Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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PLR-116945-17

Date:
April 24, 2018

EIN:

Legend

Taxpayer =

LLC 1 =

Sub 1 =

Borrower =

Sub 2 =

Sub 3 =

Year 1 =

Year 2 =

Date 1 =

Date 2 =

Date 3 =

A =

B =

Dear :

This responds to your letter dated May 23, 2017, and supplemental letters dated July 20, 2017, October 12, 2017, October 16, 2017, December 4, 2017, and April 5, 2018, submitted on behalf of Taxpayer requesting a letter ruling under § 165 of the Internal Revenue Code (the Code). The information submitted for consideration is summarized below.

FACTS

Taxpayer is the domestic common parent of an affiliated group of corporations that file a consolidated federal income tax return. At the time of the Sub 1 Conversion (defined below), LLC 1 wholly owned Taxpayer, which wholly owned Sub 1, which wholly owned Borrower, which wholly owned Sub 2, which wholly owned Sub 3, which owned various domestic and foreign subsidiaries.

From Year 1 to Year 2, Borrower borrowed various amounts of cash from third party creditors (Borrowed Funds). Moreover, during such time, cash distributions were made or were deemed to be made from Sub 3 up the chain.

On Date 1, Sub 1 converted to an LLC under state law and was classified as an entity disregarded as separate from Taxpayer for federal income tax purposes (Sub 1 Conversion).

On Date 2, Borrower converted to an LLC under state law and was classified as an entity disregarded as separate from Taxpayer for federal income tax purposes (Borrower Conversion).

On Date 3, pursuant to a Restructuring Agreement, the third party creditors agreed to reduce the amount payable from A to B in exchange for all of the new shares of Taxpayer, the cancellation of all the old shares of Taxpayer held by LLC 1, and releases to LLC 1, its members, and its subsidiaries down the chain (Releases). Taxpayer states that these Releases were granted by all of the third party creditors of the Borrowed Funds and were mutual, such that they were granted by and to all parties of the Restructuring Agreement, including the third party creditors, LLC 1, Taxpayer, Sub 1, Borrower, Sub 2, and Sub 3.

REPRESENTATIONS

1. At the time of the Sub 1 Conversion, Sub 1 had a single class of stock outstanding and Taxpayer directly owned 100 percent of this single class of stock.

2. At the time of the Sub 1 Conversion, Borrower had a single class of stock outstanding and Sub 1 directly owned 100 percent of this single class of stock. Following the Sub 1 Conversion and prior to the Borrower Conversion, Taxpayer directly owned 100 percent of this single class of stock through its ownership of Sub 1, a single member LLC disregarded as separate from Taxpayer for U.S. federal income tax purposes.

3. Sub 1 had no assets other than the stock of Borrower as of the date of the Sub 1 Conversion.

4. Borrower was insolvent (i.e., its liabilities exceeded the aggregate fair market value of its assets) as of the date of the Sub 1 Conversion and the date of the Borrower Conversion.

5. On the date of the Sub 1 Conversion, Sub 1's stock was worthless within the meaning of §§ 165(g)(1), 1.1502-80(c), and 1.1502-19(c)(1)(iii).

6. Taxpayer had no excess loss account in its Sub 1 stock, Sub 1 had no excess loss account in its Borrower stock, and Borrower had no excess loss account in its Sub 2 stock as of the dates of the Sub 1 Conversion and the Borrower Conversion.

7. Taxpayer will claim a worthless stock deduction with respect to the stock of Sub 1 only to the extent permitted by the unified loss rule in § 1.1502-36.

8. All distributions by Borrower will be treated as emanating from Sub 3's gross receipts, and no distributions will be treated as emanating from Borrower's Borrowed Funds.

RULINGS

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

1. Provided the requirements of § 165(g) (taking into account the provisions of § 1.1502-80(c)) are otherwise satisfied, Taxpayer may claim a worthless stock deduction under § 165(g)(3), subject to the application of § 1.1502-36.

2. For purposes of the § 165(g)(3)(B) gross receipts test, Sub 1 will include in its aggregate gross receipts all amounts of gross receipts received in intercompany transactions that are described in § 1.1502-13 (as effective/applicable on or after July 12, 1995) (Intercompany Transactions), and such amounts from Intercompany Transactions will be treated as "gross receipts from passive sources" only to the extent they are attributable to the Intercompany

Transactions' counterparty's "gross receipts from passive sources" (Look-Through Approach). For purposes of these rulings, "gross receipts from passive sources" is defined as royalties, certain rents, dividends, certain interests, annuities, and gains from sales of stock and securities as defined in § 165(g)(3) and the regulations thereunder.

3. For purposes of computing Sub 1's "gross receipts" under § 165(g)(3)(B), Sub 1 (and any relevant counterparty in an Intercompany Transaction) will take into account the historic receipts of any transferor corporation in a transaction to which § 381(a) applied, provided however, that Sub 1 (and any relevant counterparty in an Intercompany Transaction) will eliminate gross receipts from Intercompany Transactions with any such transferor corporation, as appropriate, to prevent duplication.

4. In applying the Look-Through Approach, for purposes of computing the "gross receipts from passive sources" of Sub 1's counterparty in an Intercompany Transaction or any other counterparties in Intercompany Transactions, the counterparty will include in its aggregate gross receipts all amounts of gross receipts it received in Intercompany Transactions, and such amounts from Intercompany Transactions will be treated as "gross receipts from passive sources" to the extent they are attributable to its counterparty's "gross receipts from passive sources." In other words, Sub 1's "gross receipts from passive sources" is determined by looking at all of Sub 1's gross receipts from Intercompany Transactions (even if on its face the Intercompany Transaction appears not to be "gross receipts from passive sources") and sourcing the gross receipts based on Sub 1's counterparty's "gross receipts from passive sources." Furthermore, Sub 1's counterparty in Intercompany Transactions (and Sub 1's counterparty's counterparty, and so on until it reaches an ultimate counterparty) will apply a similar rule.

5. In applying the Look-Through Approach with respect to gross receipts from intercompany dividends (that is, intercompany distributions to which § 301(c)(1) applies), the amounts will be attributed pro rata to the gross receipts that gave rise to the E&P from which the dividend was distributed.

6. In applying the Look-Through Approach with respect to gross receipts from Intercompany Transactions other than § 301(c)(1) distributions, provided the Intercompany Transaction counterparty's gross receipts for the tax period are greater than the counterparty's Intercompany Transaction payments, the amounts will be attributed pro rata to the gross receipts of the Intercompany Transaction counterparty for the taxable year during which the Intercompany Transaction occurs (adjusted as appropriate for other Intercompany Transactions during such period to prevent any duplication).

CAVEATS

The rulings contained in this letter are based on facts and representations submitted by 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 examination process.

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.

We express no opinion with respect to Sub 1's worthlessness or whether any of the Releases constitute value received for stock of Sub 1. If any such Release is determined to constitute value received for such stock, this letter ruling is null and void.

We express no opinion as to whether Sub 1 satisfies the Gross Receipts Test of § 165(g)(3)(B).

We express no opinion on the treatment of § 301(c)(2) distributions with respect to the Gross Receipts Test of § 165(g)(3)(B).

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,

Brinton T. Warren
Branch Chief, Branch 3
(Income Tax & Accounting)