

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Date:

December 29, 2011

Target =

Target Sub 1 =

Target Sub 2 =

Target LLC =

Acquiring =

Acquiring LLC =

Merger Sub =

Investor =

Investor Sub =

Joint Venture =

Regulator =

a =

b =

c =

d =

e =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Dear :

This letter responds to your November 15, 2011 request for rulings on certain federal income tax consequences of the Proposed Transaction (defined below). The information submitted in that request 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. 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.

Summary of Facts

Target is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Investor, through certain of its affiliates, owns approximately a percent of Target's outstanding common stock. The remainder of Target's common stock is publicly held.

Among other entities, Target owns 100 percent of the Class A units of Target LLC and b percent of the stock of Target Sub 2. Target LLC is disregarded as separate from Target

for federal income tax purposes. Target LLC's only asset is 100 percent of the common stock of Target Sub 1. Target Sub 1's nonvoting preferred stock is publicly held. Target Sub 1 is regulated by Regulator. Investor owns 100 percent of the stock in Investor Sub. Investor Sub owns the remaining c percent interest in Target Sub 2.

Acquiring is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Among other entities, Acquiring owns 100 percent of the membership interests in Acquiring LLC, an entity disregarded as separate from Acquiring for federal income tax purposes. Acquiring also owns 100 percent of the stock in Merger Sub, a corporation created for purposes of the Proposed Transaction.

The Proposed Transaction was subject to Regulator's approval. As part of this approval, Acquiring and Target represented to Regulator that Target would distribute its stock in Target Sub 1, through a distribution of its interest in Target LLC, to Acquiring. Acquiring and Target also agreed that Target Sub 1 would provide certain fixed dollar rate credits to its customers and Acquiring would fund those credits through a cash payment to Target Sub 1 (the "Credits").

In Year 1, Target and Investor agreed to form Joint Venture. In connection with the formation of Joint Venture, Target Sub 2, then wholly owned by Target, agreed to contribute certain assets to Joint Venture, subject to Joint Venture's acquisition of certain required regulatory approvals (the "Contribution Property"). In Year 2, Investor Sub acquired its c interest in Target Sub 2.

In Year 3, Target and Investor entered into a series of agreements (collectively, the "Master Agreement") to resolve certain issues surrounding the Joint Venture. Pursuant to the Master Agreement, Investor acquired Target's interest in Joint Venture. Target and Investor also agreed that when the transfers of the remaining Contribution Property occurred, Investor would transfer to Target an additional d shares of its Target common stock. It is unclear if or when the regulatory approvals necessary to effectuate the transfers of the remaining Contribution Property may be forthcoming. Acquiring will assume in the Proposed Transaction Target's remaining liabilities under the Master Agreement. If the regulatory approval occurs after completion of the Proposed Transaction, Investor will transfer shares of its Acquiring stock, acquired in the Proposed Transaction, to Acquiring.

The Master Agreement did not reconcile all differences between Target and Investor. In Year 4, Acquiring entered into discussions with Investor in an effort to reach a settlement of Investor's differences with Target. No agreement was reached; however, Acquiring allows for the possibility that it may be necessary to redeem Investor's stock position following the Proposed Transaction or aid in the disposition of Investor's stock position, although the likelihood that such a transaction will occur is remote.

Proposed Transaction

Acquiring and Target propose the following series of transactions, all of which will be undertaken pursuant to a plan of reorganization (the “Proposed Transaction”):

- (i) Merger Sub will merge with and into Target, with Target surviving and becoming a wholly owned subsidiary of Acquiring (the “Reverse Subsidiary Merger”).
- (ii) As a result of the Reverse Subsidiary Merger, each outstanding share of Target common stock, other than shares owned by Target, Acquiring, or Merger Sub, will be converted into the right to receive shares of Acquiring common stock, with cash to be paid in lieu of fractional shares.
- (iii) Target will distribute the stock of Target Sub 1 (through a distribution of its interests in Target LLC) to Acquiring (the “Distribution”).
- (iv) At the same time or in immediate succession on the same day as the Distribution, Target will merge with and into Acquiring, with Acquiring surviving (the “Upstream Merger”). The Distribution and Upstream Merger will occur within months of the Reverse Subsidiary Merger.
- (v) Acquiring will contribute cash to Target Sub 1 to fund the Credits.
- (vi) Acquiring will contribute Target Sub 1 to Acquiring LLC.

Representations

The following representations are made in connection with the Proposed Transaction:

- (a) The fair market value of the Acquiring stock and cash paid in lieu of fractional shares received by Target’s shareholders in the Proposed Transaction will be approximately equal to the fair market value of the Target stock surrendered in the exchange.
- (b) At least 40 percent of the proprietary interests in Target will be exchanged for Acquiring stock and will be preserved within the meaning of Treas. Reg. § 1.368-1(e).
- (c) The payment of cash in lieu of fractional shares, if any, of Acquiring stock will be solely for the purpose of avoiding the expense and inconvenience to Acquiring of issuing fractional shares and will not represent separately bargained-for consideration.

(d) Except as discussed above with respect to Investor, to the knowledge of Acquiring and Target, there is no plan or intention by the former Target shareholders to sell, exchange, or otherwise dispose of any of the Acquiring stock received in the Proposed Transaction.

(e) With the exception of a potential redemption in connection with Acquiring's transfer of the Contribution Property as required under the terms of the unrelated Master Agreement between Target and Investor, neither Acquiring nor any person related to Acquiring (within the meaning of § 1.368-1(e)(3)) has any plan or intention to reacquire any of the Acquiring stock issued in the Reorganization. Acquiring, however, cannot state with certainty that it will not redeem a portion of Investor's Acquiring common stock in an unrelated transaction occurring after completion of the Proposed Transaction, though the likelihood that such a transaction will actually occur is remote.

(f) Except as discussed above, Acquiring has no plan or intention to sell or otherwise dispose of any of the assets of Target acquired in the Proposed Transaction, except for dispositions made in the ordinary course of business, transfers described in section 368(a)(2)(C), or transfers described in Treas. Reg. § 1.368-2(k).

(g) The liabilities of Target assumed by Acquiring and the liabilities to which the transferred assets of Target are subject were incurred by Target in the ordinary course of its business.

(h) Following completion of the Proposed Transaction, Acquiring (directly or through members of its qualified group) will continue the historic business of Target or use a significant portion of Target's historic business assets in a business.

(i) Acquiring, Target, and Target's shareholders will pay their respective expenses, if any, incurred in connection with the Proposed Transaction.

(j) There is no intercorporate indebtedness existing between Acquiring and Target that was issued, acquired, or will be settled at a discount.

(k) No two parties to the Proposed Transaction are investment companies as defined in section 368(a)(2)(F)(iii)-(iv).

(l) Target is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).

(m) The fair market value of the assets of Target transferred to Acquiring will equal or exceed the sum of the liabilities assumed by Acquiring plus the amount of liabilities, if any, to which the transferred assets are subject.

(n) The Distribution and the Upstream Merger will occur at the same time or in immediate succession on the same day.

Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows regarding the Proposed Transaction:

- (1) The Proposed Transaction will qualify as a reorganization within the meaning of section 368(a)(1)(A) (Rev. Rul. 2001-46, 2001-2 C.B. 321). Acquiring and Target will each be “a party to the reorganization” within the meaning of section 368(b).
- (2) Target will not recognize gain or loss upon the transfer of its assets to Acquiring in exchange for Acquiring common stock and the assumption of liabilities by Acquiring (sections 361(a) and 357(a)).
- (3) Target will not recognize gain or loss on the distribution of Acquiring common stock to its shareholders (section 361(c)).
- (4) Acquiring will not recognize gain or loss upon Acquiring’s receipt of Target’s assets in exchange for Acquiring common stock (section 1032(a)).
- (5) The basis of Target’s assets in the hands of Acquiring will be the same as the basis of such assets in the hands of Target immediately before the Proposed Transaction (section 362(b)).
- (6) The holding period for Target’s assets in the hands of Acquiring will include the holding period during which Target held such assets (section 1223(2)).
- (7) No gain or loss will be recognized by Target shareholders who receive solely Acquiring common stock in exchange for their Target common stock (section 354(a)(1)).
- (8) The basis of Acquiring common stock received by Target shareholders will be the same basis of the Target common stock surrendered in exchange therefore (section 358(a)(1)).
- (9) The holding period of the Acquiring common stock received by Target shareholders will include the period during which the Target common stock surrendered in exchange therefore was held, provided the Target common stock was held as a capital asset on the date of the exchange (section 1223(1)).
- (10) The payment of cash in lieu of issuing fractional shares of Acquiring common stock will be treated as if the fractional shares were issued in the Proposed Transaction

and then redeemed by Acquiring with the cash payments treated as having been received as distributions in full payment in exchange for the redeemed fractional shares as provided in section 302(a). Provided the fractional share interest is a capital asset in the hands of the recipient shareholder, the gain or loss will constitute capital gain or loss subject to the provisions and limitations of Subchapter P of Chapter 1 (Rev. Rul. 66-365, 1966-2 C.B. 116).

(11) As provided by section 381(c)(2) and Treas. Reg. § 1.381(c)(2)-1, Acquiring will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Target as of the close of the date of the Upstream Merger.

(12) Acquiring will succeed to and take into account the items of Target described in section 381(c), subject to the provisions and limitations specified in sections 381, 382, 383, 384 and the regulations thereunder (section 381(a)).

Caveats

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,

Isaac W. Zimbalist
Senior Technical Reviewer
(Corporate)