Internal Revenue Service

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Department of the Treasury
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Refer Reply To:
CC:CORP:B04
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Date:
December 15, 2009

Legend:

Parent =

Sub =

State A =

Country B =

Country C =

Country D =

Territory A =

Business X =

Business Y =

Company 1 =

Company 2 =

DE 1 =

DE 2 =

DE 3 =

DE 4 =

DE 5 =

DE 6 =

DE 7 =

DE 8 =

DE 9 =

DE 10 =

DE 11 =

DE 12 =

DE 13 =

DE 14 =

a =

b =

c =

d =

Year 1 =

Year 2 =

Dear

This letter responds to your December 1, 2009 request for rulings as to the Federal income tax consequences of a transaction. The information submitted for consideration is summarized below.

Parent is a publicly traded corporation incorporated under the laws of State A. Parent is engaged in Business X. Parent owns for U.S. Federal income tax purposes all of the issued and outstanding stock of Sub, a company organized under the laws of Country B that is treated as a corporation for U.S. Federal income tax purposes. Sub is engaged in Business Y. Sub owns all of the issued and outstanding shares of Company 1 and Company 2, companies organized under the laws of Country B and Country C, respectively that are disregarded as separate from its' owners for U.S. Federal income tax purposes (a "disregarded entity"). For U.S. Federal income tax purposes, Sub also is treated as wholly owning DE 1, DE 2, and DE 3, disregarded entities organized under the laws of Country D. DE 1 and DE 2 own a and b percent, respectively, of DE 13, a disregarded entity organized under the laws of Country D. DE 2 and DE 13 each own c percent of DE 14, a disregarded entity organized under the laws of Country D.

Company 1 directly or indirectly owns 100 percent of DE 4, DE 5, DE 6, and DE 7, disregarded entities organized under the laws of Country B, Territory A, Country C, and Country D, respectively.

Company 2 directly or indirectly owns 100 percent of DE 8, DE 9, DE 10, DE 11, and DE 12, disregarded entities organized under the laws of Country D.

Company 1, Company 2, and DE 1 through DE 14 hereinafter are referred to as the "Sub Disregarded Entities."

In Year 1, Parent adopted a stock-based compensation plan as part of its overall compensation structure (the "Year 1 Incentive Stock Plan") that includes (i) options

which qualify as "incentive stock options" under §422(b) of the Code ("ISOs") and (ii) options which do not qualify as ISOs ("Non-Qualified Options") (together, with the ISOs, the "Stock Options"), and (iii) restricted stock units ("RSUs"). The Stock Options and the RSUs were granted to employees of the Sub Disregarded Entities (the "Employees").

Under the terms of the Stock Options the Employees have the right, but not the obligation, to purchase a certain number of shares of Parent stock at a fixed price (the "Exercise Price"). Under the terms of the RSUs, Parent promises to deliver its stock to the Employees at a later date, after the applicable vesting conditions have been satisfied. The Employees are not required to make any payments to receive the RSU awards. The Stock Options and RSUs are not exercisable immediately, but rather generally vest over a d year period.

During the Year 2 taxable year, Parent transferred its stock to certain Employees who held Stock Options and RSUs under the Year 1 Incentive Stock Plan. The transfers were for (i) the number of shares vested and settled during the Year 2 taxable year under the RSUs, and (ii) the number of shares exercised by the Employees during the Year 2 taxable year under the Stock Options. Parent expects to make similar transfers under the Year 1 Incentive Stock Plan in future taxable years.

Pursuant to a charge-back agreement entered into by Parent and Sub, Sub will reimburse Parent for the value of the Parent shares delivered to the Employees during the Year 2 taxable year and future taxable years under the Year 1 Incentive Stock Plan (the "Reimbursement Payments").

Taxpayer has made the following representations in connection with the transaction:

(a) Any of the Stock Options granted to the Employees will not be actively traded on an established market.

(b) At the time the Stock Options are granted, at least one of the following statements will be true: (i) the Stock Options are not transferable by the Employees, (ii) the Stock Options are not exercisable immediately in full by the Employees, (iii) the Stock Options (or the underlying Parent stock) are subject to restrictions that have significant effects on the Stock Options' value or (iv) the fair market value of the "option privilege" with respect to the Stock Options will not be readily ascertainable.

(c) In Year 2, the Employees exercised a certain number of the Stock Options and paid the Exercise Price for the Stock Options to Parent.

(d) In Year 2, Parent transferred Parent shares to the Employees who settled certain RSU Awards.

(e) All shares transferred by Parent to the Employees under the Year 1 Incentive Stock Plan are transferred (or will be transferred in future taxable years) for services performed on behalf of the Sub Disregarded Entities.

Based solely on the information submitted, we rule as follows:

(1) The Reimbursement Payments will not constitute a distribution by Sub with respect to its stock within the meaning of §301 of the Code.

(2) Pursuant to §1.1032-3, Parent will recognize no gain or loss with respect to the receipt of the Reimbursement Payments from Sub.

(3) Parent will be deemed, pursuant to §1.1032-3, to have made cash contributions to Sub in an amount, if any, equal to the excess of the fair market value of Parent stock delivered under the Year 1 Incentive Stock Plan over the fair market value of the money or other property, if any, that Parent receives as payment from Sub (including the Reimbursement Payments), and accordingly, will adjust its basis in its stock in Sub pursuant to §358 and the regulations thereunder.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty 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 rulings, it is subject to verification on examination.

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.

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.

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 this letter.

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,

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