

Internal Revenue Service

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Legend

Taxpayer =

Successor =

Exchange =

State A =

a =

Year 1 =

Dear :

This letter responds to a March 27, 2012, letter requesting rulings under I.R.C. §§ 301 and 305. Additional information was received in letters dated August 13, 2012, and August 17, 2012. The information received in these letters is summarized below.

Facts

Taxpayer is a State A corporation that is the common parent of an affiliated group of corporations that files a consolidated Federal income tax return on a calendar year basis. Taxpayer has one class of common stock outstanding ("Taxpayer Stock"), which is publicly traded and listed on the Exchange.

Taxpayer intends to elect under section 856 to be treated as a real estate investment trust ("REIT") effective the first day of Year 1. In connection with the REIT election, prior to the end of Year 1, Taxpayer intends to distribute to its shareholders with respect to Taxpayer Stock all of its earnings and profits that were, or will be, accumulated by Taxpayer for all taxable periods ending prior to Year 1 ("C Corp E&P") as required by section 857(a)(2)(B). Taxpayer will distribute the C Corp E & P in one or two distributions (each a "Proposed Distribution"). Taxpayer expects to make the first Proposed Distribution prior to Year 1. Prior to the first Proposed Distribution, Taxpayer will merge with and into Successor, a newly formed, wholly owned subsidiary corporation incorporated in State A (the "Merger"). Taxpayer represents that the Merger qualifies as a tax-free reorganization under section 368(a)(1)(F). References herein to "Taxpayer" include Successor, as appropriate.

Pursuant to the first Proposed Distribution, Taxpayer's shareholders will have a right to elect to receive cash or Taxpayer Stock. Except as described below, each shareholder as of the record date of the first Proposed Distribution, will be entitled to elect to receive its distribution in the form of either 100 percent cash or 100 percent Taxpayer Stock. If a shareholder fails to make a valid election by the election deadline, that shareholder will be deemed to have made an election to be determined by Taxpayer in its sole discretion.

Taxpayer intends to limit the total amount of the cash in the first Proposed Distribution to 20 percent of the value of the first Proposed Distribution (the "Maximum Cash Distribution"). If the total number of shares of Taxpayer Stock for which an election to receive cash is made would result in the payment of cash in an aggregate amount that is less than or equal to the Maximum Cash Distribution, then all shares for which such cash election is made will receive the distribution entirely in cash. If the total number of shares of Taxpayer Stock for which an election to receive cash is made would otherwise result in the payment of cash in an aggregate amount in excess of the Maximum Cash Distribution, then each shareholder electing to receive cash will receive a prorated amount of cash, with the remainder of its distribution paid in the form of shares of Taxpayer Stock, but in no event will any shareholder electing to receive cash receive less than 20 percent of its entire distribution in cash.

The calculation of the number of shares to be received by any shareholder will be determined, over a period of up to two weeks ending as close as practicable to the payment date, based upon a formula utilizing market prices that is designed to equate in value the number of shares to be received with the amount of money that could be received instead.

Taxpayer has outstanding convertible debt with an aggregate principal amount of \$ a (the "Convertible Debt"). In connection with the first Proposed Distribution, and pursuant to the terms of the Convertible Debt, the conversion rate applicable to the Convertible Debt will be increased (the "Adjustments"), which will entitle the Convertible Debt holders (the "Holders") to receive upon conversion a greater number of shares of

Taxpayer Stock than they would otherwise be entitled to receive if the adjustment to the Convertible Debt conversion ratio were not made. Accordingly, the Adjustments will entitle the Holders to receive upon conversion, a greater proportionate interest in the assets or earnings and profits of Taxpayer than they would otherwise receive if the Adjustments were not made, provided cash is distributed in the first Proposed Distribution.

Taxpayer may make the second Proposed Distribution with respect to Taxpayer Stock during Year 1 in the event that it determines that Taxpayer's calculation of its C Corp E&P was too low. In that case, Taxpayer may use an elective cash/stock distribution, as described above.

Holdings

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

- (1) Any and all of the cash and Taxpayer Stock distributed in a Proposed Distribution by Taxpayer to holders of the Taxpayer Stock using the cash/stock distribution election, as described above, shall be treated as a distribution of property with respect to the Taxpayer Stock to which section 301 applies. Sections 301 and 305(b)(1). The amount of the distribution of stock shall be the fair market value of such stock on the date of distribution if such Proposed Distribution occurs before Year 1. Section 1.305-1(b)(1). Provided Taxpayer elects to be taxed as, and qualifies as, a REIT as of Year 1, the amount of the distribution of stock shall be considered to equal the amount of cash which could have been received instead if such Proposed Distribution occurs during Year 1. Sections 1.305-1(b)(2) and 1.305-2(b) Example (2).
- (2) Provided that cash is distributed using the cash/stock distribution election, as described above, in a Proposed Distribution by Taxpayer to any holders of Taxpayer Stock, then the Adjustments made in connection with that Proposed Distribution to the Convertible Debt shall constitute a deemed distribution of Taxpayer Stock to the Holders to which section 301 applies by reason of section 305(b)(2) and (c). Rev. Rul. 75-513, 1975-2 C.B. 114. The amount of the deemed distribution of stock shall be measured by the fair market value, as of the date of the Adjustments, of the number of shares of Taxpayer Stock deemed distributed to the Holders. Sections 1.305-1(b)(3) and 1.305-3(e) (Examples (6), (8), (9), and (15)); Rev. Rul. 75-513.

Caveats

Holdings concerning a Proposed Distribution are void and no opinion is expressed as to a Proposed Distribution if that Proposed Distribution is not completed by the end of Year 1. No opinion is requested and no opinion is expressed as to the second Proposed Distribution if that distribution is made entirely in cash. Additionally,

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 and regulations or the tax treatment of any condition existing at the time of, or effects resulting from the proposed transaction that is not specifically covered by the above rulings. In particular, no opinion is expressed with regard to whether Taxpayer qualifies as a REIT under subchapter M of the Code or whether the Merger qualifies as a reorganization under section 368(a)(1)(F).

Procedural Statements

The rulings contained in this letter are based upon facts 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 materials 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.

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

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 this letter ruling.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Russell P. Subin
Senior Counsel, Branch 3
Office of Associate Chief Counsel (Corporate)