

Internal Revenue Service

Department of the Treasury
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Taxpayer =

Debtors =

State X =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Bankruptcy Court =

Allowed Claim =

Excluded Items =

a =

b =

c =

d =

e =

f =

g =

h =

i =

Dear :

We respond to a letter from your authorized representative dated October 29, 2010, requesting rulings concerning the Federal income tax consequences of the liquidation of Taxpayer, subsidiaries and affiliates. Additional information was submitted in subsequent correspondence, and the information submitted for consideration is substantially as described 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. 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.

Facts and Representations

Taxpayer, a State X corporation, is the common parent in an affiliated group of corporations that file a consolidated return on a calendar year basis (the "Taxpayer Group"). As of Date 1, the Taxpayer Group had a consolidated net operating loss.

On Date 2, and periodically thereafter, Taxpayer and a of its affiliates consisting of certain members of the Taxpayer Group and certain other affiliates, including single member limited liability companies ("LLCs"), commenced voluntary cases under Chapter 11 of the Bankruptcy Code in Bankruptcy Court. Taxpayer with b of its member subsidiaries and LLC(s) ("Debtor(s)") are included in this request for rulings. (Capitalized terms not defined in the legend generally have the same meaning as defined in the confirmed bankruptcy plan. "Debtor(s)" generally includes only those debtors who are part of this ruling request). On Date 3, Taxpayer filed a (first) proposed bankruptcy plan and thereafter a related disclosure statement. After negotiations with creditors, the final amended plan was filed on Date 4, and confirmed with certain amendments by the Bankruptcy Court on Date 5 (as confirmed, "the Plan").

The Plan consists of distinct Chapter 11 plans that apply separately to each Debtor. The Plan does not provide for substantive consolidation. However, Taxpayer represents that the Plan provides for a compromised allocation of distributions (in several cases, among creditors of different debtors) to adjust for the risk of various issues, including substantive consolidation.

Taxpayer, as the Plan Administrator, will implement the Plan for each Debtor. Under the Plan, after the effective date of the Plan (the "Effective Date"), the Plan Administrator will wind down, sell and otherwise liquidate Debtor assets over a period of c years unless the Service rules that the plan of liquidation may continue over an extended period. The Plan Administrator will have discretion to (1) maintain any Debtor in good standing until all aspects of the Plan governing that Debtor's affairs have been completed, (2) dissolve the Debtor and complete its winding up at any time the Plan Administrator determines appropriate and consistent with the implementation of the

Plan pertaining to that Debtor, (3) dissolve any entity controlled by the Debtor, or (4) abandon any interest that the Debtor holds in any entity. The Plan Administrator may establish one or more liquidating trusts. The Debtors will ultimately be dissolved.

According to the estimated recovery analysis accompanying the Disclosure Statement filed with the Bankruptcy Court on Date 4, the Taxpayer creditors holding administrative, priority or secured claims are expected to recover d percent. Senior unsecured creditors of the Taxpayer are expected to receive e percent. Other unsecured creditors of the Taxpayer whose claims are not subordinated are expected to recover between f percent and g percent. Creditors holding subordinated debts of the Taxpayer and its equity holders are expected to recover h percent. Although it is unlikely that the shareholders of Taxpayer will receive distributions under the Plan, the Plan preserves the rights of Taxpayer's shareholders to receive distributions in the unlikely event that the Debtors' assets can be liquidated for values that will enable the creditors to be paid in full. For Debtors other than the Taxpayer, the creditor classes and the estimated Allowed Claim and estimated recovery for each creditor class may differ from those for the Taxpayer creditors.

On the Effective Date, all Taxpayer stock (preferred and common) will be cancelled and the Plan Trust will be established. One share of stock (the "Plan Trust Stock") will be issued to the Plan Trust. The Plan Trust will hold the share for the benefit of the former holders of Taxpayer stock consistent with their former relative priority and economic entitlements. The Plan Trust will exercise voting rights associated with the Plan Trust Stock in furtherance of the liquidation of the Debtors and compliance with the provisions of the Plan.

The Taxpayer Group represents that all distributions required under the Plan will not be effected until after the close of the year that includes the Effective Date although substantial cash distributions will occur on or shortly after the Effective Date. It estimates that the final liquidating distribution under the Plan will take approximately c years following the Effective Date but possibly longer because of many complicating aspects of the bankruptcy proceedings. The complicating factors include ongoing complex litigation, a large number of complex and illiquid assets, the large number of creditor claims, multinational and multijurisdictional conflicts, and illiquid and depressed financial markets. The Taxpayer Group represents that many complex securities and illiquid assets that the Debtors hold have lost considerable value and that disposing of them in the current illiquid and depressed financial markets would defeat the purpose of a Chapter 11 liquidation.

Taxpayer has also represented that, as Plan Administrator, it will not intentionally prolong the liquidations under the Plan, as doing so would be inconsistent with various creditors' rights under the Plan and the Bankruptcy Code. Taxpayer has the responsibility under the Plan to proceed with the liquidation in a commercially reasonable manner and to make distributions in accordance with the respective

priorities of the creditors, as evidenced in the Plan. Furthermore, Taxpayer represents that its primary purpose at all times in implementing the Plan will be the liquidation of the Debtors' assets with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Plan.

