At the time of the Reorganization, Oldco will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Oldco.
- (g) At all times prior to the deemed acquisition of the assets of Oldco in the Reorganization: (i) Holdco will have been engaged in no business activity; (ii) Holdco will have had no federal income tax attributes (attributes described in section 381(c)); and (iii) Holdco will have held no assets (except for holding a minimal amount of assets if such assets are required for the purpose of paying Holdco's incidental expenses or required in order to maintain Holdco's status as a corporation in accordance with State X law).
- (h) All liabilities to which the Oldco assets are subject at the time of the Reorganization, and all the liabilities of Oldco that are properly treated as being assumed by Holdco in the Reorganization (as determined under section 357(d)), are liabilities that were incurred by Oldco in the ordinary course of its business and are associated with the assets deemed transferred from Oldco to Holdco.
- (i) Oldco and Holdco will each pay its own expenses incurred in connection with the Reorganization.
- (j) Oldco 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 Contribution

- (k) No stock or securities will be issued for services rendered to or for the benefit of Newco 1 in connection with the Contribution, and no stock or securities will be issued for indebtedness of Newco 1 that is not evidenced by a security or for interest on indebtedness of Newco 1 which accrued on or after the beginning of the holding period of Holdco, Oldco LLC, or Oldco for the debt.
- (l) The transfer is not the result of the solicitation by a promoter, broker, or investment house.
- (m) Neither Holdco nor Oldco LLC will retain any rights in the Business B assets transferred to Newco 1.
- (n) The adjusted basis of the Business B assets to be transferred by Holdco (through Oldco LLC) to Newco 1 will exceed the sum of the liabilities to be assumed (within the meaning of section 357(d)) by Newco 1 plus any liabilities to which the Business B assets are subject.

- (o) The total fair market value of the Business B assets transferred to Newco 1 in the Contribution will exceed the sum of: (i) the amount of any liabilities assumed (within the meaning of section 357(d)) by Newco 1 in the exchange, (ii) the amount of any liabilities owed to Newco 1 by Holdco or Oldco LLC that are discharged or extinguished in connection with the exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock permitted to be received under section 351(a) without recognition of gain) received by Holdco (through Oldco LLC) in the exchange. The fair market value of the assets of Newco 1 will exceed the amount of its liabilities immediately after the Contribution.
- (p) The liabilities associated with the Business B assets that will be assumed by Newco 1 upon the Contribution were incurred in the ordinary course of business and are associated with the assets to be transferred.
- (q) The aggregate fair market value of the Business B assets transferred by Holdco (through Oldco LLC) to Newco 1 will exceed the aggregate adjusted basis of Holdco (through Oldco LLC) in that property.
- (r) There is no indebtedness between Newco 1 and Holdco or Oldco LLC and there will be no indebtedness created in favor of Holdco or Oldco LLC as a result of the transaction.
- (s) The Reorganization and the Contribution will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
- (t) All exchanges will occur on the approximately the same date.
- (u) There is no plan or intention on the part of Newco 1 to redeem or otherwise reacquire any stock issued in the Contribution.
- (v) Taking into account any issuance, deemed or otherwise, of additional shares of Newco 1 stock; any issuance of stock for services; the exercise of any Newco 1 stock rights, warrants, or subscriptions; a public offering of Newco 1 stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of Newco 1 received in the Contribution, Holdco (through Oldco LLC) will be in control of Newco 1 within the meaning of section 368(c) immediately after the Contribution.
- (w) The fair market value of the Newco 1 stock received by Holdco (through Oldco LLC) will be approximately equal to the fair market value of the Business B assets transferred in the Contribution.

- (x) Newco 1 will remain in existence and retain and use the Business B assets transferred to it in a trade or business.
- (y) Newco 1 has no plan or intention to sell or otherwise dispose of any of the assets acquired in the Contribution, except for dispositions in the ordinary course of business.
- (z) Each of the parties to the Contribution will pay its own expenses, if any, incurred in connection with the Contribution.
- (aa) Newco 1 will not be an investment company within the meaning of section 351(e)(1) and Treas. Reg. § 1.351-1(c)(1)(ii).
- (bb) Neither Holdco nor Oldco LLC is under the jurisdiction of a court in a Title 11 or similar case (within the meaning of section 368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy the indebtedness of Holdco or Oldco LLC.
- (cc) Newco 1 will not be a “personal service corporation” within the meaning of section 269A.

#### The Reincorporation

- (dd) No stock or securities will be deemed issued for services rendered to or for the benefit of Newco 2 in connection with the Reincorporation, and no stock or securities will be deemed issued for indebtedness of Newco 2 that is not evidenced by a security or for interest on indebtedness of Newco 2 which accrued on or after the beginning of the holding period of Holdco, Oldco LLC, or Oldco for the debt.
- (ee) The transfer is not the result of the solicitation by a promoter, broker, or investment house.
- (ff) Holdco will not retain any rights in the Business A assets deemed transferred to Newco 2.
- (gg) The adjusted basis of the Business A assets deemed to be transferred by Holdco to Newco 2 will exceed the sum of the liabilities deemed to be assumed (within the meaning of section 357(d)) by Newco 2 plus any liabilities to which the Business A assets are subject.
- (hh) The total fair market value of the Business A assets transferred to Newco 2 in the Reincorporation will exceed the sum of: (i) the amount of any liabilities assumed (within the meaning of section 357(d)) by Newco 2 in the exchange,

- (ii) the amount of any liabilities owed to Newco 2 by Holdco that are discharged or extinguished in connection with the exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock permitted to be received under section 351(a) without recognition of gain) received by Holdco in the exchange. The fair market value of the assets of Newco 2 will exceed the amount of its liabilities immediately after the Reincorporation.
- (ii) The liabilities associated with the Business A assets that will be assumed by Newco 2 upon the Reincorporation were incurred in the ordinary course of business and are associated with the assets deemed to be transferred.
  - (jj) The aggregate fair market value of the Business A assets deemed transferred by Holdco to Newco 2 will exceed the aggregate adjusted bases of Holdco in those assets.
  - (kk) There is no indebtedness between Newco 1 and Holdco and there will be no indebtedness created in favor of Holdco as a result of the Reincorporation.
  - (ll) The Reorganization and the Reincorporation will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
  - (mm) All exchanges will occur on approximately the same date.
  - (nn) There is no plan or intention on the part of Newco 2 to redeem or otherwise reacquire any stock deemed to be issued in the Reincorporation.
  - (oo) Taking into account any issuance, deemed or otherwise, of additional shares of Newco 2 stock; any issuance of stock for services; the exercise of any Newco 2 stock rights, warrants, or subscriptions; a public offering of Newco 2 stock; and the sale, exchange, transfer by gift, or other disposition of any of the Newco 2 stock deemed received in the Reincorporation, Holdco will be in control of Newco 2 within the meaning of section 368(c) immediately after the Reincorporation.
  - (pp) The fair market value of the Newco 2 stock and other consideration deemed received by Holdco will be approximately equal to the fair market value of the Business A assets deemed transferred in the Reincorporation.
  - (qq) Newco 2 will remain in existence and retain and use the Business A assets deemed transferred to it in a trade or business.

- (rr) Newco 2 has no plan or intention to sell or otherwise dispose of any of the assets it is deemed to acquire in the Reincorporation, except for dispositions in the ordinary course of business.
- (ss) Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the Reincorporation.
- (tt) Newco 2 will not be an investment company within the meaning of section 351(e)(1) and Treas. Reg. § 1.351-1(c)(1)(ii).
- (uu) Holdco is not under the jurisdiction of a court in a Title 11 or similar case (within the meaning of section 368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy the indebtedness of Holdco.
- (vv) Newco 2 will not be a “personal service corporation” within the meaning of section 269A.

## RULINGS

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

### The Reorganization

- (1) Steps (i) through (iv) of the Proposed Transaction will be integrated and treated as the transfer by Oldco of all of its assets, subject to liabilities, to Holdco in exchange for stock of Holdco, followed by the distribution by Oldco of the Holdco stock to its shareholders in liquidation, and will constitute a reorganization within the meaning of section 368(a)(1)(F). Holdco and Oldco will each be “a party to the reorganization” within the meaning of section 368(b). The subsequent Contribution to Newco 1 pursuant to step (v), the disregarded distribution of the Newco 1 stock to Holdco as described in step (vi), and the Reincorporation described in step (vii) will not preclude the Reorganization from qualifying as a section 368(a)(1)(F) reorganization. (Rev. Rul. 96-29, 1996-1 C.B. 50).
- (2) Oldco will recognize no gain or loss upon the deemed transfer of all of its assets to Holdco in exchange for the Holdco stock and Holdco’s deemed assumption of Oldco’s liabilities (sections 361(a) and 357(a)).
- (3) Holdco will recognize no gain or loss upon the deemed receipt of Oldco’s assets in exchange for Holdco stock (section 1032(a)).



- (4) Holdco's basis in each asset deemed acquired from Oldco will be the same as Oldco's basis in such asset immediately before the Reorganization (section 362(b)).
- (5) Holdco's holding period for each asset deemed acquired from Oldco will include the period during which such asset was held by Oldco (section 1223(2)).
- (6) Oldco will recognize no gain or loss on the deemed distribution of Holdco stock to Oldco's shareholders (section 361(c)(1)).
- (7) The shareholders of Oldco will recognize no gain or loss upon the receipt of the stock of Holdco in exchange for the stock of Oldco (section 354(a)(1)).
- (8) The basis of the Holdco stock in the hands of the Oldco shareholders will be equal, in the case of each such shareholder, to the basis of the Oldco stock surrendered by that shareholder in exchange therefor (section 358(a)(1)).
- (9) The holding period for the Holdco stock in the hands of the Oldco shareholders will include the period, in the case of each such shareholder, during which that shareholder held the Oldco stock exchanged therefor, provided that the Oldco stock is held as a capital asset on the date of the exchange (section 1223(1)).
- (10) Pursuant to section 381(b) and (c), Holdco will be treated for purposes of section 381 as Oldco would have been treated if there had been no reorganization. The taxable year of Oldco will not end on the date of the transfer; net operating losses of Oldco for any taxable year ending after the date of transfer may be carried back in accordance with section 172(b); and the tax attributes of Oldco enumerated in section 381(c) will be taken into account by Holdco as if there had been no reorganization (Treas. Reg. § 1.381(b)-1(a)(2)).

#### The Contribution

- (11) The Contribution will be treated as the transfer by Holdco (through Oldco LLC) of the Business B assets to Newco 1 in exchange for shares of Newco 1 stock and Newco 1's assumption of the liabilities associated with the Business B assets. Neither Holdco nor Oldco LLC will recognize gain or loss on the Contribution (sections 351(a) and 357(a)).
- (12) Newco 1 will not recognize gain or loss on the Contribution (section 1032(a)).

- (13) The basis of the Business B assets received by Newco 1 in the Contribution will be equal to the basis of those assets in the hands of Holdco (through Oldco LLC) immediately before the Contribution (section 362(a)).
- (14) The holding period of each asset received by Newco 1 in the Contribution will include the period during which Holdco (through Oldco LLC) held that asset (section 1223(2)).
- (15) The basis of the Newco 1 stock received by Holdco (through Oldco LLC) will be the same as the adjusted basis of the Business B assets transferred in exchange therefor, reduced by the amount of liabilities assumed (within the meaning of section 357(d)) by Newco 1 (section 358(a)(1) and (d)).
- (16) The holding period of the Newco 1 stock held by Holdco (through Oldco LLC) will include the holding period of the assets transferred to Newco 1, provided that the assets are held by Holdco (through Oldco LLC) as capital assets on the date of the exchange (section 1223(1)).

#### The Reincorporation

- (17) The Reincorporation will be treated as the transfer by Holdco of the Business A assets remaining in Oldco LLC after the Contribution to Newco 2 in a deemed exchange for stock of Newco 2 and Newco 2's assumption of the liabilities associated with the Business A assets. Holdco will recognize no gain or loss on the Reincorporation (sections 351(a) and 357(a)).
- (18) Newco 2 will not recognize gain or loss on the Reincorporation (section 1032(a)).
- (19) The basis of the Business A assets deemed received by Newco 2 in the Reincorporation will be equal to the basis of those assets in the hands of Holdco immediately before the Reincorporation (section 362(a)).
- (20) The holding period of each asset deemed received by Newco 2 in the Reincorporation will include the period during which Holdco held that asset (section 1223(2)).
- (21) The basis of the Newco 2 stock deemed to be received by Holdco will be the same as the adjusted basis of the Business A assets deemed transferred in exchange therefor, reduced by the amount of liabilities treated as assumed (within the meaning of section 357(d)) by Newco 2 (section 358(a)(1) and (d)).
- (22) The holding period of Newco 2 stock deemed received by Holdco will include the holding period of the assets deemed transferred to Newco 2, provided

that the assets are held by Holdco as capital assets on the date of the exchange (section 1223(1)).

#### CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transaction under other provisions of the Code or the 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 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,

Jonathan R. Neuville  
Assistant to the Branch Chief, Branch 2  
Office of Associate Chief Counsel (Corporate)