Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:CORP:B03-PLR-161798-02
Date:
May 13, 2003

Re:

Common Parent =

Sub 1 =

Sub 1A =

Holdings =

Sub 1's LLC =

Sub 2 =

Sub 3 =

Sub 3A =

LLC 4 =

LLC 5 =

GP =

LP =

New LLC =

F Sub 6 =

F Sub 7 =

F Sub 8 =

F Sub 9 =

F Sub 10 =

Regional Operations Center 11 =

Regional Operations Center 12 =

Regional Operations Center 13 =

Region 14 =

Region 15 =

Region 16 =

Area 17 =

Product A =

Business E =

Country B =

Country C =

State D =

f =

g =

h =

Dear :

We respond to your November 12, 2002, request for rulings on certain Federal income tax consequences of a partially consummated and proposed transaction. Additional information was received in correspondence dated December 5, 2002, January 13, 2003, January 27, 2003, March 13, 2003, and April 8, 2003. The information submitted for consideration is substantially as set forth below.

Common Parent develops and manufactures Product A and engages in Business E directly and through its subsidiaries. Common Parent's operations are organized into regions supported by regional operations centers located in Regional Operations Center 11, Regional Operations Center 12, and Regional Operations Center 13. Regional Operations Center 11 supports Region 14, Regional Operations Center 12 supports Region 15, and Regional Operations Center 13 supports Region 16.

Common Parent wholly owns Sub 1, a domestic corporation and a member of the Common Parent's consolidated group. Sub 1 holds Business E rights to distribute Product A. Like Common Parent's overall operations, Sub 1's operations are divided into Region 14, Region 15, and Region 16. Sub 1 has two wholly owned corporate subsidiaries, Holdings and Sub 1A, neither of which participates in Sub 1's Business E. Holdings holds investment assets, and Sub 1A facilitates certain Business E activities in the Area 17 market. Sub 1 also performs certain administrative and management services for affiliates including but not limited to a general partnership (GP) described below.

Common Parent also wholly owns Sub 2, a domestic corporation and a member of Common Parent's consolidated group. Common Parent and Sub 2 are the sole partners, f percent and g percent respectively, of GP, a State D general partnership.

Common Parent wholly owns a Country B corporation, Sub 3, through a disregarded entity, LLC 4. Common Parent is the sole member of LLC 4, a single member State D limited liability company. LLC 4 operates as a holding company disregarded as an entity separate from Common Parent for Federal tax purposes pursuant to § 301.7701-3 of the Procedure and Administration Regulations.

Sub 3 is a holding company that owns all the shares of Sub 3A, a Country B corporation disregarded as an entity separate from Sub 3 for Federal tax purposes. Sub 3A is in the business of holding Business E rights. Sub 3 also owns all the shares

of F Sub 6, a holding company that is a Country B formed and resident corporation. F Sub 6 owns all the shares of F Sub 7, a Country C holding company. F Sub 7 owns all the shares of F Sub 8, also a Country C holding company. F Sub 8 owns all the shares of F Sub 9, another Country C holding company. F Sub 9 owns all the shares of F Sub 10, a Country B corporation. F Sub 10 is engaged in the manufacture, development, and distribution of Product A throughout the Region 14 sales region. This chain of foreign entities (other than Sub 3) are all disregarded for Federal tax purposes pursuant to § 301.7701-3.

Common Parent would like to transfer certain businesses in Region 14 to F Sub 10 for valid business purposes. To accomplish this result, Common Parent has partially completed and proposes the following transaction:

Step 1.

(i) Sub 1 has contributed certain existing Business E rights supporting certain businesses in the Region 14 territory (the Existing Business E Rights) to a newly formed single member limited liability company, Sub 1's LLC, a disregarded entity for Federal tax purposes that is wholly owned by Sub 1;

(ii) Common Parent contributed cash equal to the value of Sub 2's g percent general partnership interest in GP to a newly formed single member limited liability company, New LLC, a disregarded entity for Federal tax purposes that is wholly owned by Common Parent.

Step 2. New LLC purchased at fair market value Sub 2's g percent general partnership interest in GP. This caused a termination of GP for Federal tax purposes because GP has a single owner, Common Parent (through New LLC, a disregarded entity wholly owned by Common Parent).

Step 3. Sub 1 entered into the following agreements:

(i) Sub 1's LLC entered into a license agreement with Sub 3A whereby Sub 1's LLC granted Sub 3A a non-exclusive license for Existing Business E Rights in exchange for which Sub 3A will pay a multi-year, declining rate royalty to Sub 1's LLC. The royalty rate is based on an economic analysis of the value of the Existing Business E Rights. A pre-payment of the entire amount of the royalty may be required upon execution of the license agreement, with annual true-up payments to insure the payments are arms-length. Although the legal contracting parties are Sub 3A and Sub 1's LLC, for Federal tax purposes, Sub 1, the sole member-owner of Sub 1's LLC, is viewed as entering into the agreement with Sub 3, the sole member-owner of Sub 3A. For purposes of this request, the agreement between Sub 1's LLC or its single member-owner, Sub 1, and Sub 3A, or its single member-owner, Sub 3, is collectively referred to as the "Buy-In Agreement."

(ii) Sub 1 transferred to GP (now a disregarded entity owned by Common Parent) the right to acquire from Common Parent future improvements to Business E supporting certain businesses for the Region 14 territory, at the then fair market value of such improvements (the Future Business E Rights). Immediately thereafter, GP contributed the Future Business E Rights to a newly formed single member limited liability company, LLC 5, a disregarded entity for Federal tax purposes that is wholly owned by GP, but treated as wholly owned by Common Parent for Federal tax purposes;

(iii) Sub 3A entered into a "Qualified Cost Sharing Arrangement," as defined by § 1.482-7(b) of the Income Tax Regulations, with LLC 5 (a disregarded entity owned by Common Parent) with respect to the Future Business E Rights. For purposes of this request, the cost-sharing arrangement between LLC 5 (or its sole member owner, Taxpayer) and Sub 3A (or its single member owner, Sub 3), is collectively referred to as the "Cost Sharing Arrangement;"

(iv) Sub 3A entered into a non-exclusive license agreement with F Sub 10 granting F Sub 10 the Existing Business E Rights and Future Business E Rights in order to conduct Business E in the Region 14 territory in exchange for which F Sub 10 will pay a royalty based upon Business E revenues. Because Sub 3 is the single member owner of both Sub 3A and F Sub 10, the agreement has no significance for Federal tax purposes; and

(v) For a limited period of time, Sub 1 will license back from F Sub 10 or its single member-owner, Sub 3, the Existing Business E Rights and the Future Business E Rights on a non-exclusive basis in exchange for a royalty. No valuation of Sub 1 was done; however, Taxpayer can conservatively estimate that the Existing Business E Rights and Future Business E Rights transferred in Step 3(i) constitute no more than h percent of the pre-liquidation value of Sub 1.

Step 4. For valid business purposes, in the subsequent taxable year of Common Parent's consolidated group, following the expiration of certain Sub 1 arrangements with third parties and as soon as administratively feasible, Sub 1 will enter into a merger agreement (the Plan of Merger) with Taxpayer providing for the following steps (collectively referred to as the Merger):

(i) Common Parent will contribute: (a) New LLC (which continues to hold the g percent interest in GP) and (b) its direct f percent interest in GP to the capital of Sub 1 in exchange for additional Sub 1 common stock;

(ii) Sub 1 will then contribute all of its assets, other than stock of Holdings, stock of Sub 1A, and Sub 1's membership interest in New LLC, to GP; and

(iii) Sub 1 will merge upstream with and into Common Parent with Common Parent surviving.

The following representations have been made in connection with the proposed transaction:

Section 332 Representations

(a) Common Parent, on the date of the adoption of the Plan of Merger, and at all times until the final liquidating distribution is completed, will be the owner of at least 80 percent of the single outstanding class of Sub 1 stock.

(b) No shares of Sub 1 stock will have been redeemed during the 3 years preceding the adoption of the Plan of Merger of Sub 1.

(c) All distributions from Sub 1 to Common Parent pursuant to the Plan of Merger will be made within a single taxable year of Sub 1.

(d) As soon as the first liquidating distribution has been made, Sub 1 will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and distributing its remaining assets to its shareholders.

(e) Sub 1 will retain no assets following the final liquidating distribution.

(f) Except for a contribution from Common Parent of distribution rights for a particular product, stock of Sub 1A, and periodic improvements to Future Business E Rights supporting certain businesses in exchange for Sub 1 stock, Sub 1 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than 3 years prior to the date of adoption of the Plan of Merger.

(g) Except as discussed above in the proposed transaction, the liquidation of Sub 1 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 Sub 1, if persons holding, directly or indirectly, more than 20 percent in value of the Sub 1 stock also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of § 318(a) of the Code as modified by § 304(a)(3).

(h) Prior to adoption of the Plan of Merger and Step 3(ii), no assets of Sub 1 will have been distributed in kind, transferred, or sold to Common Parent except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than 3 years prior to adoption of the

Merger plan.

(i) Sub 1 will report all earned income represented by assets that will be distributed to its shareholders such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

(j) The fair market value of the assets of Sub 1 will exceed its liabilities both at the date of the adoption of the Plan of Merger and immediately prior to the time the first liquidating distribution is made.

(k) There is no intercorporate debt existing between Common Parent and Sub 1 and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than 3 years prior to the date of the adoption of the Merger plan.

(l) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with or in any way related to, the proposed Merger of Sub 1 have been fully disclosed.

Taxpayer also represents the following:

(m) The royalty payments received by Sub 1's LLC for its transfer of Existing Business E Rights to Sub 3A will be commensurate with income.

(n) With respect to GP, all items of income and loss, and distributions are shared in the same ratio as the percentage ownership. Each partner’s tax basis in its partnership interest is equal to its allocable share of the partnership’s basis in its assets.

(o) GP’s assets consist of current assets (e.g. cash, accounts receivables, prepaid expenses, and inventory). Additionally, it owns a limited partnership interest in LP.

(p) Sub 2 will not receive cash from GP in excess of its basis in its GP partnership interest in the deemed liquidating distribution from GP.

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

(1) The merger of Sub 1 into Common Parent will qualify as a tax-free liquidation under § 332 (§ 1.332-2(d)).

(2) The transfer of assets by Sub 1 to GP in Step 4(ii) of the proposed transaction will not be treated as a transfer to a non-member of the Common Parent consolidated group, which would result in an acceleration of Sub 1's intercompany item under § 1.1502-13(d).

(3) Under Rev. Rul. 99-6, 1999-1 C.B. 432, GP terminates under § 708(b)(1)(A) when Common Parent (through New LLC) purchases Sub 2's entire partnership interest in GP because GP will have a single owner, Common Parent (and New LLC, a disregarded entity wholly-owned by Common Parent). Accordingly, Sub 2 will treat the transaction as a sale of its partnership interest and determine its income, gain and/or loss under §§ 741 and 751(a).

(4) In addition, under Rev. Rul. 99-6, GP is deemed to make a liquidating distribution of all of its assets to Sub 2 and Common Parent, and following this distribution, Common Parent is treated as acquiring the assets deemed to have been distributed to Sub 2 in liquidation of Sub 2's partnership interest. Common Parent's basis in the assets attributable to Sub 2's partnership interest equals the purchase price of Sub 2's partnership interest under § 1012. This basis is allocated among the assets under § 1.1016-1(b)(4). Section 735(b) does not apply with respect to the assets Common Parent is deemed to purchase from Sub 2.

(5) The sale by Sub 2 of its g percent interest in GP to Common Parent will be an intercompany transaction as described in § 1.1502-13(b).

(6) Sub 2's intercompany items are the income, gain, and/or loss realized from the sale of its g percent partnership interest in GP (§ 1.1502-13(b)(2)).

(7) The income, gain, and/or loss from the sale of Sub 2's partnership interest (the intercompany item) can be accounted for under the matching rule. Common Parent's corresponding items will be Common Parent's items with respect to the assets that Common Parent is described as acquiring in Ruling (4).

(8) Common Parent's recomputed corresponding items will be based on the bases that Sub 2 would have had in the assets had those assets been received in a liquidating distribution.

Except as specifically set forth above, we express no opinion concerning the tax consequences of the proposed transaction under any other provision of the Code and regulations, or about the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction. Specifically, no opinion is expressed concerning (i) the federal income tax treatment of the transactions between LLC 5 and Sub 3A pursuant to the Cost Sharing Arrangement; (ii) the application of § 482 to the transactions between LLC 5 and Sub 3A pursuant to the Cost Sharing Arrangement; (iii) the application of § 367 to any of the steps in the transaction described in this letter ruling. In particular, no opinion is expressed as to the application of § 367(d) to the intangible transfers that occur in certain steps of the transaction.

The rulings contained in this letter are predicated upon the facts and

representations submitted by the taxpayers and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for a ruling. Verification of the information, representations, and other data may be required as part of the audit process. See sections 12.04 and 12.05 of Rev. Proc. 2003-1, 2003-1 I.R.B. 1, 44, which discuss in greater detail the revocation or modification of ruling letters. However, when the criteria in section 12.06 of Rev. Proc. 2003-1, 2003-1 I.R.B. 1, 45, are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

This ruling is directed only to the taxpayer(s) 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 should be attached to the federal income tax returns of the taxpayers involved for the taxable year in which the transaction covered by this ruling letter is consummated.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your representatives.

Sincerely,

Filiz A. Serbes

Filiz A. Serbes
Chief, Branch 3
Office of Associate Chief Counsel (Corporate)

cc: