

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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CC:CORP:BO1

PLR-143237-04

Date:

October 29, 2004

In Re:

Parent =

Business M =

Foreign Parent =

Subsidiary =

X Corp =

Parent LLC =

Lender =

Bank =

Date 1 =

Date 2 =

Date 3 =

N =

Year O =

P =

Q =

R =

S =

Date 4 =

Dear

This letter replies to your letter of August 5, 2004, submitted on behalf of Parent, requesting rulings as to certain federal income tax consequences of a proposed transaction. The following is a summary of the information in your letter and subsequent correspondence.

Summary of Facts

Parent is the common parent of a consolidated group engaged in Business M and is a subsidiary of Foreign Parent.

Subsidiary is a holding company formed by Parent on Date 1. Certain assets, including the stock of Corp X, were contributed by members of the Parent consolidated group to Subsidiary. Subsidiary conducted an initial public offering of its common stock on Date 2. After Date 2, Parent owned less than 80 percent of the stock of Subsidiary, and as a result Subsidiary was disaffiliated from Parent's consolidated group. Subsidiary became the common parent of a separate consolidated group.

Thereafter, the Subsidiary consolidated group had been generating, and was projected to generate, income, while the Parent consolidated group had a substantial net operating loss carryover that it wished to offset against the income generated by the Subsidiary consolidated group. Accordingly, Parent wanted to reaffiliate with Subsidiary, but did not want to use cash to purchase Subsidiary stock. Parent obtained financing to purchase sufficient Subsidiary common stock to allow it to reaffiliate with Parent as described below.

On Date 3, Parent LLC, which is wholly owned by Parent and is a disregarded entity under § 301.7701-3(b)(1)(ii) of the Income Tax Regulations, purchased N shares

of Subsidiary common stock from Lender, which was affiliated with Bank, in exchange for two promissory notes (the Old Notes) due in Year O and with an aggregate principal amount of P. The Old Notes included exchange rights (the Old Options) allowing Lender to exchange each Old Note for Subsidiary common stock at a price of \$Q per share, which was the stock market price of Subsidiary common stock on Date 3. Each Old Option may only be exercised during an "exchange period," which for one Old Note is R, and for the other Old Note is S. The interest rate on the Old Notes is substantially less than Parent's straight-debt borrowing rate, reflecting the value of the Old Options.

Parent LLC pledged to Lender the Subsidiary stock that the Notes were exchangeable into, but the pledge allows Parent generally to vote and receive cash distributions on the pledged Subsidiary shares.

As a result of the purchase, Parent's ownership of Subsidiary stock increased to more than 80 percent, allowing Subsidiary to reaffiliate with the Parent consolidated group. Parent has taken action to obtain an automatic waiver from the Service from the 60-month waiting period before reconsolidation under § 1504(a)(3), in accordance with § 5 of Rev. Proc. 2002-32, 2002-1 C.B. 959.

The stock market price of Subsidiary stock has increased to more than the exercise price of the Old Options. The exercise of the Old Options by Lender would again disaffiliate Subsidiary from Parent. Parent now proposes that, on or before Date 4, which is during the "exchange period" for one of the Old Notes, Parent LLC will repay both Old Notes using four new notes (the New Notes) having an aggregate principal amount equal to the fair market value of the aggregate amount of Subsidiary stock that the Old Notes could have been exchanged into on that date. Because the Subsidiary stock is projected to have appreciated as of the date the Old Notes are repaid, the principal of the New Notes is expected to be higher than that of the Old Notes. The New Notes will also have exchange rights (the New Options) that allow the holder thereof to purchase the Subsidiary stock during "exchange periods," each ending within 24 months after the issuance of the New Notes. The exercise price of the New Options will be no less than the market price of the Subsidiary stock as of the issuance date of the New Notes, subject to customary anti-dilution adjustments. Because the Subsidiary stock has appreciated, the exercise price of the New Options will be higher than that of the Old Options. Immediately after the exchange of the Old Notes for the New Notes, Lender will transfer the new notes to a non-banking affiliate of the Lender for fair market value consideration.

Ruling

Based solely on the information submitted, we rule that the transactions in which the New Notes are issued in satisfaction of the Old Notes and the New Notes are transferred to an affiliate of Lender will not cause either the Old Options or the New Options to be treated as exercised under § 1.1504-4(b)(2) of the regulations.

Caveats

No opinion is expressed about the tax treatment of the transaction under 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 ruling. In particular, no opinion is expressed about (i) whether Subsidiary is affiliated with Parent immediately before the issuance of the New Notes; (ii) the Federal income tax consequence or characterization of any event after the issuance and transfer described above of the New Notes on the affiliation of Subsidiary with Parent; or (iii) the federal income tax consequences (other than those specifically covered by the above ruling) of the issuance of the New Notes in satisfaction of the Old Notes

Procedural Statements

This ruling 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 the 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 your authorized representative.

Sincerely,

Victor Penico

Victor Penico
Senior Counsel, Branch 1
Office of Associate Chief Counsel
(Corporate)

cc: