

## Internal Revenue Service

Sub 2 =

LLC 2 =

LLC 3 =

LLC 4 =

FSub 1 =

FSub 2 =

FSub 3 =

FSub 4 =

Business A =

Business B =

Business C =

a =

b =

c =

State A =

Dear :

This letter responds to your March 14, 2006 letter requesting rulings on certain federal income tax consequences of a proposed transaction. The information provided 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 taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. 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. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether each of the Internal Distribution, Controlled 1 External Distribution, and Controlled 2 External Distribution (each described 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)); and (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 (a foreign corporation) is the common parent of a corporate group composed of various domestic and foreign corporations engaged in various businesses including Business A, Business B, and Business C. Parent wholly owns Distributing 1.

Distributing 1 is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Distributing 1 is a holding company that conducts Business A, Business B, and Business C indirectly through subsidiaries.

Distributing 1 owns all of the outstanding common stock and preferred stock of Distributing 2. Distributing 2 owns all of the outstanding common stock of Controlled 2. Controlled 2 owns a percent of LLC 1, which is treated as a partnership for federal income tax purposes. Distributing 2 conducts directly Business A, and Controlled 2 conducts indirectly (through LLC 1) Business B.

LLC 1 is a board-managed limited liability company. Controlled 2 controls the LLC 1 board of directors through its ownership of an a percent interest in LLC 1. Each of the LLC 1 board members appointed by Controlled 2 for each of the last five years has been an officer and/or employee of Controlled 2 and/or Distributing 2.

In addition to controlling the LLC 1 board of directors, officers and employees of Distributing 1, Distributing 2, and Controlled 2 regularly performed active and substantial management functions with respect to Business B, and provided overall supervision,

direction and control of the Business B employees, in each of the five years preceding the Proposed Transactions (described below).

For a two-year period during the five years preceding the Proposed Transactions, the employees of Business B (as conducted by LLC 1) were employed by LLC 1 Sub, a wholly-owned subsidiary of LLC 1. During the two years in which Business B's employees were employed by LLC 1 Sub, LLC 1 Sub had no material assets other than assets related to the employment of the Business B employees. In addition, LLC 1 Sub had no gross receipts and no material expenses other than gross receipts and expenses related to the employment of the Business B employees.

Distributing 1 also wholly owns Sub 1, which conducts directly and indirectly Business C. Sub 1 wholly owns Sub 2, and Sub 2 wholly owns LLC 2. The taxpayer represents that LLC 2 is treated as a disregarded entity for federal income tax purposes. Before the Proposed Transactions, Sub 2 will convert under State A law into LLC 3 and Sub 1 will convert under State A law into LLC 4. The taxpayer represents (i) that LLC 3 and LLC 4 each will be treated as a disregarded entity for federal income tax purposes and (ii) that the conversion of Sub 2 into LLC 3 and the conversion of Sub 1 into LLC 4 each will constitute a tax-free liquidation as described in § 332.

Financial information has been received indicating that Business A (as conducted by Distributing 2), Business B (as conducted by LLC 1) and Business C (as currently conducted by Sub 1 and that will be conducted directly by Distributing 1 at the time of the Proposed Transactions) each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the five years preceding the Proposed Transactions.

Distributing 1 has debts outstanding to Parent consisting of approximately \$b dollars of notes (the "Distributing 1 Notes") and open account indebtedness of approximately \$c dollars (collectively, the "Distributing 1 Group Indebtedness"). The Distributing 1 Group Indebtedness was incurred in the ordinary course of business and has commercially reasonable arm's length terms. The Distributing 1 Notes have fixed maturity dates.

### **Proposed Transactions**

For what are represented to be valid business purposes, Distributing 1 has proposed the following series of transactions (the "Proposed Transactions"):

(i) Distributing 2 will distribute all of the outstanding common stock of Controlled 2 to Distributing 1 (the "Internal Distribution").

(ii) Controlled 2 will distribute to Distributing 1 a note (the "Controlled 2 Note") in the amount equal to Controlled 2's allocable share of the current Distributing 1 Group

Indebtedness. Distributing 1 will transfer the Controlled 2 Note to Parent in partial satisfaction of the outstanding Distributing 1 Group Indebtedness.

(iii) Distributing 1 will contribute to newly formed Controlled 1 all of the common stock and preferred stock of Distributing 2 in exchange for all of the common stock of Controlled 1 and a note (the "Controlled 1 Note") in the amount equal to Distributing 2's allocable share of the current Distributing 1 Group Indebtedness (collectively, the "Contribution").

(iv) Distributing 1 will distribute the Controlled 1 Note to Parent in full or partial satisfaction of the remainder of the Distributing 1 Group Indebtedness.

(v) Distributing 1 will distribute to Parent (a) all of the outstanding common stock of Controlled 1 (the "Controlled 1 External Distribution") and (b) all of the outstanding common stock of Controlled 2 (the "Controlled 2 External Distribution"). The Controlled 1 External Distribution and the Controlled 2 External Distribution are together referred to as the "External Distributions."

(vi) Parent will contribute all of the outstanding stock of Controlled 1 and Controlled 2 to FSub 1, a wholly owned subsidiary of Parent.

(vii) FSub 1 will contribute (a) all of the outstanding stock of Controlled 1 to FSub 2, a wholly owned subsidiary of FSub 1, and (b) all of the outstanding stock of Controlled 2 to FSub 4, a wholly owned subsidiary of FSub 1.

(viii) FSub 2 will contribute all of the outstanding stock of Controlled 1 to FSub 3, a wholly owned subsidiary of FSub 2.

## **Representations**

### **Internal Distribution**

The taxpayer makes the following representations regarding the Internal Distribution described above in step (i):

(a) The indebtedness, if any, owed by Controlled 2 to Distributing 2 after the Internal Distribution will not constitute stock or securities.

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

(c) The five years of financial information submitted on behalf of Controlled 2 is representative of its present operations, and with regard to Controlled 2, there have been no substantial operational changes since the date of the last financial statements submitted.

(d) The five years of financial information submitted on behalf of Distributing 2 is representative of its present operations, and with regard to Distributing 2, there have

been no substantial operational changes since the date of the last financial statements submitted.

(e) Following the Internal Distribution, Distributing 2 and Controlled 2 will each continue the active conduct of its business independently and with its separate employees or employees of the other members of its affiliated group.

(f) The Internal Distribution is carried out for the corporate business purpose of facilitating the External Distributions. The Internal Distribution is motivated, in whole or substantial part, by this corporate business purpose.

(g) The Internal Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing 2 or Controlled 2 or both.

(h) Other than trade account indebtedness created in the ordinary course of business through continuing transactions at terms comparable to those which could be obtained in an arm's length transaction, payables created for all transitional services negotiated at arm's length, and potential liabilities associated with the tax sharing agreement through the date of the External Distributions, no inter-corporate debt will exist between Distributing 2 and Controlled 2 at the time of, or after, the Internal Distribution.

(i) Immediately before the Internal Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transactions regulations (see § 1.1502-13 and § 1.1502-14 as in effect before publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). At the time of the Internal Distribution, Distributing 2 will not have an excess loss account in the stock of Controlled 2.

(j) Payments made in connection with all continuing transactions, if any, 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, except for certain transactions and arrangements, which may be provided based on the cost incurred by the provider.

(k) For purposes of § 355(d), immediately after the Internal 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 Distributing 2 stock entitled to vote or 50 percent 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 the Internal Distribution.

(l) For purposes of § 355(d), immediately after the Internal 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 Controlled 2 stock entitled to vote or 50 percent 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 the Internal Distribution 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 the Internal Distribution.

(m) The Internal 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 Distributing 2 or Controlled 2 (including any predecessor or successor of any such corporation).

(n) Distributing 1, Distributing 2, and Controlled 2 each will pay its or their own expenses, if any, incurred in connection with the Internal Distribution.

#### Contribution and Controlled 1 External Distribution

The taxpayer makes the following representations regarding the Contribution and Controlled 1 External Distribution described above in steps (iii) and (v):

(o) The indebtedness, if any, owed by Controlled 1 to Distributing 1 after the Controlled 1 External Distribution will not constitute stock or securities.

(p) No part of the consideration to be distributed by Distributing 1 in the Controlled 1 External Distribution will be received by Parent as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1, except for the receipt of the Controlled 1 Note by Parent in its capacity as a creditor in full or partial satisfaction of the remainder of the Distributing 1 Group Indebtedness.

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

(r) The five years of financial information submitted on behalf of Controlled 1 (or Distributing 2) is representative of its present operations, and with regard to Controlled 1 (or Distributing 2), there have been no substantial operational changes since the date of the last financial statements submitted.

(s) The five years of financial information submitted on behalf of Distributing 1 (or Sub 1 before its liquidation into Distributing 1) is representative of its present operations, and with regard to Distributing 1 (or Sub 1 before its liquidation into

Distributing 1), there have been no substantial operational changes since the date of the last financial statements submitted.

(t) Following the Controlled 1 External Distribution, Distributing 1 and Controlled 1 (through Distributing 2) will each continue the active conduct of its business independently and with its separate employees or employees of the other members of its affiliated group.

(u) The Controlled 1 External Distribution is carried out for the following corporate business purposes: Facilitating alignment of Business A with the remainder of Parent's global Business A as well as enhancing the ability of Business A to more effectively incentivize its employees by allowing them to participate in the employee ownership program. The Controlled 1 External Distribution is motivated, in whole or substantial part, by one or more of these corporate business purposes.

(v) The Controlled 1 External Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled 1 or both.

(w) The total adjusted basis and the fair market value of the assets transferred to Controlled 1 by Distributing 1 in the Contribution will equal or exceed the sum of the liabilities assumed, if any, (as determined under § 357(d)) by Controlled 1 plus the fair market value of any other property, and the amount of money, transferred by Controlled 1 to Distributing 1 that is transferred to the creditors of Distributing 1 pursuant to the plan of reorganization.

(x) The liabilities assumed, if any, (as determined under § 357(d)) by Controlled 1 in the Contribution will have been incurred in the ordinary course of business and will be associated with the assets transferred.

(y) Other than trade account indebtedness created in the ordinary course of business through continuing transactions at terms comparable to those which could be obtained in an arm's length transaction, payables created for all transitional services negotiated at arm's length, and potential liabilities associated with the tax sharing agreement through the date of the External Distributions, no inter-corporate debt will exist between Distributing 1 and Controlled 1 at the time of, or after, the Controlled 1 External Distribution.

(z) Immediately before the Controlled 1 External Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transactions regulations (see § 1.1502-13 and § 1.1502-14 as in effect before 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, Distributing 1's excess loss account with respect to the stock of Controlled 1, if any, will be included in income immediately before the Controlled 1 External Distribution (see § 1.1502-19).



(aa) Payments made in connection with all continuing transactions, if any, 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, except for certain transactions and arrangements, which may be provided based on the cost incurred by the provider of such services.

(bb) For purposes of § 355(d), immediately after the Controlled 1 External 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 Distributing 1 stock entitled to vote or 50 percent 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 the Controlled 1 External Distribution.

(cc) For purposes of § 355(d), immediately after the Controlled 1 External 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 Controlled 1 stock entitled to vote or 50 percent 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 the Controlled 1 External Distribution 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 the Controlled 1 External Distribution.

(dd) The Controlled 1 External 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 Distributing 1 or Controlled 1 (including any predecessor or successor of any such corporation).

(ee) The total fair market value of the assets transferred by Distributing 1 to Controlled 1 in the Contribution will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 1 in connection with the exchange, (ii) the amount of any liabilities owed to Controlled 1 by Distributing 1 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 the recognition of gain) received by Distributing 1 in connection with the exchange. The fair market value of the assets of Controlled 1 will exceed the amount of its liabilities immediately after the exchange.

(ff) The Controlled 1 Note received by Distributing 1 from Controlled 1 will be transferred by Distributing 1 to its creditor (Parent) in connection with the reorganization.

(gg) No two parties to the Controlled 1 External Distribution are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(hh) Neither Distributing 1 nor Controlled 1 was a United States real property holding corporation (as defined in § 897(c)(2)) at any time during the five-year period ending on the date of the Controlled 1 External Distribution. Controlled 1 will not be a United States real property holding company, but Distributing 1 will likely be a United States real property holding company, following the Controlled 1 External Distribution.

(ii) Distributing 1, Controlled 1, and Parent each will pay its or their own expenses, if any, incurred in connection with the Controlled 1 External Distribution.

