

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Date:

December 17, 2008

Legend

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Business A =

Business B =

Business C =

Business D =

Business E =

Business F =

Business G =

State A =

State B =

State C =

Year =

Dear :

This letter responds to your October 10, 2008, letter requesting rulings on certain federal income tax consequences of a series of proposed transactions. The information submitted in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayers and accompanied by penalty of perjury statements executed by the appropriate parties. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. Moreover, no determination has been made regarding whether the Sub 5 Distribution (as defined below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the

distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

SUMMARY OF FACTS

Parent is a publicly traded domestic corporation and the common parent of an affiliated group of corporations (the “Parent Group”) that files a consolidated federal income tax return. Parent owns all of the outstanding stock of Sub 1 and Sub 2.

Sub 1 owns all of the outstanding stock of Sub 3. Sub 3 owns all of the outstanding membership interests of Sub 4, a domestic limited liability company that is disregarded as an entity separate from Sub 3 for federal tax purposes.

Sub 2 owns all of the outstanding stock of Sub 5 and Sub 6, and all of the outstanding membership interests of Sub 7 and Sub 8, each a domestic limited liability company that is treated as a corporation for federal tax purposes. Sub 6 owns all of the outstanding stock of Sub 9. Except as described above, each of the above-stated entities is a domestic corporation and a member of the Parent Group.

Sub 6 became a wholly owned subsidiary of Sub 2 in Year when Parent transferred all of the stock of Sub 10, a domestic corporation wholly owned by Parent, to Sub 2 in constructive exchange solely for Sub 2 stock, after which Sub 10 converted under State A law from a corporation to a limited liability company that was disregarded as an entity separate from its owner for federal tax purposes (such series of transactions, the “Prior Restructuring”). At the time of the Prior Restructuring, Sub 10 owned all of the outstanding stock of Sub 6. Parent received a private letter ruling stating that, among other things, the Prior Restructuring qualified as a reorganization under § 368(a)(1)(D) and that no gain or loss was recognized by Sub 2, Sub 10, or Parent in the Prior Restructuring.

Sub 5 is directly engaged in Business A. Sub 9 is directly engaged in Business B. Sub 2 is directly engaged in Business C. Sub 4 is directly engaged in Business D. Sub 3 is directly engaged in Business E and Business G. Sub 8 is directly engaged in Business E. Sub 7 is directly engaged in Business F. Financial information has been submitted indicating that each of Business A and Business B has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

The management of the Parent Group has determined that it can increase efficiency and achieve material savings by consolidating Sub 5 with Sub 1; by combining Business C with Business D; and by combining Business E with Business F, as conducted by Sub 3 and Sub 7, respectively, with Business E conducted by Sub 8.

PROPOSED TRANSACTIONS

Parent has proposed the following series of transactions (the “Proposed Transactions”) to achieve the desired benefits and savings:

- (i) Sub 7 will form a new domestic corporation (“Newco”) and contribute thereto Business F (the “Newco Contribution”).
- (ii) Sub 7 will distribute all of its stock in Newco to Sub 2 (the “Newco Distribution”).
- (iii) Newco will merge with and into Sub 8 under State A and State B law, with Sub 8 surviving (the “Newco Merger”).
- (iv) Sub 2 will transfer Business C and all of the stock of Sub 8 to Sub 5 (the “Sub 5 Contribution”).
- (v) Sub 2 will distribute all of its stock in Sub 5 to Parent (the “Sub 5 Distribution”).
- (vi) Sub 5 will merge with and into Sub 1 under State B and State C law, with Sub 1 surviving (the “Sub 5 Merger”).
- (vii) Sub 1 will transfer Business C, and all of the stock of Sub 8, to Sub 3 (the “Sub 3 Contribution”).
- (viii) Sub 3 will contribute Business C to Sub 4.
- (ix) Sub 3 will contribute Business E and Business G to Sub 8 (the “Sub 8 Contribution”).

REPRESENTATIONS

Parent, on behalf of itself and Sub 1, Sub 2, Sub 5 and Sub 9, makes the following representations with respect to the Sub 5 Contribution and the Sub 5 Distribution, described in steps (iv) and (v) above:

(1a) No part of the consideration to be distributed by Sub 2 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Sub 2.

(1b) Sub 9 is, and immediately after the Sub 5 Distribution will be, a member of Sub 2's separate affiliated group (within the meaning of § 355(b)(3)(B)) (the "Sub 2 SAG").

(1c) The five years of financial information submitted on behalf of Business B conducted by the Sub 2 SAG is representative of the present business operations of Business B conducted by the Sub 2 SAG, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(1d) The five years of financial information submitted on behalf of Business A conducted by the Sub 5 separate affiliated group (the "Sub 5 SAG") is representative of the present business operations of Business A conducted by the Sub 5 SAG and to be conducted by the Sub 1 separate affiliated group (the "Sub 1 SAG"), and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(1e) Neither Business B nor control of an entity conducting this business was acquired during the five-year period ending on the date of the Sub 5 Distribution in a transaction in which gain or loss was recognized (or treated as recognized under proposed § 1.355-3) in whole or in part. Except as described herein, throughout the five-year period ending on the date of the Sub 5 Distribution, the Sub 2 SAG has been the principal owner of the goodwill and significant assets of Business B and will continue to be such owner following the Proposed Transactions.

(1f) Neither Business A nor control of an entity conducting this business was acquired during the five-year period ending on the date of the Sub 5 Distribution in a transaction in which gain or loss was recognized (or treated as recognized under proposed § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of the Sub 5 Distribution, Sub 5 has been the principal owner of the goodwill and significant assets of Business A. The Sub 1 SAG will be the principal owner of the goodwill and significant assets of Business A following the Proposed Transactions.

(1g) Following the Proposed Transactions, the Sub 2 SAG will continue the active conduct of Business B, independently and with its separate employees.

(1h) Following the Proposed Transactions, the Sub 1 SAG will continue the active conduct of Business A, independently and with its separate employees.

(1i) The Sub 5 Distribution is being carried out for the following corporate business purposes: (i) to facilitate the Sub 5 Merger, (ii) to avoid unnecessary, material increases in state tax liabilities and other expenses, and (iii) to achieve other corporate benefits. The Sub 5 Distribution is motivated, in whole or substantial part, by one or more of these corporate business purposes.

(1j) The Sub 5 Distribution is not being used principally as a device for the distribution of the earnings and profits of Sub 2 or Sub 5 or both.

(1k) For purposes of § 355(d), immediately after the Sub 5 Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Sub 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Sub 2 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Sub 5 Distribution.

(1l) For purposes of § 355(d), immediately after the Sub 5 Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Sub 5 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Sub 5 stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Sub 5 Distribution or (ii) attributable to distributions on Sub 2 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Sub 5 Distribution.

(1m) The total adjusted basis and the fair market value of the assets transferred to Sub 5 by Sub 2 in the Sub 5 Contribution each will equal or exceed the sum of any liabilities assumed (within the meaning of § 357(d)) by Sub 5.

(1n) The total fair market value of the assets transferred to Sub 5 in the Sub 5 Contribution will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Sub 5 in the exchange, (ii) the amount of any liabilities owed to Sub 5 by Sub 2 that are discharged or extinguished in connection with the exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without recognition of gain) received by Sub 2 in the exchange. The fair market value of the assets of Sub 5 will exceed the amount of Sub 5's liabilities immediately after the Sub 5 Contribution.

(1o) Any liabilities assumed (within the meaning of § 357(d)) by Sub 5 in the Sub 5 Contribution will have been incurred in the ordinary course of business and will be associated with the assets transferred.

(1p) Sub 2 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Sub 5 Contribution and Sub 5 Distribution.

(1q) No intercorporate debt will exist between Sub 2 and Sub 5 at the time of, or after, the Sub 5 Distribution.

(1r) Immediately before the Sub 5 Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable

intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published in T.D. 8597).

(1s) At the time of the Sub 5 Distribution, no member of the Parent Group will have an excess loss account in the Sub 5 stock or in the stock of any Sub 5 subsidiary.

(1t) Payments made in connection with all continuing transactions, if any, between Sub 2 and Sub 5 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(1u) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(1v) The Sub 5 Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Sub 2 or Sub 5 (including any predecessor or successor of Sub 2 or Sub 5).

