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Department of the Treasury

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To: CC:CORP:B04 PLR-125776-12

Date

December 14, 2012

Legend:

Shareholder =

Old S Corp =

QSub 1 =

QSub 2 =

QSub 3 =

International1 =

International2 =

International3 =

Holdings LLC =

=

<u>a</u> = <u>b</u> = <u>c</u> = <u>d</u> =

Business

<u>e</u>

<u>f</u> = g =

Dear :

This letter responds to a letter dated June 14, 2012, and subsequent correspondence, on behalf of Old S Corp by its authorized representative, requesting rulings as to the Federal income tax consequences of certain steps in a proposed series of transactions that will be effected as part of a larger, multi-step transaction.

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Facts

Old S Corp is a calendar-year, StateA corporation. Old S Corp has one class of outstanding stock, all of which is owned by Shareholder, a United States ("US") resident. Old S Corp made an election to be an S corporation effective Date1.

Shareholder is a permitted shareholder under Section 1361(b)(1). The S election has been in effect since Date1. Set forth below is a summary of the direct and indirect subsidiaries of Old S Corp that are relevant to the rulings requested.

Old S Corp is a holding company and the sole shareholder of four subsidiaries ("Old S Corp Subsidiaries"): (i) International1, (ii) QSub1, (iii) QSub2, and (iv) QSub3. Old S Corp is engaged in Business through the Old S Corp Subsidiaries and their subsidiaries.

International1 is a calendar-year, StateB C corporation. It is a holding company and the parent of several wholly owned foreign subsidiaries that manufacture and distribute Old S Corp's products outside the US. International1 owns all of the outstanding membership interests of Holdings LLC, a StateB entity that is disregarded for Federal income tax purposes. Holdings LLC and International1 own aw and aw and aw, respectively, of the outstanding equity of International2, a Country partnership that has elected under §§301.7701-2 and -3 to be treated as a corporation for US Federal income tax purposes. International2 owns all of the outstanding stock of International3, a Country corporation that is disregarded for Federal income tax purposes under §§301.7701-2 and -3.

QSub1 and QSub2 are StateB corporations. QSub3 is a StateC corporation. QSub1, QSub2 and QSub3 are disregarded for Federal income tax purposes as qualified subchapter S subsidiaries within the meaning of Section 1361(b)(3)(B).

In addition to the stock of Old S Corp, Shareholder owns $\underline{f}\%$ of the outstanding stock of Opco, a calendar-year StateB corporation. Opco has an election in effect to be an S corporation. The remaining $\underline{c}\%$ of Opco's outstanding stock is owned by a third party.

Foundation is a StateB not-for-profit corporation that is a charitable organization described in Section 501(c)(3) and is treated as a private foundation for Federal income tax purposes. Shareholder is the sole member of Foundation and has the power to appoint its board of directors.

Old S Corp proposes to enter into the multi-step transaction described below ("Proposed Transaction") to: (i) facilitate an initial public offering while enabling Shareholder to retain an equity interest through an S corporation; (ii) facilitate Shareholder's charitable objectives by contributing the right to receive approximately <u>d</u>% of Old S Corp's after-tax business profits to Foundation ,and issuing an approximate <u>b</u>% equity interest in the Old S Corp business to Foundation; (iii) create an employee-based equity compensation plan; and (iv) create a holding company structure to manage Foundation's and Shareholder's respective interests in the Old S Corp's business and the reinvestment of its profits. The Proposed Transaction is as follows:

Pre-Reorganization Transaction Steps

The following steps are collectively the "Pre-Reorganization Transaction Steps":

- 1. Old S Corp forms a StateA limited liability company ("International Holdings LLC") as a disregarded, single-member limited liability company ("SMLLC") for Federal income tax purposes by contributing nominal capital in exchange for all of the outstanding membership interests of International Holdings LLC.
- 2. International1 merges into International Holdings LLC and ceases to exist under applicable local law ("International1 Liquidation").
- 3. International2 forms a StateA limited liability company ("US LLC"), as a disregarded SMLLC, by contributing nominal capital in exchange for all of the outstanding membership interests of US LLC.
- 4. International2 and US LLC form a Country cooperative ("Coop"), by contributing nominal capital, in the ratio of g% and a%, respectively, in exchange for all of the outstanding equity of Coop in the same g-a ratio.
- 5. Coop elects under §§301.7701-2 and -3 for its initial Federal tax entity classification to be disregarded.
- 6. International2 contributes all of the stock of International3 to Coop in exchange for Coop membership interests.
- 7. Old S Corp forms a StateA limited liability company ("LLC1"), as a disregarded SMLLC, by contributing nominal capital in exchange for all of the outstanding membership interests of LLC1.
- 8. QSub1 merges into LLC1 and ceases to exist under applicable local law ("QSub1 Merger").
- 9. QSub3 converts under StateC law into a disregarded SMLLC ("LLC3"), with QSub3 ceasing to exist as a corporation and being succeeded by disregarded LLC3 ("QSub3 Conversion").

Reorganization Transaction Steps

The following steps are collectively the "Reorganization Transaction Steps":

10. Shareholder forms a StateA corporation ("New S Corp"), which elects to be treated for Federal income tax purposes as an S corporation, by contributing all of the outstanding stock of Old S Corp in exchange for all of the outstanding stock of New S Corp.

11. Pursuant to State A law Old S Corp will convert to a limited liability company that is intended to be treated as a disregarded entity for federal income tax purposes ("Old S LLC"), and Old S Corp will cease to exist as a corporation ("Old S Corp Conversion").

Post-Reorganization Transaction Steps

The following steps are collectively the "Post-Reorganization Transaction Steps":

- 12. Old S LLC distributes all of the stock of QSub2 to New S Corp.
- 13. New S Corp forms a StateA limited liability company ("US Holdings LLC"), as a disregarded SMLLC, by contributing all of the outstanding membership interests of Old S LLC in exchange for all of the outstanding membership interests of US Holdings LLC.
- 14. New S Corp contributes approximately <u>b</u>% of the outstanding membership interests of US Holdings LLC to Foundation.
- 15. Shareholder transfers all of Shareholder's <u>f</u>% interest in the outstanding equity of Opco to US Holdings LLC in exchange for a membership interest in US Holdings LLC.
- 16. Old S LLC establishes an incentive compensation plan for its employees, and issues profits interests to its employees.
- 17. Shareholder forms a StateA corporation ("PubCo"), by contributing nominal capital in exchange for all of the outstanding, high-vote, Class B common stock of PubCo, and PubCo issues all of its outstanding low-vote, Class A common stock to the public in exchange for cash pursuant to an initial public offering.
- 18. PubCo transfers cash to US Holdings LLC in exchange for approximately <u>d</u>% <u>e</u>% of the outstanding membership interests of Old S LLC by fair market value, and PubCo becomes the managing member of Old S LLC.
- 19. US Holdings LLC distributes the proceeds received from PubCo to New S Corp, Shareholder and Foundation on a pro-rata basis.
- 20. New S Corp distributes the proceeds received from US Holdings LLC to Shareholder with respect to Shareholder's ownership of New S Corp stock ("Distribution").
- 21. Shareholder makes an optional contribution to Foundation.

Representations

Reorganization Transaction Steps

Old S Corp makes the following representations in connection with steps 10 and 11 of the Proposed Transaction (i.e., Shareholder's contribution of Old S Corp stock to New S Corp, followed by Old S Corp's conversion into a disregarded SMLLC):

- (a) The Reorganization Transaction Steps will be undertaken for valid business purposes.
- (b) The Reorganization Transaction Steps will be consummated pursuant to a plan of reorganization properly adopted by the board of directors of Old S Corp and New S Corp, and shareholder resolutions reflecting Shareholder approving and authorizing the Reorganization Transaction Steps as reflected in the relevant board minutes and legal documents, before its implementation ("Plan of Reorganization").
- (c) Immediately before the Reorganization Transaction Steps, Old S Corp is an S corporation within the meaning of Section 1361(a).
- (d) Immediately before the Reorganization Transaction Steps, New S Corp will not (i) be engaged in any business activity, (ii) have any Federal tax attributes (including attributes described in Section 381(c)), or (iii) hold any assets (other than a minimal amount of assets to pay New S Corp's incidental expenses and to maintain New S Corp's status as a corporation in accordance with State law).
- (e) All liabilities to which the Old S Corp assets are subject at the time of the Reorganization Transaction Steps, and all liabilities of Old S Corp that are properly treated as being assumed by New S Corp in the Reorganization Transaction Steps pursuant to Section 357(d), are liabilities that were incurred in the ordinary course of business and are associated with the assets held by Old S Corp at the time of the Reorganization Transaction Steps.
- (f) At the time of the Reorganization Transaction Steps, neither Old S Corp nor New S Corp will have outstanding any debt or convertible securities, warrants or options, or any other type of right or instrument that constitutes an equity interest in Old S Corp or New S Corp, or where pursuant to such right or instrument any person could acquire an equity interest in Old S Corp or New S Corp.
- (g) Immediately following Shareholder's contribution of all of the Old S Corp stock to New S Corp, Old S Corp will convert under StateA law from a corporation into a single-member, limited liability company, effective as of the date of the contribution, that is disregarded as separate from its sole member, New S Corp, for Federal tax purposes.

- (h) Immediately following the Reorganization Transaction Steps, Shareholder will own all of the outstanding stock of New S Corp solely by reason of his ownership of all the stock of Old S Corp immediately before the Reorganization Transaction Steps, Shareholder will have received solely New S Corp common stock in the Reorganization Transaction Steps, and the New S Corp shares received by Shareholder will be identical to the Old S Corp shares for which they are exchanged.
- (i) Immediately following the Reorganization Transaction Steps, New S Corp, together with Old S Corp, will hold all the assets held by Old S Corp immediately before the Reorganization Transaction Steps, except for assets used in connection with the Reorganization Transaction Steps to pay expenses incurred by Old S Corp or New S Corp as filing, accounting, legal fees, and/or other expenses incident to the Reorganization Transaction Steps, including the cost of obtaining governmental approvals for the transaction, but the total of all these costs will be less than % of the fair market value of the net assets of Old S Corp immediately before the Reorganization Transaction Steps.
- (j) There is no plan or intention for either Old S Corp or New S Corp to issue any stock in conjunction with or subsequent to the Reorganization Transaction Steps, except as set forth in the steps of the Proposed Transaction.
- (k) There is no plan or intention of New S Corp to terminate the qualified subchapter S subsidiary election within the meaning of Section 1361(b)(3)(B) for QSub2, or to dispose of the assets of, or equity interests in, Old S LLC except as set forth in the steps of the Proposed Transaction.
- (I) For Federal tax purposes, each of LLC1, LLC3, and Old S LLC will be disregarded as separate from their sole member under §§301.7701-2 and -3, effective on their formation, and Old S LLC will subsequently transform into a partnership for Federal tax purposes in the Proposed Transaction while LLC1 and LLC3 will remain disregarded in the Proposed Transaction.
- (m) Immediately before the Reorganization Transaction Steps, the fair market value of Old S Corp's assets will exceed the aggregate amount of its liabilities.
- (n) Old S Corp will not be, immediately before the Reorganization Transaction Steps, and New S Corp will not be, immediately after the Reorganization Transaction Steps, under the jurisdiction of a court in a title 11 or similar case within the meaning of Section 368(a)(3)(A).
- (o) There is no plan or intention to revoke or terminate the S corporation election of New S Corp or Old S Corp (other than Old S Corp's change to a SMLLC as part of the Reorganization Transaction Steps).

- (p) Shareholder, New S Corp and Old S Corp will each pay their own expenses incurred in connection with the Reorganization Transaction Steps.
- (q) All transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to the Reorganization Transaction Steps have been fully disclosed.

International 1 Liquidation

Old S Corp makes the following representations in connection with step 2 of the Proposed Transaction (i.e., International1's merger into disregarded International Holdings LLC, when both are wholly owned by Old S Corp):

- (r) The International Liquidation will be undertaken for valid business purposes.
- (s) The International1 Liquidation will be consummated pursuant to a plan of merger properly adopted by the board of directors of International1 and International Holdings LLC, and shareholder resolutions reflecting Old S Corp approving and authorizing the merger as reflected in the relevant board minutes and legal documents, before its implementation ("International1 Plan of Liquidation").
- (t) International 1 has always been classified as a corporation for Federal income tax purposes under §§301.7701-2 and -3.
- (u) Old S Corp, on the date of adoption of the International1 Plan of Liquidation, and at all times until the International1 Liquidation is completed, will directly own all of International1's single outstanding class of stock and International1 will have no outstanding debt or convertible securities, warrants or options, or any other type of right, instrument or obligation that could be classified as equity of International1, or where pursuant to such right or instrument any person could acquire an equity interest in International1, for Federal tax purposes.
- (v) No shares of International1 stock will be redeemed during the three years preceding the adoption of the International1 Plan of Liquidation, and no shares of International1 stock will be the subject of a basis reduction under Sections 108(b) and 1017.
- (w) By operation of law, all transfers from International1 to Old S Corp deemed to occur for Federal tax purposes in the International Liquidation will occur on the merger of International1 into International Holdings LLC becoming effective.
- (x) Once the International1 Liquidation is effective, International1 will cease to exist, it will cease to be a going concern for Federal tax purposes, and it will not retain any assets or engage in any activity following the International1 Liquidation for Federal tax purposes.

- (y) International 1 will not acquire assets in any nontaxable transaction at any time, except for acquisitions in the ordinary course of its business and acquisitions more than three years preceding the adoption of the International 1 Plan of Liquidation.
- (z) No assets of International1 will be disposed of by International1, except for dispositions in the ordinary course of its business and dispositions more than three years preceding the adoption of the International1 Plan of Liquidation.
- (aa) Except for the Reorganization Transaction Steps, the International1 Liquidation will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation ("Recipient"), of any of the businesses or assets of International1, if persons holding, directly or indirectly, more than % in value of the International1 stock (as determined by application of Section 318(a) as modified by Section 304(c)(3)) also hold, directly or indirectly, more than % in value of the stock in Recipient.
- (bb) Prior to the adoption of the International1 Plan of Liquidation, no assets of International1 will be distributed in kind, transferred or sold, except for transactions in the ordinary course of its business, and transactions more than three years preceding the adoption of the International1 Plan of Liquidation.
- (cc) International1 will report all earned income represented by assets that will be treated as distributed to Old S Corp for Federal tax purposes, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
- (dd) The fair market value of the assets of International1 will exceed its liabilities, both at the date of adoption of the International1 Plan of Liquidation and immediately before the International1 Liquidation is effective.
- (ee) There will be no intercompany debt between International1 (or any entity disregarded as separate from International1 for Federal income tax purposes) and Old S Corp (or any entity disregarded as separate from Old S Corp for Federal tax purposes) during the three years preceding the adoption of the International1 Plan of Liquidation, and none will be cancelled, forgiven, or discounted, except for transactions occurring more than three years preceding the adoption of the International1 Plan of Liquidation.
- (ff) International Holdings LLC will be disregarded under §§301.7701-2 and -3 for Federal income tax purposes as separate from Old S Corp as its sole member, effective on its formation, it will remain disregarded in the Proposed Transaction, and there is no plan or intention to undertake any action (e.g., an election to be treated as an association taxable as a corporation for Federal income tax purposes under §301.7701-3), and no other circumstances will exist (e.g., the

existence of a second regarded owner of an equity interest), following the Proposed Transaction, that will prevent International Holdings LLC from being disregarded as separate from its sole member under §§301.7701-2 and -3 for Federal tax purposes.

- (gg) International1. will not be, immediately before the International1 Liquidation, and International Holdings LLC will not be, immediately after the International1 Liquidation, under the jurisdiction of a court in a title 11 or similar case within the meaning of Section 368(a)(3)(A).
- (hh) Old S Corp is not an organization that is exempt from Federal tax under Section 501, and is only exempt from tax to the extent provided under subchapter S of the Code.
- (ii) Old S Corp, International 1 and International Holdings LLC will each pay their own expenses incurred in connection with the International 1 Liquidation.
- (jj) All transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to the International1 Liquidation have been fully disclosed.

Rulings

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

International 1 Liquidation

- 1. The International1 Liquidation will be treated as International1's complete liquidation into Old S Corp under Sections 332 and 337(a).
- 2. Old S Corp will recognize no gain or loss on its deemed receipt of International1's assets and liabilities in the deemed exchange for its stock in International1. Section 332.
- 3. International1 will recognize no gain or loss on its deemed distribution of assets to Old S Corp in the deemed redemption of all of its stock. Section 337(a).
- 4. Old S Corp's basis in the assets deemed to be received pursuant to the International1 Liquidation will be the same as International1's basis immediately before the International1 Liquidation. Section 334(b)(1).
- 5. Old S Corp's holding period in each asset deemed to be received pursuant to the International1 Liquidation will include International1's holding period. Section 1223(2).

6. Old S Corp will succeed to and take into account International1's items described in Section 381(c) (including its earnings and profits or deficit in earnings and profits), subject to the conditions and limitations specified in Sections 381-84. Section 381(a)(1) and §1.381(a)-1.

Reorganization Transaction Steps

- 7. The Reorganization Transaction Steps will be treated for Federal tax purposes as Old S Corp's deemed transfer to New S Corp of all of Old S Corp's assets in exchange solely for shares of New S Corp stock and New S Corp's assumption of Old S Corp's liabilities, followed by Old S Corp's distribution of those shares of New S Corp stock to Shareholder in complete liquidation of Old S Corp. Rev. Rul. 87-27, 1987-1 C.B. 134.
- 8. The Reorganization Transaction Steps will constitute a reorganization described in Section 368(a)(1)(F), with New S Corp as the surviving corporation, and Old S Corp and New S Corp will each be "a party to the reorganization" under Section 368(b).
- 9. The Pre-Reorganization Transaction Steps and Post-Reorganization Transaction Steps will not be integrated with, nor affect the characterization of the Reorganization Transaction Steps as an F Reorganization. Rev. Rul. 58-422, 1958-2 C.B. 145; Rev. Rul. 96-29, 1996-1 C.B. 50.
- 10. Old S Corp will not recognize gain or loss on the deemed transfer of all of its assets to New S Corp in exchange solely for shares of New S Corp stock, and New S Corp's assumption of Old S Corp's liabilities, followed by the distribution of the New S Corp stock to Shareholder in liquidation. Sections 357(a) and 361(a) and (c).
- 11. New S Corp will not recognize gain or loss on its acquisition of Old S Corp's assets in exchange for shares of New S Corp stock and the assumption of Old S Corp's liabilities. Section 1032(a).
- 12. Shareholder will not recognize gain or loss on the receipt of New S Corp stock in exchange for his Old S Corp stock as part of the Reorganization Transaction Steps. Section 354(a).
- 13. New S Corp's basis in the assets deemed to be transferred by Old S Corp to New S Corp pursuant to the Reorganization Transaction Steps will be the same as Old S Corp's basis immediately before the Reorganization Transaction Steps. Section 362(b).

- 14. New S Corp's holding period for each asset that New S Corp is deemed to receive as part of the Reorganization Transaction Steps will include Old S Corp's holding period. Section 1223(2).
- 15. New S Corp will succeed to and take into account Old S Corp's accumulated adjustment account and items described in Section 381(c) (including its earnings and profits or deficit in earnings and profits), subject to the conditions and limitations specified in Sections 381-84. Section 381(a)(1) and §§1.381(a)-1 and 1.1368-2(d)(2).
- 16. Old S Corp's taxable year will not close as a result of the Reorganization Transaction Steps. §1.381(b)-1(a)(2).
- 17. Old S LLC will continue to use the taxpayer identification number previously assigned to Old S Corp. See Rev. Rul. 73-526, 1973-2 C.B. 404.
- 18. Old S Corp's election to be treated as an S corporation (within the meaning of Section 1362) will not terminate as a result of the Reorganization Transaction Steps and Old S Corp's election will remain in effect for New S Corp as an S corporation. Rev. Rul. 2004-85, 2004-2 C.B. 189; Rev. Rul. 2008-18, 2008-1 C.B. 674.
- 19. Shareholder's basis in the New S Corp stock received in exchange for his Old S Corp stock will equal his basis in his Old S Corp stock immediately before the Reorganization Transaction Steps. Section 358(a)(1).
- 20. Shareholder's holding period in the New S Corp stock received in exchange for his Old S Corp stock will include his holding period in his Old S Corp stock. Section 1223(1).

Distribution

21. The Distribution will be treated as US Holdings LLC's Section 1368(a) distribution to Shareholder.

Caveats

No opinion is expressed or implied about the tax treatment of any other aspect of any transaction or item discussed or referenced in this letter, or about the tax treatment of any condition existing at the time of, or effects resulting from, any transaction or item that is not specifically covered by the above rulings. Specifically no opinion is expressed or implied regarding the contribution by New S Corp to Foundation of its interest in US Holdings LLC or regarding the transfer by PubCo of cash to US Holdings LLC in exchange for an approximate <u>d</u>% to <u>e</u>% membership interest in Old S LLC.

Procedural Statements

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 ruling, it is subject to verification on examination.

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

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, if the taxpayer files its returns electronically, this requirement may be satisfied by attaching a statement to the return that provides the date and control number of this 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,

<u>Lawrence M.</u> Axelrod

Lawrence M. Axelrod, Special Counsel to the Associate Chief Counsel (Corporate)