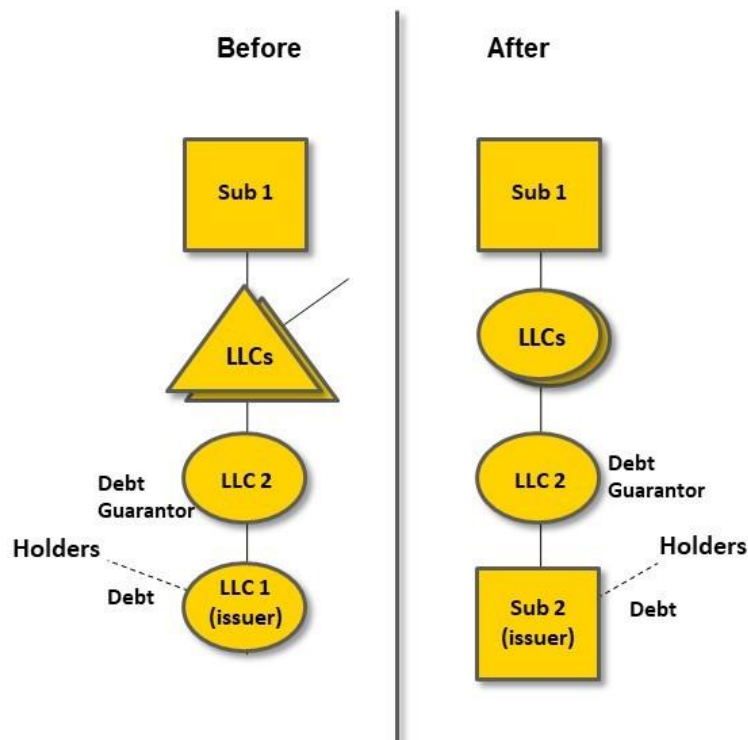


Technical Developments and Musings

No modification for debt of DRE that becomes a corporation. In [PLR 202337007](#), IRS confirms the primacy of state law treatment of an entity as issuer of an instrument, for Reg. §1.1001-3 purposes. IRS concluded there's no "modification" of a recourse debt instrument—an event that otherwise might give rise to income or gain to a holder—where the instrument issuer was a disregarded entity (DRE) but subsequently converted to a corporation under state law.



As depicted here, in a series of transactions, Sub 2, formerly a DRE that issued publicly traded "Debt," became the "regarded" corporate obligor for US tax purposes. But the conversion alone doesn't create a modification, according to IRS. The ruling notes that, pursuant to underlying law, Sub 2 "will remain the same legal entity as LLC 1," and that none of the Debt holders' rights against the Debt issuer will be altered in any manner. The ruling further asserts that federal tax law "looks to State law to determine the legal entitlements to property." It should be noted that while the ruling is limited to the issue of a §1001 modification of the debt instrument, presumably there still was an *assumption* of the debt by Sub 2, within the meaning of §357, as part of its deemed incorporation from the conversion.

Additional CAMT guidance. In the third of a series of notices, the IRS has published [interim guidance](#) that clarifies certain provisions of the corporate alternative minimum tax (CAMT), which generally became effective in 2023. The notice reaffirms IRS's plans to issue proposed regulations that are consistent with the most recent guidance as well as its prior notices. Among other things, the latest guidance expands the definition of an applicable financial statement, while apparently confirming that every taxpayer is intended to have such a statement for CAMT purposes. In addition, forthcoming proposed regulations are anticipated to apply for tax years beginning on or after January 1, 2024, although taxpayers may rely on the guidance in the interim. For further info, see [Tax Alert 2023-1570](#).

R&E amortization guidance too. In another notice—[2023-63](#)—the IRS outlines two rules on how to apply the §174(d) amortization deduction to unamortized specified research and expenditure (SRE) expenditures for SRE property, if that property is disposed, retired or abandoned through sales and exchanges as well as in certain corporate nonrecognition transactions in which a corporation ceases to exist. While generally treating SRE expenditures as an attribute that can be carried over in §381 transactions, the guidance also contemplates that certain transactions (e.g., §351 exchanges) may separate the SRE amortization from the underlying SRE property. For further info, see [Tax Alert 2023-1535](#).