Law and Analysis

Under § 61(a)(12) of the Internal Revenue Code, gross income includes income from the discharge of indebtedness (COD income). A taxpayer may realize COD income by satisfying an obligation at less than its face value. United States v. Kirby Lumber Co., 284 U.S. 1 (1931).

Under § 108(a)(1)(A), gross income does not include COD income if the discharge occurs in a title 11 case. Section 108(d)(2) provides that the term "title 11 case" means a case under title 11 of the United States Code (relating to bankruptcy), but only if the taxpayer is under the jurisdiction of the court in such case and the discharge of indebtedness is granted by the court or is pursuant to a plan approved by the court. Section 108(a)(1)(B) provides that COD income is excludable from gross income if the discharge occurs when the taxpayer is insolvent.

In general, a debt is considered discharged at the point when it becomes clear that the debt will never have to be paid. Cozzi v. Commissioner, 88 T.C. 435, 445 (1987). The test for determining that point requires a practical assessment of all the facts and circumstances surrounding the likelihood of repayment of the debt. Id. Any "identifiable event" which fixes the loss with certainty may be taken into consideration. Id. (citing United States v. S.S. White Dental Mfg. Co., 274 U.S. 398 (1927)). The commencement of a bankruptcy proceeding is not an identifiable event. See Friedman v. Commissioner, 216 F.3d 537 (6th Cir. 2000), aff'g T.C. Memo. 1998-196; Alpert v. United States, 481 F.3d 404 (6th Cir. 2007), aff'g 430 F. Supp. 2d 682 (N.D. Ohio 2006).

In the instant case, the Plan does not involve a legal discharge of the Allowed Claims upon confirmation of the Plan. In the absence of a legal discharge upon confirmation, it is necessary to examine the unique facts of each case in order to determine when and to what extent a debt is discharged for purposes of §§ 61(a)(12) and 108. Under the unique facts of this case there are significant obstacles to determining the extent to which a particular Allowed Claim will be paid prior to the conclusion of a Debtor's bankruptcy proceeding. The extraordinary complexity of the Debtors' bankruptcy cases, the complex and illiquid nature of the assets, and the depressed financial markets prevent each Debtor from estimating the amount of cancelled debt with any reasonable accuracy and disposing of all of its assets in a speedy yet commercially reasonable manner.

The Plan provides that each Debtor will make distributions in a separate "waterfall" (with certain reallocations of distributions). Until a Debtor has distributed all of its assets, it (and the Taxpayer as the Plan Administrator) cannot determine whether and to what extent it can satisfy any Allowed Claims that have not yet been paid in full. Thus, so long as the Plan continues to be a plan of liquidation for Federal income tax purposes, a Debtor will not have an identifiable event fixing its right to COD income until it has made all distributions pursuant to the Plan.

Rulings

Based solely on the facts and representations submitted, we rule as follows:

- (1) The Plan constitutes a plan of liquidation (or a continuation of a plan of liquidation) for each of the Debtors for Federal income tax purposes. The Plan will continue to be respected as a plan of liquidation beyond its original c year term for an additional period not to exceed i years.
- (2) No Debtor will realize COD income with respect to an Allowed Claim by reason of the confirmation or consummation of the Plan, until the earlier of (1) the date that such Debtor makes all distributions pursuant to the Plan or (2) the date the Plan ceases to be a plan of liquidation for Federal income tax purposes. This ruling does not apply to Excluded Items or any claims resolved outside the scope of the Plan.
- (3) The replacement of Taxpayer's common and preferred stock with the Plan Trust Stock giving each former Taxpayer shareholder economic entitlements having the same priority and the same entitlement to distribution as when the Taxpayer stock was outstanding does not result in an owner shift for purposes of §382(g). In addition, all claims retained by the creditors of the Debtors, and any interests received by the creditors of the Debtors in satisfaction of their claims, are not "stock" for purposes of determining whether there has occurred an ownership change under §382 on any testing date (§1.382-2T(f)(18)(iii) of the Temporary Regulations).

Limitations and Caveats

The foregoing discussion and conclusion are based on the following: (1) the Disclosure Statement, filed with the Bankruptcy Court on Date 4, and the Plan, (2) our assumption that the Taxpayer Group will adhere to all terms and conditions of the Plan, and (3) the facts presented and representations made by the Taxpayer as set forth above.

No opinion is requested and no opinion is expressed as to the tax effects of the creation or the transfer of assets to a Liquidating Trust, as outlined in the Plan.

Additionally, no opinion is expressed about the tax treatment of the Plan 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 bankruptcy restructuring that are not specifically covered by the above rulings.

Procedural Statements

This ruling is directed only to the Taxpayer Group. 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,

Mark J. Weiss
Reviewing Attorney, Branch 6
Office of Associate Chief Counsel (Corporate)

cc: