

**Internal Revenue Service**

Number: **201435003**

Release Date: 8/29/2014

Index Number: 382.12-08, 382.05-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:BO1

PLR-116763-13

Date:

May 21, 2014

In Re:

Parent =

Sub 1 =

Sub 2 =

Sub 2 Subgroup =

Business A =

Target =

Plan =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Bankruptcy Court =

Convertible Stock =

Disputed Claims Reserve =

New Common Stock =

A Claims =

B Claims =

C Claims =

E Lenders =

F Lenders =

Assets =

a =

b =

c =

d =

e

=

Dear

We respond to your authorized representative's letter dated April 3, 2013, requesting certain rulings related to the application of section 382 in connection with the plan of reorganization under the Bankruptcy Code (the "Plan") of Parent and certain of its subsidiaries. Additional information was provided in letters dated June 11, 2013, September 23, 2013, October 22, 2013, and May 16, 2014. The material information is summarized below.

The rulings contained in this letter are based on 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 ruling. Verification of the information, representations and other data may be required as part of the audit process.

#### Summary of Facts

Parent is the common parent of an affiliated group of corporations that files a consolidated federal income tax return (the "Taxpayer Group"). Parent, through its subsidiaries, is primarily engaged in Business A. Sub 1 and Sub 2 are direct subsidiaries of Parent.

On Date 1, Parent and substantially all of its domestic subsidiaries (together with Parent, the "Debtors"), each of which is a member of the Taxpayer Group or a disregarded entity for federal income tax purposes, commenced voluntary cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") with the Bankruptcy Court. The only non-Debtor members of the Taxpayer Group were certain non-operating subsidiaries of Sub 1, to which only a relatively small amount of the consolidated net operating losses ("NOLs") of the Taxpayer Group is attributable.

Parent entered into an agreement and plan of merger (as amended from time to time, the "Merger Agreement") with Target on Date 2. Under the Merger Agreement and pursuant to the Plan, a newly formed, wholly owned first-tier subsidiary of Parent entered into a reverse triangular merger with Target, with Target surviving as a wholly owned subsidiary of Parent (the "Merger"). Holders of Target common stock before the Merger received ("New Common Stock"), and their Target common stock was canceled. The Merger was intended to qualify as a tax-free reorganization under section 368(a). The Merger was conditioned on the confirmation of the Plan in accordance with the requirements of the Bankruptcy Code.

The Plan was confirmed by the Bankruptcy Court on Date 3. The Plan became effective, and the Merger was consummated, on Date 4.

Under the Plan and the Merger Agreement, the equity ownership of reorganized Parent (on a fully-diluted basis) was divided: (i) a percent to holders of Target equity and other Target instruments, including convertible debt, stock options, stock-settled stock appreciation rights (“SARs”) and stock-settled restricted stock units (“RSUs”), and (ii) b percent to unsecured creditors of the Debtors, certain management employees for services performed through the effective date of the Plan (the “Effective Date”), and holders of Parent equity interests, and in respect of any stock-settled RSUs granted on the Effective Date. Target also had outstanding cash-settled SARs and RSUs. These cash-settled SARs and RSUs were issued by Target to its employees under an incentive plan in the ordinary course of business, are nontransferable, and do not provide any right to vote or receive stock. Any cash-settled SARs and RSUs not exercised as of the Effective Date remained outstanding after the Effective Date (on an equivalent basis).

The Plan provided, in relevant part, for the treatment of the creditors of the Debtors and holders of Parent equity interests as described below, and for the implementation of the Merger:

- Holders of A Claims received on the Effective Date, in satisfaction and discharge of their allowed A Claims, Convertible Stock of reorganized Parent. The Convertible Stock mandatorily converted into New Common Stock on c days following the Effective Date, to the extent not voluntarily converted prior to that date. (Alternatively, a holder could elect to treat its A Claims as B Claims.)
- Holders of B Claims received on the Effective Date, in satisfaction and discharge of their allowed B Claims (and subject to amounts transferred to the Disputed Claims Reserve), (i) the remaining Convertible Stock after the distribution to holders of A Claims, and (ii) a nontransferable right to receive additional shares of New Common Stock as soon as reasonably practicable after the d day following the Effective Date depending on certain factors.
- Holders of C Claims received on the Effective Date, in satisfaction and discharge of their allowed C Claims, (i) New Common Stock, and (ii) a nontransferable right to receive additional shares of New Common Stock on c days following the Effective Date (or as soon as reasonably practicable thereafter) depending on certain factors.
- Holders of Parent equity interests received on the Effective Date, in exchange for their allowed equity interests, (i) New Common Stock, and (ii) a nontransferable right to receive additional shares of New Common Stock on c days following the Effective Date (or as soon as reasonably practicable

thereafter), depending on certain factors. These rights, together with the similar rights with respect to B Claims and C Claims, constitute the “Stock Rights”.

In accordance with the Plan, management of the Debtors also received on the Effective Date a certain amount of New Common Stock for services performed through the Effective Date.

To allow for the orderly resolution of disputed claims, the Convertible Stock, the Stock Rights and the New Common Stock that would be distributable to a holder of a disputed B Claim if such claim were an allowed claim (and, if applicable, any additional stock that would be distributable in such event with respect to C Claims) have been contributed by, or on behalf of, the applicable Debtor to the Disputed Claims Reserve at such times as such stock and rights would otherwise have been distributed if such claims were allowed claims on the Effective Date. There were no disputed A Claims.

To the extent a disputed claim is ultimately allowed, the holder of such claim and, if applicable, the holders of C Claims will receive their allocable portion of any stock reserved with respect to such claim and any earnings thereon from the Disputed Claims Reserve (net of any expenses relating thereto, including any taxes imposed thereon or otherwise payable by the Disputed Claims Reserve). To the extent a disputed claim is ultimately disallowed, the stock and earnings relating thereto will be distributed from the Disputed Claims Reserve to the holders of allowed B Claims, C Claims and/or Parent equity interests, as applicable.

After all of the applicable claims against the Disputed Claims Reserve have been settled and the related distributions made, the administrator of such reserve will distribute the remaining amounts in the reserve to the holders of allowed B Claims, C Claims and/or Parent equity interests, as applicable, or if only a relatively small amount remains in the Disputed Claims Reserve, will contribute the remaining amounts to charity. Nothing held in the Disputed Claims Reserve will be returned to the Debtors. It is anticipated that the Disputed Claims Reserve will be treated as a “disputed ownership fund” under Treas. Reg. § 1.468B-9.

More than 18 months before Date 1, Sub 2 Subgroup obtained (or succeeded to) financing from E Lenders for the purchase of Assets. In addition, within 18 months prior to Date 1 and in the ordinary course of its business, Sub 2 Subgroup obtained financing from F Lenders for the purchase of additional Assets and, in connection therewith, modified the terms of the older loans from one of the F Lenders. Approximately 9 months before Date 1 (a date that is within 18 months before Date 1), Sub 2 Subgroup transferred the Assets financed by the E Lenders and F Lenders and certain other assets to Sub 1 through an intercompany sale. In connection with the sale, Sub 1 assumed the respective loans (the “Loans”) and Sub 2 Subgroup was released. The terms of the Loans and related agreements were not otherwise substantially changed in connection with such transactions.

### Representations

The following representations have been made with respect to the rulings requested:

- (a) On the Effective Date, the Taxpayer Group underwent an “ownership change” within the meaning of section 382(g)(1) and applicable Regulations as a result of the Merger and the implementation of the Plan (the “Ownership Change”).
- (b) Immediately before the Ownership Change, the Debtors were “under the jurisdiction of the court in a title 11 or similar case” as defined for purposes of section 382(l)(5).
- (c) The Plan required confirmation by the Bankruptcy Court as a condition to becoming effective, and the Plan was confirmed by the Bankruptcy Court.
- (d) Parent has not yet decided whether to make an election under section 382(l)(5)(H) in respect of the Ownership Change.
- (e) In the case of any conversion of Convertible Stock into New Common Stock, the fair market value of the stock converted was approximately equal to the fair market value of the stock received therefor.

### Rulings

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

- (1) In determining whether section 382(l)(5) applies to the Ownership Change, the Taxpayer Group will be treated on a consolidated basis as though the Taxpayer Group were a single entity under the jurisdiction of the court in a title 11 or similar case. Accordingly, whether section 382(l)(5) applies to the Ownership Change will depend not on whether the qualified creditors of any single Debtor member receive stock of reorganized Parent meeting the requirements of section 1504(a)(2) (determined by substituting “50 percent” for “80 percent” each place it appears), but on whether the shareholders and qualified creditors of the entire Taxpayer Group receive such stock.
- (2) Consistent with the treatment of the Taxpayer Group as a single entity for purposes of section 382(l)(5), Sub 1’s assumption of the Loans in connection with its intercompany purchase of Assets from the Sub 2 Subgroup will not change the status of the Loans or interrupt the period during which the holder is considered to own the Loans for purposes of section 382(l)(5) and Treas. Reg. § 1.382-9(d)(2)(i).

- (3) Consistent with the treatment of the Taxpayer Group as a single entity for purposes of section 382(l)(5), if section 382(l)(5) applies to the Ownership Change, then the effects of section 382(l)(5) will apply to the NOLs of the entire Taxpayer Group, including those attributable to the non-Debtor members of the Taxpayer Group.
- (4) For purposes of section 382 (including section 382(l)(5), section 382(l)(6), and determining a subsequent ownership change of the Taxpayer Group), the New Common Stock into which the Convertible Preferred Stock is converted and the New Common Stock received pursuant to the Stock Rights will be treated as received, valued, and otherwise taken into account on the Effective Date.
- (5) For purposes of determining whether section 382(l)(5) applies to the Ownership Change, any Convertible Preferred Stock, Stock Rights, or New Common Stock transferred (or deemed transferred) by the Taxpayer Group to the Disputed Claims Reserve will be treated as transferred to and owned by persons who are beneficiaries of the Disputed Claims Reserve (i.e., any holder of a B Claim, C Claim, or Parent equity interest that may ultimately receive a distribution of stock held, or deemed held, by the reserve, even though such person's claim is currently disputed or such person's right to a distribution from the reserve is contingent on the subsequent disallowance of the disputed claims at issue) on the date of the Taxpayer Group's transfer (or deemed transfer) to the Disputed Claims Reserve.
- (6) Any Convertible Preferred Stock, Stock Rights, or New Common Stock distributed by the Disputed Claims Reserve to beneficiaries of the Disputed Claims Reserve will not result in an owner shift within the meaning of section 382(g)(2) and Treas. Reg. § 1.382-2T(e) with respect to the Taxpayer Group.
- (7) The cash-settled SARs outstanding or granted as of the Effective Date will not be treated as stock, non-stock interests treated as stock, or an interest similar to an option for purposes of determining an ownership change of the Taxpayer Group and for purposes of section 382(l)(5).
- (8) If the Taxpayer Group elects not to apply section 382(l)(5) to the Ownership Change, or if section 382(l)(5) otherwise does not apply to the Ownership Change, then the section 382 limitation for the Taxpayer Group will be determined by applying the rules in Treas. Reg. § 1.382-9(j) to value Parent as the loss corporation, except as provided in Rulings (9) through (11), below.
- (9) For purposes of determining the stock value component of the annual limitation under Treas. Reg. § 1.382-9(j)(1), the "stock of Parent" includes

the stock of each member of the Taxpayer Group other than stock that is owned directly or indirectly by another member. For this purpose, ownership is determined under Treas. Reg. § 1.382-2T, and a member is considered to indirectly own stock of another member through a nonmember only if the member has a 5-percent or greater ownership interest in the nonmember.

- (10) All options to acquire stock of Parent (within the meaning of section 382) that have been issued by Parent, Target, or their predecessors (“Options”), including the conversion right with respect to convertible debt and stock-settled SARs and RSUs, that are outstanding or granted as of the Effective Date may be included in determining the stock value component of the annual limitation under Treas. Reg. § 1.382-9(j)(1) to the extent such Options have value.
- (11) When valuing the pre-change assets of Parent for purposes of Treas. Reg. § 1.382-9(j)(2), such assets will include any assets owned by Parent. Except as required in coordination with section 382(l)(4) as applied to Parent, the assets of a corporation in which Parent directly owns a stock interest are not treated as assets of Parent; rather, the stock interest is treated as an asset of Parent. Notwithstanding the previous sentence, if a member of the Taxpayer Group (other than Parent) is under the jurisdiction of a court in a title 11 or similar case, and Parent and the group member are members of the same consolidated group both before and after consummation of the Plan (whether or not the stock of the group member is owned directly by Parent), then Parent is treated as owning assets of the group member to the extent of the value of any stock of Parent and any Options distributed, pursuant to the Plan, to creditors of the group member in satisfaction or cancellation of their claims (in addition to any directly owned stock interest in the group member – that is, the pre-change value of any stock interest directly owned by Parent is not reduced or excluded by this sentence).

#### Caveats

No opinion is expressed about the tax treatment of the transactions described above under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, such transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

- (a) whether the Merger qualifies as a “reorganization” under section 368(a);
- (b) whether section 382(l)(5) applies to the Ownership Change;



(c) whether the Disputed Claims Reserve qualifies as a “disputed ownership fund” under Treas. Reg. § 1.468B-9; and

(d) whether the receipts of New Common Stock after the Effective Date pursuant to the Stock Rights are deferred payments subject to unstated interest income under section 483.

#### Procedural Statements

This ruling is directed only to the Taxpayer Group. 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 the letter ruling.

In accordance with powers of attorney on file with this office, copies of this letter are being sent to two of your authorized representatives.

Sincerely,

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Douglas C. Bates  
Senior Technician Reviewer  
Branch 6  
Office of Associate Chief Counsel  
(Corporate)