(1w) Immediately after the transaction (as defined in § 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of § 355(g)(3)) in Sub 2 or Sub 5, (ii) if any person holds a 50-percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (iii) neither Sub 2 nor Sub 5 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

Parent, on behalf of itself, Sub 1, and Sub 5, makes the following representations with respect to the Sub 5 Merger described in step (vi) above:

(2a) The Sub 5 Merger will be effected pursuant to the laws of State B and State C. As a result of the operation of such laws, all of the assets and liabilities of Sub 5 will become the assets and liabilities of Sub 1.

(2b) The fair market value of the Sub 1 stock constructively received by Parent in the Sub 5 Merger will be approximately equal to the fair market value of the Sub 5 stock surrendered in the exchange.

(2c) At least 40 percent of the proprietary interest in Sub 5 will be exchanged constructively for Sub 1 stock and will be preserved (within the meaning of § 1.368-1(e)).

(2d) Neither Sub 1 nor any person related (within the meaning of § 1.368-1(e)(4)) to Sub 1 has any plan or intention to redeem or otherwise acquire any shares of

the Sub 1 stock constructively issued in the Sub 5 Merger at any time after or in connection with the Sub 5 Merger or has any plan or intention to cause any other person or entity to acquire any such stock.

(2e) Sub 1 has no plan or intention to sell or otherwise dispose of any of the assets of Sub 5 acquired in the Sub 5 Merger, except for dispositions made in the ordinary course of business or transfers described in § 368(a)(2)(C) or § 1.368-2(k).

(2f) The liabilities of Sub 5 assumed (within the meaning of § 357(d)) by Sub 1 will have been incurred by Sub 5 in the ordinary course of business and will be associated with the assets transferred.

(2g) Following the Sub 5 Merger, Sub 1 will continue the historic business of Sub 5 or use a significant portion of Sub 5's historic business assets in a business (within the meaning of § 1.368-1(d)).

(2h) Except for expenses that are "solely and directly related" (within the meaning of Rev. Rul. 73-54, 1973-1 C.B. 187) to the Sub 5 Merger, all of which will be paid by Sub 1, each party will pay its respective expenses, if any, incurred in connection with the Sub 5 Merger.

(2i) At the time of the Sub 5 Merger, there will be no intercorporate indebtedness existing between Sub 1 and Sub 5 that was issued, acquired, or will be settled at a discount.

(2j) No two parties to the Sub 5 Merger are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(2k) Sub 5 is not under the jurisdiction of a court in a title 11 or similar case within the meaning of § 368(a)(3)(A).

(2l) The total fair market value of the assets transferred to Sub 1 by Sub 5 will exceed the sum of (i) the amount of liabilities assumed (as determined under § 357(d)) by Sub 1 in connection with the Sub 5 Merger, (ii) the amount of liabilities owed to Sub 1 by Sub 5 that are discharged or extinguished in connection with the Sub 5 Merger, and (iii) the amount of any money and the fair market value of any other property (other than stock permitted to be received under § 361 without the recognition of gain) received by Sub 5 in connection with the Sub 5 Merger. The fair market value of the assets of Sub 1 will exceed the amount of Sub 1's liabilities immediately after the Sub 5 Merger.

RULINGS

Based solely on the information submitted and the representations made, we rule as follows on the Sub 5 Contribution and the Sub 5 Distribution:

(1) The Sub 5 Contribution, followed by the Sub 5 Distribution, will be a reorganization under § 368(a)(1)(D). Sub 2 and Sub 5 each will be a “party to a reorganization” within the meaning of § 368(b).

(2) No gain or loss will be recognized by Sub 2 on the Sub 5 Contribution (§§ 357(a) and 361(a)).

(3) No gain or loss will be recognized by Sub 5 on the Sub 5 Contribution (§ 1032(a)).

(4) The basis of each asset received by Sub 5 in the Sub 5 Contribution will equal the basis of that asset in the hands of Sub 2 immediately before the Sub 5 Contribution (§ 362(b)).

(5) The holding period of each asset received by Sub 5 in the Sub 5 Contribution will include the period during which Sub 2 held the asset (§ 1223(2)).

(6) No gain or loss will be recognized by (and no amount otherwise will be included in the income of) Parent as a result of the Sub 5 Distribution (§ 355(a)(1)).

(7) No gain or loss will be recognized by Sub 2 as a result of the Sub 5 Distribution (§ 361(c)(1)).

(8) The aggregate basis of the Sub 2 shares and the Sub 5 shares in the hands of Parent after the Sub 5 Distribution will be the same as the basis of the Sub 2 shares in the hands of Parent immediately before the Sub 5 Distribution (§ 358(a) and § 1.358-1(a)). Such basis will be allocated between the Sub 2 shares and the Sub 5 shares in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§§ 358(b)(2) and 358(c)).

(9) The holding period of the Sub 5 shares received by Parent in the Sub 5 Distribution will include the holding period of the Sub 2 shares with respect to which the Sub 5 Distribution will be made, provided that such Sub 2 shares are held as capital assets on the date of the Sub 5 Distribution (§ 1223(1)).

(10) As provided in § 312(h), proper allocation of earnings and profits between Sub 2 and Sub 5 will be made under § 1.312-10(a) and § 1.1502-33(e)(3).

Based solely on the information submitted and the representations made, we rule as follows on the Sub 5 Merger:

(11) For U.S. federal income tax purposes, provided that the Sub 5 Merger qualifies as a statutory merger in accordance with applicable state law, the transfer by Sub 5 of all of its assets to Sub 1 in constructive exchange for Sub 1 stock and Sub 1's assumption of Sub 5's liabilities, followed by Sub 5's constructive distribution of Sub 1

stock to Parent in complete dissolution of Sub 5, will qualify as a reorganization under § 368(a)(1)(A). Sub 1 and Sub 5 each will be a “party to a reorganization” within the meaning of § 368(b). The Sub 5 Merger will not be disqualified by reason of the Sub 3 Contribution. (§ 1.368-2(k)).

(12) No gain or loss will be recognized by Sub 5 on the transfer of all of its assets to Sub 1 in exchange constructively for Sub 1 stock and Sub 1’s assumption of Sub 5’s liabilities in the Sub 5 Merger (§§ 357(a) and 361(a)).

(13) No gain or loss will be recognized by Sub 1 on its receipt of all of Sub 5’s assets in exchange constructively for Sub 1 stock and Sub 1’s assumption of Sub 5’s liabilities in the Sub 5 Merger (§ 1032(a)).

(14) No gain or loss will be recognized by Sub 5 on its constructive distribution of the Sub 1 stock constructively received in the Sub 5 Merger (§ 361(c)).

(15) The basis of each asset received by Sub 1 in the Sub 5 Merger will equal the basis of that asset in the hands of Sub 5 immediately before the Sub 5 Merger (§ 362(b)).

(16) The holding period of each asset received by Sub 1 in the Sub 5 Merger will include the period during which Sub 5 held such asset (§ 1223(2)).

(17) No gain or loss will be recognized by Parent on the constructive exchange of its Sub 5 stock for Sub 1 stock in the Sub 5 Merger (§ 354(a)(1)).

(18) The basis of the Sub 1 stock constructively received by Parent will be the same as the basis of the Sub 5 stock surrendered in exchange therefor (§ 358(a)(1)).

(19) The holding period of the Sub 1 stock constructively received by Parent in the Sub 5 Merger will include the holding period of the Sub 5 stock surrendered in exchange therefor, provided that such Sub 5 stock is held by Parent as a capital asset on the date of the Sub 5 Merger (§ 1223(1)).

CAVEATS

No opinion is expressed about the tax treatment of the Proposed Transactions under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings.

In particular, no opinion is expressed regarding whether the Sub 5 Distribution: (i) satisfies the business purpose requirement of § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of any distributing corporation or controlled corporation or both (see § 355(a)(1)(B) and § 1.355-2(d)); or (iii) is part of a

plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7). Additionally, Parent has requested no opinion and this letter ruling provides no opinion regarding the federal income tax treatment of the Newco Contribution, the Newco Distribution, the Newco Merger, the Sub 3 Contribution, or the Sub 8 Contribution described in steps (i), (ii), (iii), (vii), and (ix) of the Proposed Transactions.

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter should be attached to the federal income tax return of each taxpayer involved for the taxable year in which the transaction covered by this ruling letter is consummated. 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 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 representative.

Sincerely,

Gerald B. Fleming
Senior Technician Reviewer, Branch 2
(Corporate)

cc: