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PLR-143620-07

Date:
January 29, 2008

LEGEND

Company =

Company Official 1 =

Company Official 2 =

Date 1 =

Date 2 =

Date 3 =

Sub 1 =

Sub 2 =

Entity A =

Entity B =

Entity C =

Entity D =

Entity E =

Entity F =

Entity G =

Entity H =

Entity I =

Entity J =

A =

B =

C =

D =

E =

F =

G =

H =

I =

J =

K =

L =

M =

N =

O =

P =

Q =

R =

S =

T =

U =

V =

W =

Class X =

Class Y =

Dear :

This letter responds to a letter dated September 25, 2007 requesting rulings under section 382 of the Internal Revenue Code. Additional information was submitted in letters dated January 2 and January 28, 2008. The material information submitted is summarized below.

SUMMARY OF FACTS

Company, a publicly traded corporation, is the common parent of an affiliated group of corporations, including Sub 1 and Sub 2, which files a consolidated federal income tax return. Company is also a loss corporation within the meaning of section 382.

On Date 1, the Company and all of its domestic subsidiaries (other than Sub 1 and Sub 2) filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court in order to use the court-supervised reorganization process to effectuate its recapitalization. The Company emerged from bankruptcy on Date 2.

All of the outstanding capital stock of the Company held by shareholders as of Date 1 was extinguished under the Bankruptcy Court Order. The new capital stock authorized by the Bankruptcy Court Order was distributed to persons that were in two classes of creditors filing claims in the bankruptcy – Class X and Class Y creditors. These two classes of creditors received A shares of Company stock directly as a result of their claims and also received subscription rights permitting them to purchase B shares of additional Company stock at a significant discount to the anticipated market

price of the Company stock. These subscription rights provided the two classes of creditors additional value for their claims and the Company with additional funding as it emerged from bankruptcy. Each subscription right required the holder to deposit the subscription price with the Bankruptcy Court's appointed agent on or before Date 3 (which was before Date 2). The shares issued in exchange for these subscription rights were distributed to the Company shareholders on Date 2 or shortly thereafter. The only other Company stock issued as a consequence of the Bankruptcy Court's Order were C shares which were issued to a subset of the Class X creditors who received subscription rights to purchase Company stock in exchange for their agreement to act as backstop purchasers of any unsubscribed subscription right shares. Thus, on Date 2, the date of emergence from bankruptcy, or shortly thereafter, the Company had D shares of stock outstanding (A shares + B shares + C shares). This stock was held by the following shareholders:

Class X Creditors:

a. Issued directly in exchange for debt – A shares,

b. Issued in exchange for debt-related subscription rights to original subscription rights holders – S shares,

c. Issued to backstop purchasers in exchange for debt-related subscription rights acquired as a result of the backstop agreement – T shares,

d. Issued to backstop purchasers in exchange for agreeing to act as backstop purchasers – C shares.

Class Y Creditors:

a. Issued directly in exchange for debt – U shares,

b. Issued in exchange for debt-related subscription rights – V shares.

Immediately after the emergence of the Company from bankruptcy, four shareholders filed Schedules 13D and 13G with the Securities and Exchange Commission ("SEC") with respect to the Company.

Entity A Schedule 13D. Entity A filed a Schedule 13D which noted that beneficial ownership of E shares of Company stock belonged to two funds for which Entity A acted as investment advisor – Entity B and Entity C – each of which represented ownership of more than five percent of the Company stock. Entity B received F shares directly in exchange for its debt in the Company and debt-related subscription rights and G shares in its capacity as backstop purchaser (including shares received by reason of its agreement to act as a backstop purchaser). Entity C received H shares directly in exchange for its debt in the Company and debt-related subscription rights and I shares

in its capacity as backstop purchaser (including shares received by reason of its agreement to act as a backstop purchaser).

Entity D and Entity E Schedule 13D. Entity D and Entity E filed a Schedule 13D which noted that beneficial ownership of J shares of Company stock belonged to three funds for which Entities D and E acted as investment advisors – Entity F, Entity G and Entity H – only one of which, Entity F, owned more than five percent of the Company stock. Entity F received K shares directly in exchange for its debt in the Company and debt-related subscription rights and L shares in its capacity as backstop purchaser (including shares received by reason of its agreement to act as a backstop purchaser). Entity G and Entity H received in the aggregate M shares directly in exchange for their debt in the Company and debt-related subscription rights and N shares in their capacity as backstop purchasers (including shares received by reason of their agreement to act as backstop purchasers).

Entity I Schedule 13G. Entity I filed a Schedule 13G which noted that beneficial ownership of O shares of Company stock belonged to an undisclosed number of funds for which Entity I acted as investment advisor. None of the funds for which Entity I acted as investment advisor owned more than five percent of the Company stock. The Entity I managed funds received O shares directly in exchange for their debt in the Company and debt-related subscription rights. The Entity I managed funds did not act as backstop purchasers and therefore were not entitled to any portion of the backstop purchaser shares (including shares available to persons agreeing to act as backstop purchasers).

Entity J Schedule 13D. Entity J filed a Schedule 13D which noted that beneficial ownership of P shares of Company stock belonged to an undisclosed number of funds for which Entity J acted as investment advisor. None of the funds for which Entity J acted as investment advisor owned more than five percent of the Company stock. The Entity J managed funds received Q shares directly in exchange for their debt in the Company and debt-related subscription rights and R shares in their capacity as backstop purchasers (including shares received by reason of their agreement to act as backstop purchasers).

Company had D shares of stock outstanding on Date 2 or shortly thereafter. Out of these D shares, W shares (a number greater than 50 percent) were owned by beneficial owners owning less than 5 percent of the stock (not counting shares received by such owners in their capacities as backstop purchasers, including shares received by reason of their agreement to act as backstop purchasers). W shares is determined by reducing D shares by the number of shares owned by Entity B, Entity C and Entity F (i.e., F shares + G shares + H shares + I shares + K shares + L shares), as well as by any other shares issued to persons in their capacities as backstop purchasers, including shares received by reason of their agreement to act as backstop purchasers (i.e., N shares + R shares).

REPRESENTATIONS

The Company makes the following representations:

1. The stock of Company is publicly traded.
2. Company is a loss corporation as defined in section 382(k)(1).
3. Company emerged from protection under Chapter 11 of the Bankruptcy Code with a net operating loss carryforward.
4. Company emerged from protection under Chapter 11 of the Bankruptcy Code under a plan of reorganization that resulted in an ownership change within the meaning of section 382(g)(1) on Date 2.
5. Each of Entity A, Entity D, Entity E, Entity I and Entity J is an investment advisor as defined in 17 CFR 240.13d-1(b)(1)(ii)(E).
6. Only Entity B, Entity C and Entity F are beneficial owners of five percent or more (by vote or value) of Company stock, taking into account the application of the attribution rules of section 318 as modified by section 382(l)(3).
7. Each of Entity A, Entity D, Entity E, Entity I and Entity J has the authority, on behalf of its respective fund clients, to vote Company stock, acquire or dispose of shares of Company stock, use a common custodian to hold the stock, file Schedules 13D or 13G with respect to Company stock, communicate with Company management regarding the Company's operations, management, or capital structure, and communicate with fund clients or with prospective clients.
8. Except as noted in the facts above, the Company has no knowledge of: (1) the specific fund clients of Entity A, Entity D, Entity E, Entity I and Entity J; (2) the existence of any group of persons who have or had a formal or informal understanding among themselves to make a coordinated acquisition of Company stock using investments made by or through Entity A, Entity D, Entity E, Entity I and Entity J and their fund clients; (3) any SEC filings affirming that Entity A, Entity D, Entity E, Entity I and Entity J fund clients should be treated as a group; (4) an entity or individual (through application of the attribution rules of section 318 as modified by section 382(l)) that owns five percent or more (by vote or value) of Company stock when such individual or entity's direct ownership in Company stock is combined with its ownership of Company stock acquired by or through Entity A, Entity D, Entity E, Entity I and Entity J and their fund clients; or (5) any activities performed by Entity A, Entity D, Entity E, Entity I or Entity J that would be outside the scope of an investment advisor.
9. Beyond the information set forth above, the management of the Company has no actual knowledge relating to the ownership of Company stock that is the subject of the Schedule 13D and 13G filings made by Entity A, Entity D, Entity E, Entity I and Entity J.

Company Official 1 and Company Official 2 have each represented in affidavit form to the effect that:

10. Nothing in the formulation of the bankruptcy plan of reorganization made it evident to the Company that any of the Class X or Class Y creditors who received stock in the Company as a result of the Bankruptcy Court Order had not beneficially owned the indebtedness that was the subject of such creditors' claims for a period of 18 months or more as of Date 1.

Entity A, Entity D, Entity E, Entity I and Entity J further represent:

11. Each of Entity A, Entity D, Entity E, Entity I and Entity J is an investment advisor as defined in 17 CFR 240.13d-1(b)(1)(ii)(E).

12. The funds that each of Entity A, Entity D, Entity E, Entity I and Entity J manage did not acquire any Company debt or equity securities for the purpose of any of the funds accumulating ownership of any particular minimum percentage of the total outstanding Company debt or equity securities.

13. The funds that each of Entity A, Entity D, Entity E, Entity I and Entity J manage did not acquire the Company debt or equity securities for the purpose of gaining control of the Company.

14. Each of Entity A, Entity D, Entity E, Entity I and Entity J is required to direct any dividend from the Company or proceeds from a sale of Company stock to the specific funds that it manages, less any fees that it is allowed to retain pursuant to such entity's investment advisory agreements with its managed funds.

15. No single fund which Entity J advises owns more than five percent of the ownership interests in the Company.

RULINGS

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

1. A person who has the right to dividends and proceeds from the sale of stock ("Economic Ownership") is the owner of the stock for section 382 purposes ("Economic Owner"). Thus, an investment advisor that has the power to acquire, hold, vote and dispose of the stock ("Reporting Ownership") but does not have Economic Ownership of the stock is not the Economic Owner of the stock for section 382 purposes. Accordingly, none of Entity A, Entity D, Entity E, Entity I or Entity J is an Economic Owner of Company stock for section 382 purposes.

2. Unless the Company has actual knowledge to the contrary, the Company can rely on the existence or absence of Schedule 13D or 13G to identify all persons who directly own 5 percent or more of the Company's stock. Section 1.382-2T(k)(1)(i).

3. If an investment advisor files a Schedule 13D or 13G that reports Reporting Ownership on behalf of two or more Economic Owners of shares representing in the aggregate more than 5 percent of Company stock but does not affirm the existence of a "group" (within the meaning of section 13(d)(3) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78a et seq.), and the Economic Owners do not individually file a Schedule 13D or 13G that affirms the existence of a group (within the meaning of section 13(d)(3) of the Exchange Act), the Company can rely on the absence of the filing of a Schedule 13D or 13G by the Economic Owners to determine that the Economic Owners are not members of a group that constitutes an entity (within the meaning of §1.382-3(a)(1)) unless the Company has actual knowledge that the Economic Owners constitute such an entity. See §1.382-3(a)(1)(i) and §1.382-2T(k)(1)(i).

4. The fund clients of each of Entity A, Entity D, Entity E, Entity I and Entity J are not collectively an entity of each within the meaning of §1.382-9(d)(3)(ii)(A).

5. The Company may treat the indebtedness beneficially owned by the Class X and Class Y creditors, except for the indebtedness beneficially owned by Entity B, Entity C and Entity F, as always having been owned by the beneficial owner of such indebtedness immediately before the ownership change. Accordingly, all Class X and Class Y creditors, other than Entity B, Entity C and Entity F, are properly treated as qualified creditors as that term is defined in §1.382-9(d).

6. Company stock received by Class X and Class Y qualified creditors upon the exercise of their subscription rights received in the Chapter 11 Case, except for the subscription rights received by the Class X creditors for acting in the capacity as backstop purchasers (including the subscription rights received for agreeing to act as backstop purchasers), is properly treated as having been received in full or partial satisfaction of qualified indebtedness for purposes of applying the 50 percent test of section 382(l)(5)(A)(ii). Section 1.382-9(d)(1).

7. Company may properly treat W shares of Company stock as being owned on that date by persons who were qualified creditors of the Company immediately before the ownership change and as having been received by such qualified creditors in full or partial satisfaction of qualified indebtedness for purposes of applying the 50 percent test of section 382(l)(5)(A)(ii) and §1.382-9(b). Accordingly, the ownership change of the Company occurring on Date 2 is an ownership change described in section 382(l)(5)(A) and 1.382-9(b) with respect to which the limitation of section 382(a) does not apply. The Company will reduce its tax attributes as required by section 382(l)(5)(B) and (C).

CAVEATS

We express no opinion on the tax effect of any transaction or item discussed or referenced in this ruling letter under any other provision of the Internal Revenue Code and regulations, or the tax effect of any condition existing at the time of, or effect resulting from, the facts and circumstances herein described that are not specifically covered by the rulings set forth above.

PROCEDURAL STATEMENTS

The ruling is directed only to the taxpayer requesting it. Under §6110(k)(3), this ruling 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, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to the 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 representatives.

Sincerely,

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Mark Weiss
Assistant to the Branch Chief, Branch 1
Office of Associate Chief Counsel (Corporate)