

Internal Revenue Service

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Legend

Taxpayer =

Partnership =

Corporation =

Business A =

Disregarded Entity 1 =

Disregarded Entity 2 =

Disregarded Entity 3 =

Disregarded Entity 4 =

Exchange =

State =

a =

b =

c =

d =

Date 1 =

Date 2 =

Bankruptcy Court =

Dear :

This letter responds to your letter dated April 6, 2009, in which you requested rulings regarding certain federal income tax consequences of a proposed transaction. The information submitted in that letter and later correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Summary of Facts

Taxpayer is a domestic, publicly-held corporation. It is a holding company that, through entities it controls directly and indirectly, operates Business A. Taxpayer owns two principal assets: (i) an equity interest in the Partnership representing approximately a% of the economic rights of the Partnership and (ii) a receivable from the Partnership in the amount of \$b. Taxpayer is the managing member of the Partnership. Corporation owns the remaining equity interest in the Partnership.

The Partnership owns a chain of disregarded entities (the "Disregarded Entities") that operate Business A. The Disregarded Entities include Disregarded Entity 1, which owns 100% of Disregarded Entity 2, which owns 100% of Disregarded Entity 3, which owns 100% of Disregarded Entity 4. The Disregarded Entities are the obligors on approximately \$c of indebtedness, and their aggregate liabilities exceed the aggregate fair market value of their assets. As of Date 1, Taxpayer had substantial net operating loss carryforwards, principally from allocations of losses from the Partnership.

On Date 2, Taxpayer, the Partnership, the Disregarded Entities, certain other entities controlled directly or indirectly by Taxpayer, and Corporation (collectively, the "Debtors")

filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code. The petitions were administratively consolidated.

As part of the bankruptcy process, the Debtors have submitted a joint plan of reorganization (the "Joint Plan"). The Joint Plan contemplates a series of transactions intended to restructure the Debtors (the "Restructuring"). Among other things, the Joint Plan contemplates that the following transactions will occur:

- i) The notes and bank debt of certain of the Disregarded Entities are expected to remain outstanding and be reinstated;
- ii) Some holders of notes issued by Disregarded Entity 4 will exchange their old notes for new notes issued by Disregarded Entity 4. Those holders of notes issued by Disregarded Entity 4 who chose not to participate in the exchange of old notes for new notes, can exchange their old notes for cash. The surrender of notes issued by Disregarded Entity 4 in exchange for new notes issued by Disregarded Entity 4 and/or cash will be referred to as the "Notes Exchange";
- iii) Holders of notes issued by Disregarded Entity 3 will receive shares of Taxpayer's new Class A common stock, and certain holders will also receive the right (the "Rights") to purchase additional shares of Taxpayer's new Class A common stock, upon the Debtors' emergence from bankruptcy, in exchange for a cash payment related to the equity value of Taxpayer;
- iv) Holders of notes issued by Disregarded Entity 1 and Disregarded Entity 2 will receive warrants to purchase shares of Taxpayer's new Class A common stock;
- v) Holders of convertible notes issued by Taxpayer will receive cash and Taxpayer's new preferred stock;
- vi) Taxpayer's existing common stock will be cancelled; and
- vii) Trade creditors will be paid in full.

The Rights offering described above is expected to generate proceeds of up to approximately \$d. The cash generated by the Rights offering will be used to fund the cash portion of the Notes Exchange, repayment of certain amounts relating to the satisfaction of certain swap agreement claims against the Disregarded Entities, and to satisfy other Partnership obligations (including fees and expenses related to the restructuring).

Certain noteholders have agreed to subscribe for their respective pro rata portions of the Rights offering, and have, in addition, agreed to subscribe for a pro rata portion of any Rights that are not purchased by other holders of Disregarded Entity 3 notes in the Rights offering (the "Excess Backstop"). These noteholders who have committed to

participate in the Excess Backstop will be offered the option (the "Overallotment Option") to purchase a pro rata portion of additional shares of Taxpayer's new Class A common stock, at the same price at which shares of the new Class A common stock will be offered in the Rights offering.

Representations

Taxpayer has made the following representations:

- (a) Taxpayer is a loss corporation, as defined in section 382(k)(1).
- (b) Taxpayer will undergo an "ownership change" as defined in section 382(g) in connection with the Restructuring (the "Ownership Change").
- (c) Taxpayer and its subsidiaries, including the Partnership and the Disregarded Entities, will be under the jurisdiction of the Bankruptcy Court in a case under Title 11 of the United States Code at the time of the transaction and described in section 368(a)(3)(A). The transactions connected with the Restructuring will occur pursuant to a plan approved by the Bankruptcy Court.
- (d) Taxpayer and its subsidiaries will not meet the requirements for application of section 382(l)(5) to the Ownership Change.
- (e) Pursuant to the Joint Plan, the existing equity in Taxpayer will be cancelled for no consideration.
- (f) Pursuant to the Joint Plan, certain creditors of Taxpayer and the Disregarded Entities will receive Taxpayer equity in exchange for their claims.
- (g) The value of Taxpayer equity issued in connection with the Ownership Change (including stock issued pursuant to the rights offering) will not exceed the cash and the value of any property (including indebtedness of the Debtors) received by Taxpayer in consideration of the issuance of this stock.
- (h) The fair market value of the Taxpayer equity received by each applicable creditor in the transaction will be approximately equal to the fair market value (at the effective date of the Joint Plan) of the creditor's interest surrendered in exchange therefor.
- (i) The Debtors will use an amount of cash equal to the gross proceeds of the rights offering and Overallotment Option, if any, to satisfy creditors of the Taxpayer, the Partnership and the Disregarded Entities, and to pay fees and expenses related to the Restructuring.
- (j) The rights offering is not part of a plan the principal purpose of which is to avoid or increase any limitation under section 382(l)(1).

(k) None of the stock issued pursuant to the Restructuring is described in Treas. Reg. § 1.382-9(k)(6).

Rulings

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

1. Taxpayer is eligible to use the special rule set forth in section 382(l)(6), as implemented by Treas. Reg. § 1.382-9, with respect to the Ownership Change.
2. The value of _____ stock for purposes of section 382(e) will equal the lesser of (a) the value of its stock immediately after the Ownership Change (as determined pursuant to Ruling (3)) and (b) the value of its pre-change assets (as determined pursuant to Ruling (4)) (§ 1.382-9(j)).
3. The value of Taxpayer's stock immediately after the Ownership Change for purposes of Treas. Reg. § 1.382-9(j)(1) will be the aggregate value of Taxpayer's outstanding stock immediately after the Ownership Change and will include the value of stock issued in the Restructuring in exchange for creditors' claims or pursuant to the Rights offering.
4. The value of Taxpayer's pre-change assets for purposes of Treas. Reg. § 1.382-9(j)(2) will include Taxpayer's allocable share of the aggregate value of the assets of the Partnership and the Disregarded Entities (determined without regard to liabilities) and will exclude any proceeds from the Rights Offering.

Caveats

No opinion is expressed about the tax treatment of the Restructuring 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 Restructuring that are not specifically covered by the above rulings.

Procedural Statements

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,

Marie C. Milnes-Vasquez
Senior Technician Reviewer, Branch 4
Associate Chief Counsel (Corporate)

cc: