

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
_____, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B05
PLR-108357-23

Date:
September 29, 2023

TY:

Dear _____:

This responds to a letter ruling request by the taxpayer, _____ (TIN: _____) (_____), dated _____, and as subsequently amended, regarding the application of sections 61 and 1001 of the Internal Revenue Code (Code) to the Proposed Transaction (described below). _____ requests a ruling that it will be treated as receiving an amount realized from the Proposed Transaction measured by the present value, if any, of the _____ Guarantee (described below).

FACTS

_____ is a _____ corporation incorporated under the laws of _____. _____ is treated as a corporation for federal income tax purposes. _____ is a _____ company incorporated under the laws of _____ and is treated as a corporation for federal income tax purposes. Both _____ and _____ are engaged in providing _____. _____ and _____ each use the calendar year as their respective annual accounting period and an accrual method of accounting for maintaining books and filing federal income tax returns.

As a, _____ is governed by a board of directors (the Board). Board vacancies are filled based on the vote of existing Board members. In the event of dissolution, liquidation, or change from its current form, the value of _____ assets in excess of its obligations and other liabilities would be distributed in an equitable manner determined by the Board, subject to approval by the _____.

For what are represented to be valid business purposes, _____ and _____ propose to engage in the following transaction.

- (1) _____ will admit _____ as its member. Such membership will not be transferable. _____ will amend its corporate governance documents to reflect _____ membership in _____. As the member of _____, _____ will have the right, among other things, to approve all directors of the Board of _____ (the Control Right).
- (2) _____ will provide _____, _____, _____ for an arms-length charge (the Future Service Transactions). The expected pricing on the Future Service Transactions is expected to yield cost savings to _____ over their current pricing arrangements with current service providers. Similarly, _____ is expected to be able to provide such cost savings to _____ due to efficiencies of scale.
- (3) _____ will agree to the _____ Guarantee, defined below.

The elements described in (1) through (3) above are collectively referred to as the Proposed Transaction. Neither _____ nor _____ will pay any cash consideration at closing.

During the _____ period following the closing of the Proposed Transaction, _____ expects to realize at least \$ _____ in cost savings attributable to Future Service Transactions. If _____ does not realize at least \$ _____ in such cost savings, then at the end of the _____ period, _____ will pay _____ the excess, if any, of \$ _____ over the cost savings actually realized during the _____ period (the Guarantee).

_____ will pay for all future services provided by _____ and its subsidiaries and affiliates in accordance with the arm's length standard, as monitored by applicable regulators of _____.

_____ status as the member of _____ will not entitle _____ to any economic rights in _____. Specifically, _____ will not have the right to participate in the _____, nor will it have the right to share in the of _____ in the event of liquidation. In addition, _____ will not have access to the of _____ as a result of the Proposed Transaction.

Under the relevant terms of the _____, _____ will also be responsible for maintaining the of _____ following the Proposed Transaction (the _____). It is not expected that _____ will be at the time of closing of the Proposed Transaction.

Following the Proposed Transaction, _____'s Board will consist of _____ directors, _____ of whom will be appointed by _____. The remaining _____ directors will consist of: (a) _____ residents; (b) _____; and (c) the _____ CEO, all _____ of whom will be _____.

nominated by the Board and approved by _____ in its capacity as the sole member of _____. Accordingly, once _____ becomes the member of _____, _____ will have final authority to approve all members of the Board. Each director will be entitled to one vote on all issues typically submitted for review and approved by boards of directors of _____ corporations. However, certain actions will also require the approval of _____ as the member of _____.

_____ represents that:

1. The Proposed Transaction will not result in a _____; and
2. The Proposed Transaction will not result in _____ becoming an includible corporation (within the meaning of § 1504(b)) with respect to the affiliated group of which _____ is the common parent.

REQUESTED RULING

As a result of the Proposed Transaction, _____ will be treated as receiving an amount realized measured by the present value, if any, of the _____ Guarantee.

LAW AND ANALYSIS

Section 61(a) provides that, except as otherwise provided by subtitle A of the Code, gross income means all income from whatever source derived. Specifically, gross income includes, but is not limited to, gains from dealings in property. See sec. 61(a)(3).

Section 1001(a) provides that the gain from the sale or other disposition of property is the excess of the amount realized therefrom over the adjusted basis provided in § 1011 for determining gain and that the loss is the excess of the adjusted basis provided in § 1011 for determining loss over the amount realized.

Section 1001(b) provides that the amount realized from the sale or other disposition of property is the sum of any money received plus the fair market value of property (other than money) received.

In *Cottage Sav. Ass'n. v. Commissioner*, 499 U.S. 554, 559 (1991), the Supreme Court described the language of § 1001(a) as providing a "straightforward test for realization: to realize a gain or loss in the value of property, the taxpayer must engage in a "sale or other disposition of [the] property." Upholding section 1.1001-1 of the Income Tax Regulations as a reasonable interpretation of section 1001(a), the Court held that "an exchange of property for other property differing materially in kind or in extent" constituted a disposition of property. See *id.* at 560-562.

The exchange under the Proposed Transaction between _____ and _____ constitutes a disposition of property for each party for purposes of section 1001(a). As a result, _____ will realize gain or loss from the Proposed Transaction.

In *United States v. Davis*, 370 U.S. 65 (1962), the Supreme Court held that the transfer of appreciated stock by a former husband to his former wife in an arm's length transaction was a realization event under § 1001(a). The amount realized by the husband was the fair market value of the property received (the former wife's relinquished marital rights), which were presumed to be equal in value to the property given in exchange by the husband (the appreciated stock). The husband's realized (and recognized) gain was the difference between his amount realized and his adjusted basis in the appreciated stock. Although the specific result in divorce cases has been changed by enactment of § 1041, the *Davis* rationale continues to apply to arm's length transfers of property.

Accordingly, we conclude that _____ will be treated as receiving an amount realized under § 1001(a) from the Proposed Transaction measured by the present value, if any, of the _____ Guarantee.

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. Specifically, we express no opinion on the application of section 482 to the Proposed Transaction or the consequences thereof; on the present value, fair market value, or other value of the _____ Guarantee or any other consideration provided in the Proposed Transaction; or on whether there exists a valid business purpose for the Proposed Transaction.

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, copies of this letter are being sent to _____ authorized representatives.

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.

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 a ruling, it is subject to verification on examination.

Sincerely,

Sue-Jean Kim
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: