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Refer Reply To:
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Date:
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LEGEND:

Parent =

Buyer =

Seller 1 =

Seller 2 =

Seller 3 =

Sub 1 =

Sub 2 =

Sub 3 =

FSub 1 =

FSub 2 =

FSub 3 =

FSub 4 =

DRE 1 =

DRE 2 =

DRE 3 =

DRE 4 =

DRE 5 =

DRE 6 =

DRE 7 =

Partnership =

Buyer Affiliate 1 =

Buyer Affiliate 2 =

Buyer Affiliate 3 =

Merger Sub =

Agreement 1 =

Agreement 2 =

A Businesses =

B Business =

State X =

State Y =

State Z =

Country A =

Country B =

Country C =

Date 1 =

Date 2 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

=

Dear :

This letter responds to your August 19, 2011 request for rulings on certain federal income tax consequences of the Proposed Transaction (defined below). The information provided 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 the appropriate parties. 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

Parent, a privately held State X corporation, is the common parent of an affiliated group whose includible corporations join in the filing of a consolidated U.S. federal income tax return (the "Parent Group"). Parent owns all of the outstanding common stock of Sub 1. Sub 1 also has outstanding non-voting preferred stock described in section 1504(a)(4) that is wholly owned by the shareholders of Parent. Sub 1 owns all of the outstanding stock of Sub 2, which wholly owns DRE 1. DRE 1 owns all of the outstanding stock of Seller 1, which wholly owns DRE 2. DRE 2 owns all of the outstanding stock of Seller 2, which is engaged in the A Businesses and B Business both directly and indirectly through its subsidiaries. Among other interests, Seller 2 owns all of the stock in each of Sub 3, a State Y corporation, and Seller 3. Each of Sub 1, Sub 2, Seller 1, Seller 2, and Seller 3 is a State X corporation. Each of DRE 1 and DRE 2 is a State X limited liability company ("LLC") that is disregarded under Treas. Reg. § 301.7701-3 as an entity separate from its owner for U.S. federal income tax purposes (a "disregarded entity").

Sub 3 functions solely as a holding company for a portion of the Parent Group's investment in FSub 1, a Country A entity. FSub 1 is owned approximately a percent by DRE 2, b percent by Sub 3, and c percent by Seller 2. Seller 2 also owns d percent of FSub 2 and d percent of FSub 3 with Seller 3 owning the remaining e percent of each company, both Country B entities. In addition, Seller 2 wholly owns FSub 4, a Country C entity.

Buyer Affiliate 1, a privately held State X corporation, is the common parent of an affiliated group whose includible corporations join in the filing of a consolidated U.S. federal income tax return (the "Buyer Affiliate Group"). Buyer Affiliate 1 owns all of the outstanding stock of Buyer Affiliate 2, which owns all of the outstanding stock of Buyer Affiliate 3. Buyer Affiliate 2 is a State X corporation and Buyer Affiliate 3 is a State Z

corporation. Buyer Affiliate 3 also has existing debt to third party lenders in the amount of \$f.

Parent and its shareholders desired to sell the stock of Seller 2, whereas the shareholders of Buyer and Buyer Affiliate 1 desired to purchase the assets of Seller 2. The Transactions described below are being undertaken in part as a sale of assets and in part as a sale of stock, reflecting a compromise between the parties' conflicting preferences.

Proposed Transaction

To accomplish the foregoing business objectives, the parties proposed the following series of transactions, some of which have been completed (the "Proposed Transaction"):

- (i) On Date 1, certain shareholders of Buyer Affiliate 1 (the "Buyer Investors") formed Partnership, a State X LLC that is classified as a partnership for U.S. federal income tax purposes.
- (ii) On Date 1, the Buyer Investors and Partnership formed Buyer, a State X limited partnership that is classified as a partnership for U.S. federal income tax purposes.
- (iii) On Date 1, Buyer formed DRE 3, a State X LLC, and together Buyer and DRE 3 formed DRE 4, a State X limited partnership. DRE 3 and DRE 4 are each classified as a disregarded entity.
- (iv) On Date 1, DRE 3 and DRE 4 formed DRE 5, a State X limited partnership that is classified as a disregarded entity.
- (v) On Date 1, DRE 3 and DRE 5 formed DRE 6, a State X limited partnership that is classified as a disregarded entity. DRE 5 also formed Merger Sub, a State X corporation.
- (vi) On Date 2, DRE 6 formed DRE 7, a Country C entity that is classified as a disregarded entity.
- (vii) Buyer Affiliate 1 will become a wholly owned subsidiary of DRE 5, which will occur either pursuant to an exchange transaction or a merger. In the equity exchange or merger, the Buyer Investors and other stockholders of Buyer Affiliate 1 will receive limited partnership interests in Buyer in exchange for their stock in Buyer Affiliate 1, and Buyer Affiliate 1 stock options will become Buyer options.

- (viii) The Buyer Investors will contribute approximately \$g to Buyer in exchange for limited partnership interests of Buyer.
- (ix) Buyer will contribute approximately \$g that was received in step (viii) to DRE 4.
- (x) DRE 4 will contribute approximately \$g that was received in step (ix) to DRE 5.
- (xi) DRE 5 will (a) borrow from third party lenders (the "Senior Secured Lenders") approximately \$h of senior secured term loans (the "Senior Secured Loans"), (b) issue to third parties up to \$i in aggregate principal amount of senior unsecured notes (the "Notes"), and (c) if and to the extent less than approximately \$i in aggregate principal amount of Notes are issued, borrow senior unsecured increasing rate loans (the "Bridge Loan") from third party lenders. DRE 4 will guarantee the Senior Secured Loans and will pledge its interest in DRE 5. Buyer Affiliate 1 and its subsidiaries will guarantee the Senior Secured Loans and pledge their assets, including their equity interests in their subsidiaries as security for the Senior Secured Loans. Buyer Affiliate 1 and its subsidiaries will guarantee the Notes and the Bridge Loan (if any).
- (xii) DRE 5 will transfer approximately \$j and \$n to DRE 6 in exchange for limited partnership interests and a \$k note.
- (xiii) DRE 5 will transfer approximately \$l to Merger Sub in exchange for common stock and a \$m note.
- (xiv) DRE 6 will transfer approximately \$n to DRE 7 in exchange for common equity and a note.
- (xv) DRE 5 will transfer \$f to Buyer Affiliate 3 in exchange for a \$f note.
- (xvi) Buyer Affiliate 3 will repay its existing debt of \$f owed to third party lenders.
- (xvii) Prior to step (xviii), Seller 2 and Sub 3 will undertake a series of transactions involving a transfer of their interests in FSub1 to DRE2, after which Seller 2 will no longer own any interest in either Sub 3 or FSub 1.
- (xviii) DRE 7 will acquire all of the assets of FSub 4 relating to the A Businesses, as well as all of the foreign assets of Seller 2 relating to the A Businesses for an estimated amount of approximately \$n of cash and the assumption of certain liabilities.
- (xix) DRE 6 will acquire: (a) assets of Seller 3 relating to the A Businesses, excluding any assets related to the B Business and Seller 3's interests in FSub 2 and FSub 3; and (b) all of the remaining assets of the A Businesses (excluding those sold

to DRE 7 in step (xviii)) from Seller 2, respectively, for an estimated aggregate amount of \$1 of cash and assumption of certain liabilities (together with step (xviii), the "Asset Sale") pursuant to Agreement 1. DRE 6 will pledge its assets to DRE 5's Senior Secured Lenders.

- (xx) FSub4 will distribute to Seller 2 the amount of cash equal to the sales proceeds (net of expenses, if any) received for the A Businesses assets of FSub4 from DRE 7 in step (xviii) (the "FSub 4 Cash Distribution").
- (xxi) Seller 3 will distribute to Seller 2 the amount of cash equal to the sales proceeds (net of expenses, if any) received for the A Businesses assets of Seller 3 from DRE 6 in step (xix)(a) (the "Seller 3 Cash Distribution").
- (xxii) Seller 2 will further distribute to DRE 2 the amount of cash equal to the sales proceeds (net of expenses, if any) received in the Asset Sale from DRE 7 and DRE 6 in step (xviii) and step (xix), respectively, plus the cash received from FSub 4 and Seller 3 in the FSub 4 Cash Distribution and the Seller 3 Cash Distribution, respectively (the "Cash Distribution").
- (xxiii) DRE 2 will further distribute the proceeds of the Cash Distribution to Seller 1. Seller 1 expects to use the Cash Distribution to repay outstanding indebtedness of Seller 1 or its subsidiaries owed to third party lenders and pay certain expenses (including state taxes) related to the Transactions. Seller 1 will pay on behalf of Parent the U.S. federal income tax liability related to the Asset Sale and the FSub4 Cash Distribution, or it will distribute an amount (through the ownership structure) to Parent and Parent will pay such liability.
- (xxiv) On the business day immediately following the Asset Sale, the FSub4 Cash Distribution, the Seller 3 Cash Distribution, and the Cash Distribution, Merger Sub will merge with and into Seller 2 (the "Merger") pursuant to Agreement 2. Seller 1 will receive approximately \$1 of cash consideration. Following the Merger, Seller 2 and its domestic subsidiaries will provide guarantees of the Senior Secured Loans, the Notes, and the Bridge Loans and pledge certain of their assets to the Senior Secured Lenders.
- (xxv) DRE 5 is expected to thereafter contribute all of the shares of Buyer Affiliate 1 to Seller 2.

Representations

Buyer makes the following representations regarding the Proposed Transaction:

- (a) The A Businesses will be operated by Buyer as distinct businesses separate from the remaining business of Seller 2. Buyer has no plan or intention to combine the A Businesses with Seller 2.
- (b) DRE 5, DRE 6, and DRE 7 are classified as disregarded entities for U.S. federal income tax purposes and are ultimately owned by Buyer and DRE 3, which are classified as a partnership and a disregarded entity owned by a partnership, respectively, for U.S. federal income tax purposes. None of DRE 5, DRE 6, DRE 7, Buyer, DRE 4, Partnership, or DRE 3 will make an election to be classified as a corporation for U.S. federal income tax purposes.
- (c) Buyer's ownership of the stock of Seller 2 will not be attributed to any corporation under section 318(a)(2)(A) and (B), resulting in such corporation, together with its affiliates, being treated as owning an aggregate of at least 50 percent of the stock of Seller 2 owned by Buyer.

Rulings

Based solely on the information submitted and the representations made herein, we rule as follows:

- (1) Each of Seller 2 and Seller 3 will recognize gain on the Asset Sale to DRE 6, which gain will be included in the consolidated taxable income of the Parent Group.
- (2) For purposes of calculating Seller 1's gain or loss recognized in respect of its shares of Seller 2 common stock sold in the Merger, Seller 1's basis in the stock of Seller 2 will be, immediately prior to the Merger:
 - (a) increased to reflect the gain recognized by Seller 2 and Seller 3 on the Asset Sale to DRE 6 and DRE 7 and the portion of the FSub 4 Cash Distribution treated as taxable income or gain to Seller 2 (Treas. Reg. § 1.1502-32(b)(2)(i));
 - (b) reduced to reflect the amount of the distribution by Seller 2 of the Cash Distribution representing the cash proceeds (net of expenses, if any) from the Asset Sale and the FSub 4 Cash Distribution (Treas. Reg. § 1.1502-32(b)(2)(ii) and (iv));
 - (c) reduced to reflect the U.S. federal income tax expense recognized by Seller 2 and Seller 3 on the Asset Sale and as a result of the FSub 4 Cash Distribution as a noncapital, nondeductible expense (Treas. Reg. § 1.1502-32(b)(2)(iii));
 - (d) reduced to reflect the state and local tax expense recognized by Seller 2

and Seller 3 on the Asset Sale and as a result of the FSub 4 Cash Distribution (Treas. Reg. § 1.1502-32(b)(2)(i)); and

- (e) increased by the amount of the U.S. federal income tax expense and state and local tax expense of Seller 2 and Seller 3 to reflect a deemed contribution to capital of Seller 2 for the taxes to be paid by Parent or Seller 1 on behalf of Parent (Treas. Reg. § 1.1502-32(b)(3)(ii) and (iv)(D); Treas. Reg. § 1.1552-1(b)(2); *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952)).
- (3) The Proposed Transaction, by itself, will not be treated as a qualified stock purchase within the meaning of section 338(d)(3). Therefore, the Proposed Transaction, by itself, will not result in an application of the consistency rules of section 338(e) and Treas. Reg. § 1.338-8 to cause Buyer to take a carryover basis in the assets of the A Businesses.

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. Specifically, aside from Ruling 2, no rulings have been requested and no opinion is expressed or implied concerning the U.S. federal tax consequences of certain aspects of the Proposed Transaction involving the sale of foreign assets and distributions from foreign entities, including steps (xviii) and (xx).

Transactions entered into subsequent to the Proposed Transaction may affect whether the Proposed Transaction, in combination with subsequent transactions, is treated as a qualified stock purchase within the meaning of section 338(d)(3), and may also affect whether the Proposed Transaction, in combination with subsequent transactions, will result in an application of the consistency rules of section 338(e) and Treas. Reg. § 1.338-8. Therefore, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item that arises subsequent to the Proposed Transaction.

Procedural Matters

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,

Douglas C. Bates
Reviewing Attorney, Branch 5 (Corporate)

cc: