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**Re:** Request for Ruling  
General Corporation Tax  
FLR-15-4966-GCT

Dear :

This letter is in response to your request for a ruling on behalf of (“OldCo”) and its successor. (“NewCo”) dated January 22, 2015 concerning the required 2014 New York City (“City”) General Corporation Tax (“GCT”) tax return filings for these entities resulting from a corporate reorganization transaction in August 2014. Additional information was received on February 12, 2015.

### **FACTS**

Prior to the August 27, 2014, OldCo was a stand-alone subchapter S corporation for federal tax purposes which had filed its City GCT tax returns for tax years prior to 2014 as if it were a federal C Corp, because the City does not recognize the federal S corporation election. On August 27, 2014, OldCo shareholders contributed their shares of OldCo stock to NewCo in exchange for shares of NewCo stock. NewCo made a Subchapter S election and OldCo made Qualified Subchapter S Subsidiary (QSSS) election, making OldCo a disregarded entity for federal tax purposes. On August 28, 2014, OldCo converted from a QSSS wholly owned by NewCo to a single member LLC wholly owned by NewCo through a merger of OldCo into the NewCo LLC with NewCo LLC the surviving entity. For tax purposes, this conversion of OldCo into NewCo LLC was viewed as OldCo’s distribution of its net assets to NewCo in liquidation. Following this conversion, all of OldCo’s assets are now owned by NewCo LLC. NewCo’s only asset is its ownership interest in NewCo LLC.

Before the above-described transaction, there was a Subchapter S corporation OldCo which directly owned its assets. Following these transactions, there was a Subchapter S corporation NewCo which owned NewCo LLC which in turn owned OldCo's assets. However, inasmuch as NewCo LLC is a disregarded entity for both federal and City tax purposes, NewCo is the owner of OldCo's assets for tax purposes. Each of the above transactions qualified as a reorganization for federal tax purposes under section 368(1)(a)(F) of the Internal Revenue Code ("IRC") applicable to a "mere change in identity, form or place of organization of one corporation however effected."

## **ISSUE**

Whether NewCo should file a tax return for the entire 2014 calendar tax year covering the periods in that tax year both before and after the corporate reorganization under IRC section 368(1)(a)(F)? Or, whether both OldCo must file a short period return for that part of the 2014 tax year prior to the reorganization and NewCo must a short period return covering that part of the 2014 tax year following the reorganization under IRC section 368(1)(a)(F)?

## **CONCLUSION**

NewCo should file a tax return for the entire 2014 tax year. Neither NewCo nor OldCo has to file a short period return for the period either before or after the section 368(1)(a)(F) reorganization.

## **DISCUSSION**

IRC section 368(a)(1)(F) applies to a "mere change in identity, form or place of organization of one corporation however effected." Here, given the nature of the reorganization transactions, there is little doubt that section 368(a)(1)(F) applies to these transactions. See IRC §368(a)(1)(F); Proposed Reg. 1.368-2(m). Under IRC section 381(b), for a corporation which engages in a reorganization under IRC section 368(a)(1)(F), that part of the taxable year before the reorganization and that part of the taxable year occurring after the reorganization "constitute a single taxable year of the acquiring corporation [for federal tax purposes even if] the reorganization qualifies as a reorganization under another provision of [IRC] section 368(a)(1)...." Rev. Rul. 57-276. See also IRC § 381(b).

Despite the differences between the IRC and the GCT concerning the City's nonrecognition of the federal Subchapter S election for GCT purposes, we see no reason why the result under the facts presented here should be any different than under federal tax law. Before the above-described transaction, OldCo directly owned its assets and filed a GCT return. After the transaction, NewCo owned NewCo LLC which in turn owned OldCo's assets. However, a single member LLC is a disregarded entity for GCT purposes if it is disregarded entity for federal tax purposes. See Finance Mem. 99-1 (October 21, 1999). Inasmuch as NewCo LLC is a disregarded entity for both federal

and City tax purposes, NewCo is the owner of OldCo's assets for tax purposes. Further, the transactions qualified as a reorganization under IRC section 368(a)(1)(F). Accordingly, NewCo should file its GCT return for the entire 2014 tax year, just as it will do for federal income tax purposes and neither OldCo nor NewCo should file a short period return.

The Department reserves the right to verify the information submitted. Please advise the Department of any material change in the facts presented.

Very truly yours,

Diana Beinart  
General Counsel

JM:jm