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k =

l =

m =

n =

o =

Dear \_\_\_\_\_ :

This letter responds to your authorize representative's letter dated July 30, 2021, requesting rulings under section 1504 of the Internal Revenue Code. The information provided in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based upon information 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, but such material is subject to verification on examination.

### Facts

Parent is the common parent of an affiliated group of corporations (the "Parent Group") that joins in the filing of a consolidated U.S. federal income tax return.

Parent has agreed to acquire Target, a public corporation, in an all-cash merger for a total of \$a. To effect this acquisition, Parent has formed Sub, a wholly owned limited liability company treated as a corporation for U.S. federal income tax purposes. The following steps are proposed to fund Sub's acquisition of Target:

1. Parent will contribute \$b to Sub in exchange for Sub's common shares.
2. Sub, through a disregarded entity, will issue \$c of debt: \$d of senior secured term loans, \$e of senior unsecured notes, and \$f of senior secured notes. Of the total \$c, \$g will be used to refinance Target's existing debt and \$h will be used to purchase Target's stock.
3. Investor (an unrelated party) or its affiliates will contribute \$i to Sub in exchange for Voting Units and \$j to Sub in exchange for Non-Voting Units (described further below).
4. Sub will use its cash to acquire the outstanding shares of Target.

Each Voting Unit in Sub consists of one share of Voting Preferred Stock and one zero-strike Warrant for the common stock of Sub. Each Non-Voting Unit in Sub consists of one share of Non-Voting Preferred Stock and one zero-strike Warrant for the common stock of Sub. Holders of Voting Units or Non-Voting Units may separately dispose of the shares of preferred stock and the warrants without restriction, and they are not economically compelled to keep Units unseparated. The Warrants are treated as common stock for U.S. federal income tax purposes.

Parent's ownership of Sub's stock will satisfy the requirements of section 1504(a)(2) if and only if the Non-Voting Preferred Stock satisfies the requirements of section 1504(a)(4). The Non-Voting Preferred Stock has the following relevant terms:

- Stated Amount: The Non-Voting Preferred Stock has a total stated amount of \$j. (Of the \$j purchase price of the Non-Voting Units, \$k will be allocated to the Non-Voting Preferred Stock and \$l to the Warrants.)
- Dividend Rate: Dividends accrue at a rate of m% of the stated amount per year, paid quarterly. If the dividends are not paid on time, they accrue at the higher rate of n%.
- Voting: The Non-Voting Preferred Stock has no voting rights.
- Term: The Non-Voting Preferred Stock has a perpetual term. It must be redeemed before Sub is liquidated.
- Sub's Redemption Rights: Sub may redeem the Non-Voting Preferred Stock at any time for the stated amount.
- Holder's Redemption Rights: The holder of the Non-Voting Preferred Stock cannot compel a redemption, but o years after issuance, the holder can compel an initial public offering of Sub's stock or a sale of substantially all of Sub's assets.

### **Representations**

The taxpayer makes the following representations:

- a. Aside from the issues addressed by the rulings below, the Non-Voting Preferred Stock will satisfy the requirements of section 1504(a)(4).
- b. Each of Parent and Sub is an includible corporation within the meaning of section 1504(b).

- c. For U.S. federal income tax purposes, the Non-Voting Preferred Stock and the Warrants are separate instruments.
- d. No growth of Target's business is necessary for Sub to make all payments on its debts (and those of its disregarded entities) and to pay all dividends on the Voting and Non-Voting Preferred Stock on time.
- e. Under section 305(c) and Treas. Reg. § 1.305-5(b), the excess of the stated amount of the Non-Voting Preferred Stock over its purchase price will be treated as constructive distributions over a period of 0 years.

### **Rulings**

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

1. The dividends payable on the Non-Voting Preferred Stock do not cause it to be treated as "participat[ing] in corporate growth to any significant extent" within the meaning of section 1504(a)(4)(B).
2. The excess of the stated amount of the Non-Voting Preferred Stock over its acquisition price does not constitute an unreasonable redemption premium within the meaning of section 1504(a)(4)(C).

### **Caveat**

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.

### **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.

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 the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Gerald B. Fleming  
Senior Technician Reviewer, Branch 2  
Office of Associate Chief Counsel (Corporate)

cc: