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Department of the Treasury
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CC:CORP:4 – PLR-132991-03

Date:

November 19, 2003

Legend

Distributing 3 =

Distributing 2 =

Distributing 1 =

Controlled 1 =

Controlled 2 =

Parent 1 =

Parent 2 =

Sub 1 =

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Sub 2 =

LLC 1 =

LLC 2 =

LLC 3 =

Member 1 =

Member 2 =

Business A =

Business A1 =

Business A2 =

Business Advisor =

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Asset A =

Asset B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

a =b =c =d =e =f =g =h =

PLR-132991-03

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Dear

This letter responds to your May 23, 2003 request for rulings regarding certain federal income tax consequences of a series of proposed transactions (collectively, the "Proposed Transaction"). The information submitted in that request 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 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.

Summary of Facts

Publicly traded Parent 2 is the common parent of a consolidated group (the "Parent 2 Group") that includes Sub 2. Parent 2 owns all of the outstanding common stock of Sub 2 and a% of Sub 2's outstanding preferred stock. The remaining preferred

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stock of Sub 2 is owned b% by certain subsidiaries of Sub 2 and c% by the public. Sub 2 directly conducts Business A.

Publicly traded Parent 1 is the common parent of a consolidated group (the "Parent 1 Group") that includes Sub 1, Member 1, and Member 2. Parent 1 wholly owns Sub 1, Member 1, and Member 2, each of which is a corporation. Sub 1 directly conducts Business A.

LLC 3 is a limited liability company that is classified as a partnership for federal income tax purposes. Parent 2 owns d%, Member 1 owns e%, and Member 2 owns f% of the value of LLC 3. The voting interests in LLC 3 are owned g% by Parent 2, h% by Member 1, and i% by Member 2. LLC 3 wholly owns Distributing 3, a holding company that is the common parent of a consolidated group (the "Distributing 3 Group") that includes Distributing 2 and Distributing 1. Distributing 3 wholly owns Distributing 2, and Distributing 2 wholly owns Distributing 1. Distributing 3 and Distributing 2 are indirectly engaged in Business A, while Distributing 1 is directly engaged in Business A.

LLC 1 and LLC 2 are limited liability companies. Distributing 1 owns the sole membership interest in each of LLC 1 and LLC 2.

Controlled 1 will be a corporation that will be newly formed by Sub 1 as part of the Proposed Transaction. At all relevant times, Controlled 1 will have outstanding only one class of stock. Immediately prior to Distribution 1 (as defined below), j% of Controlled 1's outstanding stock will be owned by Distributing 1 and k% will be owned by Sub 1.

Controlled 2 will be a corporation that will be newly formed by Sub 2 as part of the Proposed Transaction. At all relevant times, Controlled 2 will have outstanding only one class of stock. Immediately prior to Distribution 2, j% of Controlled 2's outstanding stock will be owned by Distributing 1 and k% will be owned by Sub 2.

Parent 1 and Parent 2 (through LLC 3 and Distributing 3) acquired Distributing 2 on Date 4. The taxpayer has stated that this acquisition was made pursuant to a binding written merger agreement entered into on Date 1 that was amended subsequently and finalized on Date 2. On Date 3, a Schedule 14D-1 was filed with the Securities and Exchange Commission ("SEC") with respect to Parent 2 joining with Parent 1 in the outstanding tender offer for Distributing 2. As a result of the binding agreements and the filing with the SEC, the taxpayer has stated that the acquisition of Distributing 2 by Parent 1 and Parent 2 (through LLC 3 and Distributing 3) (hereafter, the "Grandfathered Acquisition") is not taken into account for purposes of §§ 355(e) or (f) of the Internal Revenue Code (the "Code"). The Grandfathered Acquisition also occurred more than five years prior to the time the parties entered into an agreement to undertake the Proposed Transaction.

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All of the above-described corporations and entities are domestic.

As indicated above, Distributing 1 is engaged in Business A. In addition, Distributing 1 had conducted Business A1 and Business A2 for approximately 23 years prior to Date 5. On that date, Distributing 1 transferred Business A1 to LLC 1, and such business has thereafter been continuously conducted by Sub 1 pursuant to an operating agreement. Similarly, on Date 5, Distributing 1 transferred Business A2 to LLC 2, and such business has thereafter been continuously conducted by Sub 2 pursuant to an operating agreement. Before Contribution 1, Contribution 2, Distribution 1, and Distribution 2 (all defined below), Distributing 1 will augment its Business A operations by reacquiring Business A1 and Business A2 in a tax-free manner. Business A1 and Business A2 are similar to Business A, except that each consists of a different set of s and each operates on different systems. Business A, Business A1, and Business A2 each has been actively conducted for each of the past 5 years, and financial information has been submitted which indicates that each of these businesses meets the requirements of § 355(b) of the Code.

Distributing 1 has outstanding two issues of publicly traded debentures, one with an aggregate principal amount of \$p, bearing interest at l% and maturing on Date 6, and the other with an aggregate principal amount of \$q, bearing interest at m% and maturing on Date 7 (collectively, the “Old Debentures”).

Despite being fierce competitors in Business A, Parent 1 and Parent 2 have jointly owned Distributing 1 since Date 1. Since Date 1, Parent 1 and certain members of the Parent 1 Group have been focused on, and primarily interested in, Business A1, while Parent 2 and certain members of the Parent 2 Group have been focused on, and primarily interested in, Business A2. However, Parent 1 and Parent 2 have been reluctant to fully exploit the business potential of Business A1 and Business A2, respectively, because of the benefits that would inure to the other due to the current joint ownership structure of Distributing 1. To overcome this reluctance and to resolve certain other systemic and managerial problems involving Business A1 and Business A2 that have arisen due to the current joint ownership of Distributing 1 by Parent 1 and Parent 2, the parties have agreed to separate Business A1 and Business A2 so that the former is owned and operated directly by Parent 1 and/or members of the Parent 1 Group and the latter is owned and operated directly by Parent 2 and/or members of the Parent 2 Group. Such a separation of Business A1 and Business A2 is consistent with the advice rendered by Business Advisor to Parent 1, Parent 2, and Distributing 3. To accomplish this separation, the parties have proposed the following steps be undertaken.

Proposed Transaction

- (i) Sub 1 will form Controlled 1 by contributing \$r to Controlled 1.

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- (ii) Sub 2 will form Controlled 2 by contributing \$r to Controlled 2.
- (iii) Distributing 1 will contribute Asset A and its membership interest in LLC 1 to Controlled 1 in return for j% of Controlled 1 stock, Controlled 1 Securities, and the assumption by Controlled 1 of certain liabilities ("Contribution 1").
- (iv) Distributing 1 will contribute Asset B and its membership interest in LLC 2 to Controlled 2 in return for j% of Controlled 2 stock, Controlled 2 Securities, and the assumption by Controlled 2 of certain liabilities ("Contribution 2") (Contribution 1 and Contribution 2, collectively, the "Contributions", and the Controlled 1 Securities and the Controlled 2 Securities, collectively, the "New Debentures").
- (v) Distributing 1 will distribute its Controlled 1 stock to Distributing 2 ("Distribution 1").
- (vi) Distributing 1 will distribute its Controlled 2 stock to Distributing 2 ("Distribution 2").
- (vii) As part of Distribution 1 and Distribution 2, Distributing 1 will exchange the Controlled 1 Securities received in Contribution 1, the Controlled 2 Securities received in Contribution 2, and an amount of cash for the outstanding Old Debentures (the "Debt Exchange"). Distributing 1 will initiate the offer to the holders of the Old Debentures to exchange the Old Debentures for the New Debentures and cash (with the principal amount of the New Debentures issued by Controlled 2 being equal to d% of the exchanged Old Debentures and the principal amount of the New Debentures issued by Controlled 1 being equal to n% of the exchanged Old Debentures). The New Debentures will have aggregate principal amounts, maturity dates, and interest rates identical to those of the Old Debentures exchanged therefor.
- (viii) Distributing 2 will distribute its Controlled 1 stock to Distributing 3 ("Distribution 3").
- (ix) Distributing 2 will distribute its Controlled 2 stock to Distributing 3 ("Distribution 4").
- (x) Distributing 3 will distribute its Controlled 1 and Controlled 2 stock to LLC 3 ("Distribution 5" and collectively with Distribution 1, Distribution 2, Distribution 3, and Distribution 4, the "Distributions").
- (xi) LLC 3 will distribute its Controlled 1 stock to Member 1 and Member 2 in accordance with their respective equity interests in LLC 3 ("Partnership Distribution 1"). Simultaneous with Partnership Distribution 1, LLC 3 will distribute its Controlled 2 stock to Parent 2 ("Partnership Distribution 2").

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and collectively with Partnership Distribution 1, the "Partnership Distributions").

- (xii) Parent 2 will transfer the Controlled 2 stock to Sub 2 (the "Controlled 2 Drop-Down"), and Member 1 and Member 2 will transfer their Controlled 1 stock to Parent 1 (the "Members 1 and 2 Transfers"). Parent 1 will then contribute the Controlled 1 stock to Sub 1 (the "Controlled 1 Drop-Down", and together with the Controlled 2 Drop-Down, the "Drop-Downs").

(xiii) LLC 2 will merge into Controlled 2 (the "Controlled 2 Combination") and LLC 1 will merge into Controlled 1 (the "Controlled 1 Combination," and collectively with the Controlled 2 Combination, the "Combinations").

(xiv) Controlled 2 will merge into Sub 2 (the "Controlled 2/Sub 2 Merger") and Controlled 1 will merge into Sub 1 (the "Controlled 1/Sub 1 Merger," and collectively with the Controlled 2/Sub 2 Merger, the "Mergers").

In connection with the Proposed Transaction, Distributing 3, Distributing 2, Distributing 1, Controlled 1 and its subsidiaries, and Controlled 2 and its subsidiaries will enter into a Tax Allocation Agreement. Following the Proposed Transaction, Distributing 1 will sublease certain o equipment to Controlled 1 and Controlled 2.

Representations

Contributions

The taxpayers have made the following representations regarding the Contributions:

(a) The total adjusted basis and the fair market value of the assets transferred to each of Controlled 1 and Controlled 2 by Distributing 1 will, in each instance, equal or exceed the sum of the liabilities assumed (as defined in § 357(d)) by Controlled 1 and Controlled 2 plus any liabilities to which the transferred assets are subject.

(b) The liabilities assumed (as defined in § 357(d)) in Contribution 1 and Contribution 2 and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.

(c) The income tax liability for the taxable year in which investment credit property, if any, (including any building to which § 47(d) applies) is transferred in Contribution 1 will be adjusted pursuant to § 50(a)(1) or (a)(2) (or § 47, as in effect

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before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect an early disposition of the property.

(d) The income tax liability for the taxable year in which investment credit property, if any, (including any building to which § 47(d) applies) is transferred in Contribution 2 will be adjusted pursuant to § 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect an early disposition of the property.

Distribution 1

The taxpayers have made the following representations regarding Distribution 1:

(e) Any indebtedness owed by Controlled 1 to Distributing 1 after Distribution 1 will not constitute stock or securities.

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

(g) No part of the consideration to be distributed by Distributing 1 in Distribution 1 will be received by a security holder as an employee or in any capacity other than that of a security holder of Distributing 1.

(h) The five years of financial information submitted on behalf of Distributing 1 and Controlled 1 is representative of these corporations' present operations, and with regard to each of these corporations, there has been no substantial operational change since the date of the last financial statements submitted.

(i) Immediately after Distribution 1, the fair market value of the gross assets of the trades and businesses of each of Distributing 1 and Controlled 1 relied on to satisfy the active trade or business requirement of § 355(b) will have a fair market value of not less than five percent of the total fair market value of the gross assets of such corporation.

(j) Following Distribution 1, Distributing 1 and Controlled 1 will each continue the active conduct of its respective business independently and with its own employees.

(k) Distribution 1 is being carried out to help eliminate certain systemic, management, and other problems that have arisen (or are exacerbated) by the operation of Business A1 and Business A2 within the Distributing 3 Group, as well as to facilitate the combination of Business A1 and Business A2 with certain affiliates of

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Parent 2 and Parent 1. Distribution 1 is motivated, in whole or substantial part, by these corporate business purposes.

(l) Except for Distribution 3, there is no plan or intention by the shareholder or security holders of Distributing 1 to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in, or securities of, Controlled 1 or Distributing 1 after Distribution 1.

(m) There is no plan or intention by Distributing 1 or Controlled 1, directly or through any subsidiary corporation, to purchase any of its outstanding stock after Distribution 1, other than through stock purchases meeting the requirements of section 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696, 705.

(n) There is no plan or intention to liquidate Distributing 1 or Controlled 1, to merge any of these corporations with any other corporation, or to sell or otherwise dispose of the assets of any of these corporations after Distribution 1, except in the ordinary course of business, in the Controlled 1 Combination, and in the Controlled 1/Sub 1 Merger.

(o) Immediately before Distribution 1, 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 by T.D. 8597). Further, any excess loss account Distributing 1 may have with respect to its Controlled 1 stock will be included in income immediately before Distribution 1 (see § 1.1502-19).

(p) Payments made in connection with any continuing transactions between Distributing 1 and Controlled 1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(q) No parties to Distribution 1 are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(r) For purposes of § 355(d), immediately after Distribution 1, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50% or more of the total value of shares of all classes of Distributing 1 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 Distribution 1.

(s) For purposes of § 355(d), immediately after Distribution 1, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50%

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or more of the total value of shares of all classes of Controlled 1 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 Distribution 1, or (ii) attributable to distributions on Distributing 1 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 Distribution 1.

(t) Distribution 1 is not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire directly or indirectly (taking into account the special rules of § 355(e)(3)) stock possessing 50% or more of the total combined voting power of all classes of stock of either Distributing 1 or Controlled 1, or stock possessing 50% or more of the total value of all classes of stock of Distributing 1 or Controlled 1. For purposes of this representation, the Grandfathered Acquisition is not taken into account.

Distribution 2

The taxpayers have made the following representations regarding Distribution 2:

(u) Any indebtedness owed by Controlled 2 to Distributing 1 after Distribution 2 will not constitute stock or securities.

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

(w) No part of the consideration to be distributed by Distributing 1 in Distribution 2 will be received by a security holder as an employee or in any capacity other than that of a security holder of Distributing 1.

(x) The five years of financial information submitted on behalf of Distributing 1 and Controlled 2 is representative of these corporations' present operations, and with regard to each of these corporations, there has been no substantial operational changes since the date of the last financial statements submitted.

(y) Immediately after Distribution 2, the fair market value of the gross assets of the trades and businesses of each of Distributing 1 and Controlled 2 relied on to satisfy the active trade or business requirement of § 355(b) will have a fair market value of not less than five percent of the total fair market value of the gross assets of such corporation.

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(z) Following Distribution 2, Distributing 1 and Controlled 2 will each continue the active conduct of its respective business independently and with its own employees.

(aa) Distribution 2 is being carried out to help eliminate certain systemic, management, and other problems that have arisen (or are exacerbated) by the operation of Business A1 and Business A2 within the Distributing 3 Group, as well as to facilitate the combination of Business A1 and Business A2 with certain affiliates of Parent 2 and Parent 1. Distribution 2 is motivated, in whole or substantial part, by these corporate business purposes.

(bb) Except for Distribution 4, there is no plan or intention by the shareholder or security holders of Distributing 1 to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in, or securities of, Controlled 2 or Distributing 1 after Distribution 2.

(cc) There is no plan or intention by Distributing 1 or Controlled 2, directly or through any subsidiary corporation, to purchase any of its outstanding stock after Distribution 2, other than through stock purchases meeting the requirements of section 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696, 705.

(dd) There is no plan or intention to liquidate Distributing 1 or Controlled 2, to merge any of these corporations with any other corporation, or to sell or otherwise dispose of the assets of any of these corporations after Distribution 2, except in the ordinary course of business, in the Controlled 2 Combination, and in the Controlled 2/Sub 2 Merger.

(ee) Immediately before Distribution 2, 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 by T.D. 8597). Further, any excess loss account Distributing 1 may have with respect to its Controlled 2 stock will be included in income immediately before Distribution 2 (see § 1.1502-19).

(ff) Payments made in connection with any continuing transactions between Distributing 1 and Controlled 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(gg) No parties to Distribution 2 are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(hh) For purposes of § 355(d), immediately after Distribution 2, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50%

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or more of the total value of shares of all classes of Distributing 1 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 Distribution 2.

(ii) For purposes of § 355(d), immediately after Distribution 2, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled 2 stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled 2 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 Distribution 2, or (ii) attributable to distributions on Distributing 1 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 Distribution 2.

(jj) Distribution 2 is not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire directly or indirectly (taking into account the special rules of § 355(e)(3)) stock possessing 50% or more of the total combined voting power of all classes of stock of either Distributing 1 or Controlled 2, or stock possessing 50% or more of the total value of all classes of stock of Distributing 1 or Controlled 2. For purposes of this representation, the Grandfathered Acquisition is not taken into account.

Distribution 3

The taxpayers have made the following representations regarding Distribution 3:

(kk) Any indebtedness owed by Controlled 1 to Distributing 2 after Distribution 3 will not constitute stock or securities.

(ll) No part of the consideration to be distributed by Distributing 2 in Distribution 3 will be received by Distributing 3 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.

(mm) The five years of financial information submitted on behalf of Distributing 2 and Controlled 1 is representative of these corporations' present operations, and with regard to each of these corporations, there has been no substantial operational changes since the date of the last financial statements submitted.

(nn) Immediately after Distribution 3, the fair market value of the gross assets of the trades and businesses of each of Distributing 2 (by virtue of Distributing 1) and Controlled 1 relied on to satisfy the active trade or business requirement of § 355(b) will

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have a fair market value of not less than five percent of the total fair market value of the gross assets of such corporation.

(oo) Immediately after Distribution 3, at least 90 percent of the fair market value of the gross assets of Distributing 2 will consist of stock and securities of Distributing 1, a controlled corporation that is engaged in the active conduct of a trade or business as defined in § 355(b)(2). Immediately after Distribution 3, Controlled 1 will be directly engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(pp) Following Distribution 3, Distributing 2 (through Distributing 1) and Controlled 1 will each continue the active conduct of its respective business independently and with its own employees.

(qq) Distribution 3 is being carried out to help eliminate certain systemic, management, and other problems that have arisen (or are exacerbated) by the operation of Business A1 and Business A2 within the Distributing 3 Group, as well as to facilitate the combination of Business A1 and Business A2 with certain affiliates of Parent 2 and Parent 1. Distribution 3 is motivated, in whole or substantial part, by these corporate business purposes.

(rr) Except for Distribution 5, there is no plan or intention by the shareholder or security holders of Distributing 2 to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in, or securities of, Controlled 1 or Distributing 2 after Distribution 3.

(ss) There is no plan or intention by Distributing 2 or Controlled 1, directly or through any subsidiary corporation, to purchase any of its outstanding stock after Distribution 3, other than through stock purchases meeting the requirements of section 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696, 705.

(tt) There is no plan or intention to liquidate Distributing 2 or Controlled 1, to merge any of these corporations with any other corporation, or to sell or otherwise dispose of the assets of any of these corporations after Distribution 3, except in the ordinary course of business, in the Controlled 1 Combination, and in the Controlled 1/Sub 1 Merger.

(uu) Immediately before Distribution 3, 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 by T.D. 8597). Further, any excess loss account Distributing 2 may have with respect to its Controlled 1 stock will be included in income immediately before Distribution 3 (see § 1.1502-19).

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(vv) Payments made in connection with any continuing transactions between Distributing 2 and Controlled 1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(ww) No parties to Distribution 3 are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(xx) For purposes of § 355(d), immediately after Distribution 3, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote, or 50% or more of the total value of shares of all classes of Distributing 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 Distribution 3.

(yy) For purposes of § 355(d), immediately after Distribution 3, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled 1 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 Distribution 3, or (ii) attributable to distributions on Distributing 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 Distribution 3.

(zz) Distribution 3 is not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire directly or indirectly (taking into account the special rules of § 355(e)(3)) stock possessing 50% or more of the total combined voting power of all classes of stock of either Distributing 2 or Controlled 1, or stock possessing 50% or more of the total value of all classes of stock of Distributing 2 or Controlled 1. For purposes of this representation, the Grandfathered Acquisition is not taken into account.

Distribution 4

The taxpayers have made the following representations regarding Distribution 4:

(aaa) Any indebtedness owed by Controlled 2 to Distributing 2 after Distribution 4 will not constitute stock or securities.

(bbb) No part of the consideration to be distributed by Distributing 2 in Distribution 4 will be received by Distributing 3 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.

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(ccc) The five years of financial information submitted on behalf of Distributing 2 and Controlled 2 is representative of these corporations' present operations, and with regard to each of these corporations, there has been no substantial operational changes since the date of the last financial statements submitted.

(ddd) Immediately after Distribution 4, the fair market value of the gross assets of the trades and businesses of each of Distributing 2 (by virtue of Distributing 1) and Controlled 2 relied on to satisfy the active trade or business requirement of § 355(b) will have a fair market value of not less than five percent of the total fair market value of the gross assets of such corporation.

(eee) Immediately after Distribution 4, at least 90 percent of the fair market value of the gross assets of Distributing 2 will consist of stock and securities of Distributing 1, a controlled corporation that is engaged in the active conduct of a trade or business as defined in § 355(b)(2). Immediately after Distribution 4, Controlled 2 will also be directly engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(fff) Following Distribution 4, Distributing 2 (through Distributing 1) and Controlled 2 will each continue the active conduct of its respective business independently and with its own employees.

(ggg) Distribution 4 is being carried out to help eliminate certain systemic, management, and other problems that have arisen (or are exacerbated) by the operation of Business A1 and Business A2 within the Distributing 3 Group, as well as to facilitate the combination of Business A1 and Business A2 with certain affiliates of Parent 2 and Parent 1. Distribution 4 is motivated, in whole or substantial part, by these corporate business purposes.

(hhh) Except for Distribution 5, there is no plan or intention by Distributing 3 or any security holder of Distributing 2 to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in, or securities of, Controlled 2 or Distributing 2 after Distribution 4.

(iii) There is no plan or intention by Distributing 2 or Controlled 2, directly or through any subsidiary corporation, to purchase any of its outstanding stock after Distribution 4, other than through stock purchases meeting the requirements of section 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696, 705.

(jjj) There is no plan or intention to liquidate Distributing 2 or Controlled 2, to merge any of these corporations with any other corporation, or to sell or otherwise dispose of the assets of any of these corporations after Distribution 4, except in the

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ordinary course of business, in the Controlled 2 Combination, and in the Controlled 2/Sub 2 Merger.

(kkk) Immediately before Distribution 4, 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 by T.D. 8597). Further, any excess loss account Distributing 2 may have with respect to its Controlled 2 stock will be included in income immediately before Distribution 4 (see § 1.1502-19).

(lll) Payments made in connection with any continuing transactions between Distributing 2 and Controlled 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(mmm) No parties to Distribution 4 are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(nnn) For purposes of § 355(d), immediately after Distribution 4, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote, or 50% or more of the total value of shares of all classes of Distributing 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 Distribution 4.

(ooo) For purposes of § 355(d), immediately after Distribution 4, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled 2 stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled 2 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 Distribution 4, or (ii) attributable to distributions on Distributing 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 Distribution 4.

(ppp) Distribution 4 is not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire directly or indirectly (taking into account the special rules of § 355(e)(3)) stock possessing 50% or more of the total combined voting power of all classes of stock of either Distributing 2 or Controlled 2, or stock possessing 50% or more of the total value of all classes of stock of Distributing 2 or Controlled 2. For purposes of this representation, the Grandfathered Acquisition is not taken into account.

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Distribution 5

The taxpayers have made the following representations regarding Distribution 5:

(qqq) Any indebtedness owed by Controlled 1 or Controlled 2 to Distributing 3 after Distribution 5 will not constitute stock or securities.

(rrr) No part of the consideration to be distributed by Distributing 3 in Distribution 5 will be received by LLC 3 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 3.

(sss) The five years of financial information submitted on behalf of Distributing 3, Controlled 1, and Controlled 2 is representative of these corporations present operations, and with regard to each of these corporations, there has been no substantial operational changes since the date of the last financial statements submitted.

(ttt) Immediately after Distribution 5, the fair market value of the gross assets of the trades and businesses of Distributing 3 (through its stock ownership in Distributing 2, which in turn, owns Distributing 1) and Controlled 1 and Controlled 2 relied on to satisfy the active trade or business requirement of § 355(b) will have a fair market value of not less than five percent of the total fair market value of the gross assets of such corporation.

(uuu) Immediately after Distribution 5, at least 90 percent of the fair market value of the gross assets of Distributing 3 will consist of stock and securities of Distributing 2, a controlled corporation that is engaged in the active conduct of a trade or business as defined in § 355(b)(2). Immediately after Distribution 5, Controlled 1 and Controlled 2 will also be directly engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(vvv) Following Distribution 5, Distributing 3 (through its controlled subsidiaries), and Controlled 1 and Controlled 2 will each continue the active conduct of its respective business independently and with its own employees.

(www) Distribution 5 is being carried out to help eliminate certain systemic, management, and other problems that have arisen (or are exacerbated) by the operation of Business A1 and Business A2 within the Distributing 3 Group, as well as to facilitate the combination of Business A1 and Business A2 with certain affiliates of Parent 2 and Parent 1. Distribution 5 is motivated, in whole or substantial part, by these corporate business purposes.

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(xxx) Except for the Partnership Distributions, there is no plan or intention by LLC 3 or any security holder of Distributing 3 to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in, or securities of, either Controlled 1, Controlled 2, or Distributing 3 after Distribution 5.

(yyy) There is no plan or intention by Distributing 3, Controlled 1, or Controlled 2, directly or through any subsidiary corporation, to purchase any of its outstanding stock after Distribution 5, other than through stock purchases meeting the requirements of section 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696, 705.

(zzz) There is no plan or intention to liquidate Distributing 3, Controlled 1, or Controlled 2, to merge any of these corporations with any other corporation, or to sell or otherwise dispose of the assets of any of these corporations after Distribution 5, except in the ordinary course of business, in the Combinations, and in the Mergers.

(aaaa) Immediately before Distribution 5, 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 by T.D. 8597). Further, any excess loss account Distributing 3 may have with respect to its Controlled 1 and Controlled 2 stock will be included in income immediately before Distribution 5 (see § 1.1502-19).

(bbbb) Payments made in connection with any continuing transactions between Distributing 3 and Controlled 1 and between Distributing 3 and Controlled 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(cccc) No parties to Distribution 5 are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(dddd) For purposes of § 355(d), immediately after Distribution 5, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing 3 stock entitled to vote, or 50% or more of the total value of shares of all classes of Distributing 3 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 Distribution 5.

(eeee) For purposes of § 355(d), immediately after Distribution 5, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled 1 or Controlled 2 stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled 1 or Controlled 2 stock that was either (i) acquired by purchase (as defined in § 355(d)(5)

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and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 5, or (ii) attributable to distributions on Distributing 3 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 Distribution 5.

(ffff) Distribution 5 is not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire directly or indirectly (taking into account the special rules of § 355(e)(3)) stock possessing 50% or more of the total combined voting power of all classes of stock of either Distributing 3, Controlled 1, or Controlled 2, or stock possessing 50% or more of the total value of all classes of stock of Distributing 3, Controlled 1, or Controlled 2. For purposes of this representation, the Grandfathered Acquisition is not taken into account.

Other Representations

(gggg) At all times prior to the Controlled 1 Combination, LLC 1 will be a domestic limited liability company with a single owner and will not have made an election under § 301.7701-3(a) to be classified as a corporation.

(hhhh) At all times prior to the Controlled 2 Combination, LLC 2 will be a domestic limited liability company with a single owner and will not have made an election under § 301.7701-3(a) to be classified as a corporation.

(iiii) There is no "net precontribution gain" (as defined in § 737(b)) with respect to any partner of LLC 3. This representation takes into account the amendment to § 737(b) made by § 1063 of the Taxpayer Relief Act of 1997 which extended from five to seven years the period during which net precontribution gain must be recognized but which does not apply to property contributed to a partnership on or before June 8, 1997.

(jjjj) As a result of the Controlled 1/Sub 1 Merger, the only change in the terms of the Controlled 1 Securities will be the change in the obligor from Controlled 1 to Sub 1.

(kkkk) As a result of the Controlled 2/Sub 2 Merger, the only change in the terms of the Controlled 2 Securities will be the change in the obligor from Controlled 2 to Sub 2.

Rulings

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

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(1) Contribution 1, followed by Distribution 1, will be a reorganization under § 368(a)(1)(D). Distributing 1 and Controlled 1 each will be "a party to a reorganization" under § 368(b).

(2) No gain or loss will be recognized by Distributing 1 on Contribution 1 (§§ 361(a), 357(a)).

(3) No gain or loss will be recognized by Controlled 1 on Contribution 1 (§ 1032(a)).

(4) The basis of each asset received by Controlled 1 in Contribution 1 will equal the basis of that asset in the hands of Distributing 1 immediately before its transfer (§ 362(b)).

(5) The holding period of each asset received by Controlled 1 in Contribution 1 will include the period Distributing 1 held that asset (§ 1223(2)).

(6) No gain or loss will be recognized by Distributing 1 on the distribution of the Controlled 1 Securities to holders of the Old Debentures in the Debt Exchange (§ 361(c)(3)).

(7) No gain or loss will be recognized by Distributing 1 upon its distribution of Controlled 1 stock in Distribution 1 (§ 361(c)).

(8) No gain or loss will be recognized by Distributing 2 on its receipt of Controlled 1 stock in Distribution 1 (§ 355(a)).

(9) Gain but not loss will be recognized by holders of Old Debentures who exchange such Old Debentures for New Debentures and cash as part of Distribution 1 in an amount not in excess of the cash received in such exchange (§§ 355(a)(1) and 356(a)(1)). Any such gain will be treated as gain from the exchange of property (§ 356(a)(2)).

(10) The basis of a New Debenture received by a holder of an Old Debenture who exchanges such Old Debenture for a New Debenture and cash as part of Distribution 1 will be the same as such holder's basis in such Old Debenture decreased by the amount of cash received by such holder and increased by the amount of gain to such holder which is recognized on such exchange (§ 358(a)).

(11) The holding period of the Controlled 1 stock received by Distributing 2 in Distribution 1 will include the holding period of the Distributing 1 stock on which the distribution will be made, provided that the Distributing 1 stock is held as a capital asset on the date of Distribution 1 (§ 1223(1)).

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(12) Earnings and profits will be allocated between Distributing 1 and Controlled 1 in accordance with § 312(h), § 1.312-10(a), and § 1.1502-33(f)(2).

(13) Contribution 2, followed by Distribution 2, will be a reorganization under § 368(a)(1)(D). Distributing 1 and Controlled 2 each will be "a party to a reorganization" under § 368(b).

(14) No gain or loss will be recognized by Distributing 1 on Contribution 2 (§§ 361(a), 357(a)).

(15) No gain or loss will be recognized by Controlled 2 on Contribution 2 (§ 1032(a)).

(16) The basis of each asset received by Controlled 2 in Contribution 2 will equal the basis of that asset in the hands of Distributing 1 immediately before its transfer (§ 362(b)).

(17) The holding period of each asset received by Controlled 2 in Contribution 2 will include the period Distributing 1 held that asset (§ 1223(2)).

(18) No gain or loss will be recognized by Distributing 1 on the distribution of the Controlled 2 Securities to holders of the Old Debentures in the Debt Exchange (§ 361(c)(3)).

(19) No gain or loss will be recognized by Distributing 1 upon its distribution of Controlled 2 stock in Distribution 2 (§ 361(c)).

(20) No gain or loss will be recognized by Distributing 2 on its receipt of Controlled 2 stock in Distribution 2 (§ 355(a)(1)).

(21) Gain but not loss will be recognized by holders of Old Debentures who exchange such Old Debentures for New Debentures and cash as part of Distribution 2 in an amount not in excess of the cash received in such exchange (§§ 355(a)(1) and 356(a)(1)). Any such gain will be treated as gain from the exchange of property (§ 356(a)(2)).

(22) The basis of a New Debenture received by a holder of an Old Debenture who exchanges such Old Debenture for a New Debenture and cash as part of Distribution 2 will be the same as such holder's basis in such Old Debenture decreased by the amount of cash received by such holder and increased by the amount of gain to such holder which is recognized on such exchange (§ 358(a)).

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(23) The holding period of the Controlled 2 stock received by Distributing 2 in Distribution 2 will include the holding period of the Distributing 1 stock on which the distribution will be made, provided that the Distributing 1 stock is held as a capital asset on the date of Distribution 2 (§ 1223(1)).

(24) Earnings and profits will be allocated between Distributing 1 and Controlled 2 in accordance with § 312(h), § 1.312-10(a), and § 1.1502-33(f)(2).

(25) No gain or loss will be recognized by Distributing 2 on Distribution 3 (§ 355(c)).

(26) No gain or loss will be recognized by Distributing 3 on its receipt of Controlled 1 stock in Distribution 3 (§ 355(a)(1)).

(27) The holding period of the Controlled 1 stock received by Distributing 3 in Distribution 3 will include the holding period of the Distributing 2 stock on which the distribution will be made, provided that the Distributing 2 stock is held as a capital asset on the date of Distribution 3 (§ 1223(1)).

(28) Earnings and profits will be allocated between Distributing 2 and Controlled 1 in accordance with § 312(h), § 1.312-10(b), § 1.1502-33(f)(2).

(29) No gain or loss will be recognized by Distributing 2 on Distribution 4 (§ 355(c)).

(30) No gain or loss will be recognized by Distributing 3 on its receipt of Controlled 2 stock in Distribution 4 (§ 355(a)(1)).

(31) The holding period of the Controlled 2 stock received by Distributing 3 in Distribution 4 will include the holding period of the Distributing 2 stock on which the distribution will be made, provided that the Distributing 2 stock is held as a capital asset on the date of Distribution 4 (§ 1223(1)).

(32) Earnings and profits will be allocated between Distributing 2 and Controlled 2 in accordance with § 312(h), § 1.312-10(b), and § 1.1502-33(f)(2).

(33) No gain or loss will be recognized by Distributing 3 on Distribution 5 (§ 355(c)).

(34) No gain or loss will be recognized by LLC 3 on its receipt of Controlled 1 and Controlled 2 stock in Distribution 5 (§ 355(a)(1)).

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(35) The aggregate basis of the Controlled 1, Controlled 2, and Distributing 3 stock in the hands of LLC 3 immediately after Distribution 5 will equal the aggregate basis of the Distributing 3 stock held by LLC 3 immediately before Distribution 5, allocated in proportion to the fair market value of each of Controlled 1, Controlled 2, and Distributing 3 stock in accordance with § 358(b) (§§ 358(a), (b) and (c)).

(36) The holding period of the Controlled 1 and Controlled 2 stock received by LLC 3 in Distribution 5 will include the holding period of the Distributing 3 stock on which Distribution 5 will be made, provided that the Distributing 3 stock is held as a capital asset on the date of Distribution 5 (§ 1223(1)).

(37) Earnings and profits will be allocated between Distributing 3 and Controlled 2 and between Distributing 3 and Controlled 1 in accordance with § 312(h), § 1.312-10(b), and § 1.1502-33(e)(3).

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

(38) The distribution by LLC 3 of Controlled 2 stock to Parent 2 and of Controlled 1 stock to Member 1 and Member 2 will not result in recognition of gain or loss to Parent 2, Member 1, Member 2, or LLC 3 (§§ 731(a) and (b)).

(39) The basis of Parent 2's interest in LLC 3 will be reduced (but not below zero) by the adjusted basis of the stock of Controlled 2 received by Parent 2 from LLC 3 (§ 733).

(40) The basis of Member 1's interest in LLC 3 will be reduced (but not below zero) by the adjusted basis of the stock of Controlled 1 received by Member 1 from LLC 3 (§ 733).

(41) The basis of Member 2's interest in LLC 3 will be reduced (but not below zero) by the adjusted basis of the stock of Controlled 1 received by Member 2 from LLC 3 (§ 733).

(42) The basis of the Controlled 2 stock that will be distributed to Parent 2 in Partnership Distribution 2 will be equal to the lesser of (i) LLC 3's basis in the Controlled 2 stock immediately before Partnership Distribution 2, and (ii) Parent 2's basis in its interest in LLC 3 immediately before Partnership Distribution 2 (§ 732(a)).

(43) The basis of the Controlled 1 stock that will be distributed to Member 1 in Partnership Distribution 1 will be equal to the lesser of (i) LLC 3's basis in the Controlled 1 stock immediately before Partnership Distribution 1, and (ii) Member 1's basis in its interest in LLC 3 immediately before Partnership Distribution 1 (§ 732(a)).

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(44) The basis of the Controlled 1 stock that will be distributed to Member 2 in Partnership Distribution 1 will be equal to the lesser of (i) LLC 3's basis in the Controlled 1 stock immediately before Partnership Distribution 1, and (ii) Member 2's basis in its interest in LLC 3 immediately before Partnership Distribution 1 (§ 732(a)).

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

(45) LLC 1 will be disregarded as an entity separate from its owner for federal income tax purposes (§ 301.7701-3).

(46) LLC 2 will be disregarded as an entity separate from its owner for federal income tax purposes (§ 301.7701-3).

Based solely on the information submitted and the representations set forth above, and provided that the Mergers will constitute transactions to which § 381(a) applies and that Sub 1 and Sub 2 will constitute the acquiring corporations within the meaning of § 381, we rule as follows:

(47) The substitution of Sub 1 for Controlled 1 and the substitution of Sub 2 for Controlled 2 as obligors on the Controlled 1 Securities and Controlled 2 Securities, respectively, will be transactions within the meaning of § 1.1001-3(e)(4)(i)(B).

Caveats

No opinion is expressed about the tax treatment of the Proposed Transaction 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 Transaction that are not specifically covered by the above rulings. In particular, we express no opinion concerning:

- (a) the federal income tax consequences of the Members 1 and 2 Transfers, the Drop Downs, and the Mergers (including whether § 381(a) will apply to the Mergers),
- (b) the allocation of stock basis under § 358 as a result of Distribution 1, Distribution 2, Distribution 3, and Distribution 4, and
- (c) the federal tax consequences of the Tax Allocation Agreement.

Procedural Matters

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

Each taxpayer involved in the Proposed Transaction should attach a copy of this ruling letter to the taxpayer's federal income tax return for the taxable year in which the Proposed Transaction is completed.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to the taxpayer.

Sincerely,

Richard K. Passales
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Corporate)

cc: