

**Internal Revenue Service**

Number: **202219002**  
Release Date: 5/13/2022

Index Number: 1502.13-00, 1502.13-01

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:2  
PLR-103010-21

Date:  
February 11, 2022

**Legend**

Parent =

OpCo =

T1 =

T2 =

S1 =

S2 =

S3 =

S4 =

S5 =

DRE =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

State X =

OpCo  
Stock =

S4 Stock =

Certain  
Tax  
Matters =

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

This letter responds to a letter from your authorized representative dated February 10, 2021. In that letter, you requested rulings under Treas. Reg. § 1.1502-13. The material information submitted in the request and in subsequent correspondences are summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

### **Facts**

Parent is a publicly traded domestic corporation and the common parent of an affiliated group of corporations that file a consolidated return for U.S. federal income tax purposes (the "Parent Group").

Prior to Date 1, Parent wholly owned OpCo. OpCo wholly owned S1, and S1 owned all the outstanding common stock of T1. OpCo also wholly owned S2. S2 wholly owned S3, S3 wholly owned S4, S4 wholly owned S5, and S5 wholly owned T2 through DRE. DRE was a limited liability company ("LLC") that was disregarded as separate from its owner for federal income tax purposes (a "disregarded entity"). Parent, OpCo, S1, T1, S2, S3, S4, S5, and T2 were members of the Parent Group.

On Date 1, S1 distributed T1 to OpCo, and S1 recognized section 311(b) gain on the distribution ("DIG 1"). On the same day, OpCo distributed T1 to Parent. OpCo recognized no further gain on the distribution of T1.

On Date 2, S5 distributed T2 to S4, and S5 recognized section 311(b) gain on the distribution ("DIG 2"). On the same day, T2 was distributed up the chain to Parent, through S3, S2, and OpCo. Neither S4, S3, S2, nor OpCo recognized further gain on the distribution of T2.

On Date 3, Parent contributed T2 to T1.

On Date 4, S2 merged with and into OpCo (the "S2 Merger").

At present, Parent wholly owns OpCo and all the common stock of T1. OpCo wholly owns S1 and S3. S3 wholly owns S4, which in turn wholly owns S5. T1 wholly owns T2.

### **Proposed Transaction**

The following steps are proposed (collectively, the “Proposed Transaction”):

- (i) S1 will convert to an LLC that is treated as a disregarded entity (the “S1 Conversion”).
- (ii) OpCo will contribute its interest in S1 to a newly formed State X corporation that will be a member of the Parent Group.
- (iii) Parent will contribute all the common stock of T1 to OpCo for no additional shares of OpCo stock (the “T1 Contribution”) and T1 will convert to an LLC that is treated as a disregarded entity (together with the T1 Contribution, the “T1 Reorganization”). Following the T1 conversion, OpCo will own T2 through the disregarded T1.
- (iv) S5 will elect to be treated as a disregarded entity (the “S5 Conversion”).
- (v) T1 will distribute all of its interest in T2 to OpCo in a transaction that is disregarded for federal income tax purposes.
- (vi) OpCo will contribute all its interest in T2 to S3 for no additional shares of S3 stock (the “First T2 Contribution”).
- (vii) S3 will contribute all its interest in T2 to S4 for no additional shares of S4 stock (the “Second T2 Contribution”), and T2 will elect to be treated as a disregarded entity (together with the Second T2 Contribution, the “T2 Reorganization”).
- (viii) S4 will contribute all its interest in S5 to a newly formed State X corporation that will be a member of the Parent Group.
- (ix) Parent will exchange all of its OpCo common stock for a new single share of OpCo Stock (the “OpCo Recapitalization”).
- (x) S3 will exchange all of its S4 stock for a new single share of S4 Stock (the “S4 Recapitalization”).

### **Representations**

- (a) The S2 Merger qualified as a liquidation under section 332.

- (b) The S1 Conversion will qualify as a reorganization under section 368(a)(1)(C).
- (c) The T1 Reorganization will qualify as a reorganization under section 368(a)(1)(D).
- (d) The S5 Conversion will qualify as a reorganization under section 368(a)(1)(C).
- (e) The First T2 Contribution will qualify for treatment under section 351.
- (f) The T2 Reorganization will qualify as a reorganization under section 368(a)(1)(D).
- (g) The OpCo Recapitalization will qualify as a reorganization under section 368(a)(1)(E).
- (h) The S4 Recapitalization will qualify as a reorganization under section 368(a)(1)(E).
- (i) The effects of DIG 1 have not previously been reflected, directly or indirectly, on the Parent Group's consolidated return.
- (j) The effects of DIG 2 have not previously been reflected, directly or indirectly, on the Parent Group's consolidated return.
- (k) Following the Proposed Transaction, OpCo's (as successor to S2) basis in S3 is the same as it would have been absent S3's distribution of T2 to S2 on Date 2.
- (l) Following the Proposed Transaction, Parent's basis in OpCo will be the same as it would have been absent OpCo's distribution of T1 to Parent on Date 1 and OpCo's distribution of T2 to Parent on Date 2, except for the basis consequences resulting from the T1 Reorganization.
- (m) Following the Proposed Transaction, S3's basis in S4 will be the same as it would have been absent S4's distribution of T2 to S3 on Date 2, except for the basis consequences resulting from the T2 Reorganization.
- (n) OpCo has one class of common stock outstanding, all of which is owned by Parent.
- (o) Parent has held all its shares of OpCo common stock for more than a year, as determined under section 1223.

- (p) S4 has one class of common stock outstanding, all of which is owned by S3.
- (q) S3 has held all its shares of S4 common stock for more than one year, as determined under section 1223.
- (r) The Parent Group has not derived, and no taxpayer will derive, any federal income tax benefit from the intercompany transaction that gave rise to DIG 1 or the redetermination of DIG 1 (including adjustment to basis in member stock under Treas. Reg. § 1.1502-32). This determination is made without regard to the basis consequences resulting from the T1 Reorganization.
- (s) The Parent Group has not derived, and no taxpayer will derive, any federal income tax benefit from the intercompany transaction that gave rise to DIG 2 or the redetermination of DIG 2 (including adjustment to basis in member stock under Treas. Reg. § 1.1502-32). This determination is made without regard to the basis consequences resulting from the T1 Reorganization and the T2 Reorganization.
- (t) There is no excess loss account on any share of OpCo, S1, T1, S3, S4, S5, and T2.

### **Rulings**

- 1) The context does not require treating OpCo stock as a successor asset to T1 stock within the meaning of Treas. Reg. § 1.1502-13(j)(1), and OpCo will take DIG 1 into account following the T1 Reorganization.
- 2) DIG 1 is redetermined to be excluded from gross income under the Commissioner's Discretionary Rule of Treas. Reg. § 1.1502-13(c)(6)(ii)(D). Accordingly, DIG 1 is excluded from the gross income of the Parent Group for the group's consolidated return year that includes the day of the T1 Reorganization.
- 3) The amount of DIG 1 that is redetermined to be excluded from gross income will not be taken into account as earnings and profits of any member of the Parent Group and will not be treated as tax-exempt income of any member of the Parent Group under Treas. Reg. § 1.1502-32(b)(2)(ii).
- 4) The context does not require treating either OpCo stock, S3 stock, or S4 stock as a successor asset to T2 stock within the meaning of Treas. Reg. § 1.1502-13(j)(1), and S4 will take DIG 2 into account following the T2 Reorganization.
- 5) DIG 2 is redetermined to be excluded from gross income under the Commissioner's Discretionary Rule of Treas. Reg. § 1.1502-13(c)(6)(ii)(D).

Accordingly, DIG 2 is excluded from the gross income of the Parent Group for the group's consolidated return year that includes the day of the T2 Reorganization.

- 6) The amount of DIG 2 that is redetermined to be excluded from gross income will not be taken into account as earnings and profits of any member of the Parent Group and will not be treated as tax-exempt income of any member of the Parent Group under Treas. Reg. § 1.1502-32(b)(2)(ii).

### **Closing Agreement**

We will, accordingly, approve a closing agreement with the taxpayer with respect to certain of those issues affecting its tax liability on the basis set forth above. The necessary closing agreement for Parent has been prepared in triplicate and is enclosed. In pursuance of our practice with respect to such agreements, the agreement contains a stipulation to the effect that any change or modification of applicable statutes enacted subsequent to the date of this agreement and made applicable to the taxable period involved will render the agreement ineffective to the extent that it is dependent upon such statutes.

### **Caveats**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the proposed transaction under any provision 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. Specifically, no opinion is expressed or implied with respect to Certain Tax Matters.

### **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,

---

Robert H. Wellen  
Associate Chief Counsel  
Office of Associate Chief Counsel (Corporate)

cc: