

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
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PLR-120642-13

Date:
September 13, 2013

Legend

Parent =

Foreign Parent =

Sub 1 =

Sub 2 =

Parent Group =

State A =

Country A =

Year 1 =

Year 2 =

Date 1 =

Date 2 =

Date 3 =

a =

b =

c =

d =

e =

Dear :

This letter responds to your May 1, 2013 request for rulings regarding certain federal income tax consequences resulting from a series of transactions that took place during Year 2. 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

Parent, a State A corporation, is the common parent of a group of affiliated corporations that join in the filing of a consolidated federal income tax return (the "Parent Group"). Parent has outstanding a single class of common stock, which is widely held and publicly traded, and has no preferred stock outstanding.

Parent was formed on Date 1 as an indirect, wholly owned subsidiary of Foreign Parent for the purpose of facilitating the Parent Spin-off (defined below). Foreign Parent is a widely held, publicly traded corporation formed under the laws of Country A.

The Parent Spin-off was one in a series of related transactions that took place during Year 2 (the "Transactions"). As part of the Parent Spin-off, on Date 2, Foreign Parent caused the business Parent currently conducts (the "Parent Business") to be

contributed to Parent. The Parent Business assets contributed included the stock of Sub 1 and other Parent Business assets.

Sub 1, a State A corporation, was the parent of a group of affiliated corporations that filed a consolidated federal income tax return (the "Sub 1 Group"). The Sub 1 Group had significant net operating loss ("NOL") carryovers prior to the contribution of Sub 1's stock to Parent, and the Sub 1 Group had been a loss group within the meaning of Treas. Reg. § 1.1502-91(c)(1) since Year 1.

Sub 2, a direct, wholly owned subsidiary of Sub 1, owned assets unrelated to the Parent Business. As part of the Transactions, prior to the Parent Spin-off, Sub 2 contributed certain of its non-Parent Business assets to Sub 1 in exchange for Sub 1 stock (the "Sub 2 Contribution"). Following the Sub 2 Contribution, Sub 1 contributed the non-Parent Business assets it received in the contribution to a new corporation and subsequently distributed the stock of such corporation to its shareholder in non-recognition transactions pursuant to section 355 and related provisions.

On Date 3, after the Parent Business was contributed to Parent and Parent was distributed internally to Foreign Parent, Foreign Parent distributed all of the stock of Parent pro rata to its shareholders (the "Parent Spin-off"). Pursuant to the Parent Spin-off, each of the shareholders of Foreign Parent received a shares of Parent stock for every b shares of Foreign Parent stock held. Following the Parent Spin-off, Foreign Parent and its subsidiaries did not own any shares of Parent stock.

Based on publicly available information, as of Date 3 Foreign Parent had c shareholders that were considered 5-percent shareholders within the meaning of section 382 (other than "direct public groups" as defined in Treas. Reg. § 1.382-2T(j)(2)(ii)). These 5-percent shareholders collectively owned approximately d percent of Foreign Parent's stock. The remaining approximately e percent of Foreign Parent's stock is treated for purposes of section 382 as owned by one or more public groups (the "Foreign Parent Public Groups"). The Foreign Parent Public Groups constituted public groups of a highest tier entity and 5-percent shareholders with respect to the Sub 1 Group pursuant to Treas. Reg. §§ 1.382-2T(j)(1)(iv)(A) and 1.382-2T(g)(1)(ii).

In PLR-149071-11, supplemented by PLR-137492-12, PLR-120264-12, PLR-137488-12, and PLR-149032-12, the Internal Revenue Service ruled that the Parent Spin-off would be treated as a tax-free distribution under section 355 and that Sub 1 would join the Parent Group at the end of Date 2.

Representations

Parent has made the following representations regarding the ownership of its equity and its section 382 owner shift analysis:

- (a) The members of the Sub 1 Group bear the relationship defined in section 1504(a)(1) to each other through Sub 1 at the time of Foreign Parent's contribution of all of the stock of Sub 1 to Parent on Date 2.
- (b) On Date 2, the Sub 1 Group became a loss subgroup as defined in Treas. Reg. § 1.1502-91(d) (the "Sub 1 Loss Subgroup").
- (c) Parent's only class of outstanding stock on Date 3 was its common stock.
- (d) Other than its common stock, as of Date 3, Parent had no other outstanding interests or obligations that would be treated as stock for purposes of section 382.
- (e) Immediately prior to the Parent Spin-off, the indirect public groups with respect to the Sub 1 Group as defined in Treas. Reg. § 1.382-2T(j)(1)(iv)(A) owned in the aggregate greater than 50 percent of Foreign Parent's outstanding stock directly and a greater than 50 percent indirect interest in the stock of Sub 1.
- (f) Immediately after the Parent Spin-off, direct public groups owned in the aggregate greater than 50 percent of Parent's outstanding stock.

Rulings

- (1) Date 3, the date on which the Parent Spin-off occurred, constitutes a testing date within the meaning of Treas. Reg. § 1.382-2(a)(4) with respect to the Sub 1 Loss Subgroup.
- (2) The segregation rules in Treas. Reg. § 1.382-2T(j)(2)(iii)(B) and (j)(3) apply to the Parent Spin-off, which causes the creation of a new public group of Parent that consists of all shareholders of Parent that were not 5-percent shareholders immediately following the Parent Spin-off (the "New Public Group").
- (3) The New Public Group constitutes a public group that is treated as a 5-percent shareholder with respect to Sub 1 pursuant to Treas. Reg. § 1.382-2T(j)(1)(iv)(A).
- (4) For purposes of determining whether the Parent Spin-off resulted in a change of ownership of the Sub 1 Loss Subgroup, under Treas. Reg. § 1.382-2T(k)(2), Parent may choose to apply the presumption of no cross-ownership in Treas. Reg. § 1.382-2T(j)(1)(iii) to determine the increase in ownership of Parent's public groups as a result of the Parent Spin-off and Parent is not required to use actual knowledge with respect to the ownership of its stock by shareholders who were not 5-percent shareholders of Parent's stock at the time of the Parent Spin-off.

- (5) Section 382(l)(1) does not apply to treat the Sub 2 Contribution as a capital contribution received by Sub 1 as part of a plan a principal purpose of which was to avoid or increase its section 382 limitation.
- (6) The Sub 1 Group is not required to reduce its value by the value of the Sub 2 Contribution for purposes of determining its section 382 limitation for an ownership change occurring on Date 3.

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter, or concerning any conditions existing at the time of, or effects resulting from, such transactions that are not specifically covered in 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,

A. Graham Magill

A. Graham Magill
Assistant Branch Chief, Branch 5
Office of Associate Chief Counsel (Corporate)

cc: