

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:4-PLR-107640-02

Date:

June 25, 2002

Parent =

Sub A =

Sub B =

Sub C =

LLC1 =

LLC2 =

LLC3 =

Sub A LLC =

Sub B LLC =

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Sub C LLC =

Business A =

Business B =

Business C =

Acquirer =

a =b =c =d =e =

Year 1 =

Date U =

Date V =

Date W =

Date X =

Date Y =

State A =

Dear :

This letter responds to your January 31, 2002 request for rulings regarding certain federal income tax consequences of a partially completed and proposed transaction. The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on 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 materials

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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

Publicly traded Parent is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Parent is a registered holding company under the Public Utility Holding Company Act of 1935 ("PUHCA"). Parent conducts indirectly several businesses including Business A, Business B, and Business C. Parent wholly owns LLC 1, LLC2, and LLC3.

In Year 1, Parent formed Sub A to acquire a facility engaged in Business B. The adjusted basis of Sub A's depreciable property is approximately \$a, consisting entirely of "section 1245 property" within the meaning of § 1245(a)(3) of the Internal Revenue Code. On Date U, Parent acquired Sub C, and as a result, became a registered holding company under PUHCA. Prior to the completion of step (i) below, Sub C was a holding company that indirectly conducted Business A through several wholly owned subsidiaries, and Business C through wholly owned Sub B.

Sub B conducts Business C directly and through several wholly owned subsidiaries (the "Sub B Subsidiaries"). Sub C owes approximately \$b to a Sub B Subsidiary (the "Sub C Payable"). The adjusted tax basis of the assets owned by Sub B and the Sub B Subsidiaries (inclusive of the Sub C Payable) is approximately \$c.

In connection with Parent's acquisition of Sub C, the Securities and Exchange Commission (the "SEC"), in a Date V order (the "Date V SEC Order"), required Parent to sell Sub B and the Sub B Subsidiaries within three years of the date of the Date V SEC Order in order to comply with § 11(b) of PUHCA, which limits a registered holding company to ownership of a single integrated public utility system and to such nonutility businesses as are reasonably incidental or economically necessary or appropriate to the operation of the integrated system.

In order to comply with the Date V SEC Order, Parent and Sub C entered into a purchase agreement with Acquirer ("Purchaser"). Pursuant to the purchase agreement, Sub C LLC, as successor to Sub C, will sell Sub B and the Sub B Subsidiaries to Purchaser in a transaction as described below.

On Date W, Parent applied for a supplemental order from the SEC which was subsequently amended on Date X (the "Date X SEC Order"), requesting an order that (i) the sale of Sub B and the Sub B Subsidiaries in the manner described below complies with the Date V SEC Order, and (ii) approving, as necessary and appropriate to effectuate § 11(b) of PUHCA, the use of the cash proceeds received by Sub C LLC to repay the Sub C Payable and a portion of Parent's existing debt securities, and the assumption by Purchaser of the Sub B and Sub B Subsidiaries liabilities. The SEC

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issued the Date X SEC Order on Date X.

Proposed Transaction

In order to comply with the Date V SEC Order, Parent has proposed and partially completed the following transaction:

(i) On Date Y, Sub C was converted from a State A business trust into a State A limited liability company by merging Sub C into Sub C LLC, a State A limited liability company owned 99 percent by Parent and 1 percent by LLC 1.

(ii) Sub A will convert from a corporation into a limited liability company (the "Sub A LLC") by merging Sub A into Sub A LLC. Parent will wholly own Sub A LLC.

(iii) Certain Sub B Subsidiaries will be converted from corporations into limited liability companies. Each of such limited liability companies (the "Sub B Subsidiary LLCs") will be wholly owned, directly or indirectly through another Sub B Subsidiary LLC, by Sub B.

(iv) Immediately after step (iii), Sub B will convert to a limited liability company (the "Sub B LLC"), that will be wholly owned by Sub C LLC .

(v) Parent will elect, by "checking the box" pursuant to § 301.7701-3(c), to change the classification of LLC 2 and LLC 3 for federal income tax purposes from disregarded entities to associations taxable as corporations. Following the election, Parent will own no assets directly other than the stock of its subsidiaries (including LLC 2 and LLC 3, which will be treated as corporations) and the membership interests in Sub A LLC, Sub C LLC, LLC 1, and several other disregarded limited liability companies (the "Other Disregarded LLCs"). Sub C LLC will own no assets directly other than the stock of its subsidiaries and all of the interests of Sub B LLC.

(vi) Shortly after completion of step (v), Parent will cause Sub C LLC to sell all of the membership interests in Sub B LLC to Purchaser for (i) \$d, (ii) approximately \$b in respect of the Sub C Payable, (iii) the amount of Sub B LLC's cash on the closing date, and (iv) the assumption of approximately \$e of Sub B LLC's liabilities.

(vii) Parent will use the cash proceeds from the sale of Sub B LLC to repay the Sub C Payable and to retire Parent securities within two years after the closing date of the sale.

Representations

Parent has made the following representation in connection with the proposed transaction:

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(a) Parent is a “registered holding company” as defined in § 2 of PUHCA and § 1083(b) of the Code.

(b) None of LLC 1, Sub C LLC, Sub B LLC, the Sub B Subsidiary LLCs, or Sub A LLC will elect to be treated as an association taxable as a corporation under § 301.7701-3(a).

(c) The conversions of Sub A, Sub B, Sub C, and each of the Sub B Subsidiaries that will be converted from corporations to limited liability companies constitute tax free liquidations to the liquidating corporations under § 337 and to their parent/distributee under § 332.

(d) Sub A is the owner of the Sub A facility for federal income tax purposes and is entitled to claim depreciation deductions with respect thereto.

(e) The sale of the interests in Sub B LLC to Purchaser will close within the three year period prescribed in the Date V SEC Order.

(f) Parent will timely and accurately file a Form 982 with its federal income tax return for the taxable year in which the sale of Sub B LLC occurs.

Rulings

Provided that the Date X SEC Order becomes final in substantially the form submitted, and based solely on the information submitted and the representations set forth above, we rule as follows:

(1) Sub A LLC, LLC 1, Sub C LLC, Sub B LLC, and each of the Sub B Subsidiary LLCs will be disregarded as entities separate from Parent.

(2) No gain will be recognized by Parent indirectly through Sub C LLC upon the SEC required sale of all of the membership interests in Sub B LLC to Acquirer, as described above (§ 1081(b)).

(3) Parent will reduce the basis of its property in accordance with § 1082(a)(2). Assuming Parent’s adjusted basis in the depreciable property held by Sub A LLC exceeds the amount of gain on the sale of Sub B LLC that is deferred under § 1081(b), Parent will be required to write down the adjusted basis of each item of depreciable property owned by Sub A LLC and the Other Disregarded LLCs by the percentage obtained by dividing the amount of gain deferred under § 1081(b) on the sale of Sub B LLC, by the aggregate adjusted basis of all the depreciable property owned by Sub A LLC and the Other Disregarded LLCs (§ 1082).

(4) Pursuant to § 1.1245-4(e)(1)(iii), gain will be recognized by Parent under

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§ 1245(a)(1) in the amount by which the basis of property, other than § 1245 property, is reduced pursuant to the application of § 1082(a)(2).

Caveats

No opinion is expressed about the tax treatment of the proposed transaction under any other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from the proposed transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed on (i) whether the conversions described in representation (c) qualify under §§ 332 and 337, or (ii) whether Sub A is the owner of the Sub A facility as described in representation (d).

Procedural Statements

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Each taxpayer involved in this transaction should attach a copy of this ruling letter to the taxpayer's federal income tax return for the taxable year in which the transaction covered by this letter is completed.

Under a power of attorney on file in this office, a copy of this letter is being sent to the taxpayer and an additional authorized representative.

Sincerely,

Lewis K Brickates
Acting Branch Chief, Branch 4
Office of Associate Chief Counsel
(Corporate)