#### Controlled 2 External Distribution

The taxpayer makes the following representations regarding the Controlled 2 External Distribution described above in step (v):

(jj) The indebtedness, if any, owed by Controlled 2 to Distributing 1 after the Controlled 2 External Distribution will not constitute stock or securities.

(kk) No part of the consideration to be distributed by Distributing 1 in the Controlled 2 External Distribution will be received by Parent as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1, except for the receipt of the Controlled 2 Note by Parent in its capacity as a creditor in full or partial satisfaction of the remainder of the Distributing 1 Group Indebtedness.

(ll) The five years of financial information submitted on behalf of Controlled 2 is representative of its present operations, and with regard to Controlled 2, there have been no substantial operational changes since the date of the last financial statements submitted.

(mm) The five years of financial information submitted on behalf of Distributing 1 (or Sub 1 before its liquidation into Distributing 1) is representative of its present operations, and with regard to Distributing 1 (or Sub 1 before its liquidation into Distributing 1), there have been no substantial operational changes since the date of the last financial statements submitted.

(nn) Following the Controlled 2 External Distribution, Distributing 1 and Controlled 2 will each continue the active conduct of its business independently and with its separate employees or employees of the other members of its affiliated group.

(oo) The Controlled 2 External Distribution is carried out for the following corporate business purposes: Facilitating the alignment of Business A with the remainder of Parent's global Business A as well as facilitating the separation of

Business B into a structurally independent line of business in connection with its anticipated expansion into a global business. The Controlled 2 External Distribution is motivated, in whole or substantial part, by one or more of these corporate business purposes.

(pp) The Controlled 2 External Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled 2 or both.

(qq) Other than trade account indebtedness created in the ordinary course of business through continuing transactions at terms comparable to those which could be obtained in an arm's length transaction, payables created for all transitional services negotiated at arm's length, and potential liabilities associated with the tax sharing agreement through the date of the External Distributions, no inter-corporate debt will exist between Distributing 1 and Controlled 2 at the time of, or after, the Controlled 2 External Distribution.

(rr) Immediately before the Controlled 2 External Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transactions regulations (see § 1.1502-13 and § 1.1502-14 as in effect before 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, Distributing 1's excess loss account with respect to the stock of Controlled 2, if any, will be included in income immediately before the Controlled 2 External Distribution (see § 1.1502-19).

(ss) Payments made in connection with all continuing transactions, if any, 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, except for certain transactions and arrangements, which may be provided based on the cost incurred by the provider of such services.

(tt) For purposes of § 355(d), immediately after the Controlled 2 External 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 Distributing 1 stock entitled to vote or 50 percent 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 the Controlled 2 External Distribution.

(uu) For purposes of § 355(d), immediately after the Controlled 2 External 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 Controlled 2 stock entitled to vote or 50 percent 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 the Controlled 2 External Distribution 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 the Controlled 2 External Distribution.

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

(ww) Neither Distributing 1 nor Controlled 2 was a United States real property holding corporation (as defined in § 897(c)(2)) at any time during the five-year period ending on the date of the Controlled 2 External Distribution. Controlled 2 will not be a United States real property holding company, but Distributing 1 will likely be a United States real property holding company, following the Controlled 2 External Distribution.

(xx) Distributing 1, Controlled 2, and Parent each will pay its or their own expenses, if any, incurred in connection with the Controlled 2 External Distribution.

## **Rulings**

### **Internal Distribution**

Based solely on the information submitted and the representations set forth above, we rule as follows on the Internal Distribution (step (i)):

(1) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing 1 on the Internal Distribution (§ 355(a)).

(2) No gain or loss will be recognized by Distributing 2 on the Internal Distribution (§ 355(c)(1)).

(3) The aggregate basis of the Distributing 2 common stock and the Controlled 2 common stock in the hands of Distributing 1 after the Internal Distribution will equal the aggregate basis of the Distributing 2 common stock held by Distributing 1 immediately before the Internal Distribution, allocated in the manner described in § 1.358-2 (§ 358(b)(2) and (c)).

(4) The holding period of the Controlled 2 common stock (including fractional share interests to which Distributing 2 may be entitled) received by Distributing 1 in the Internal Distribution will include the holding period of the Distributing 2 common stock on which the Internal Distribution is made, provided the Distributing 2 common stock is held as a capital asset on the date of the Internal Distribution (§ 1223(1)).

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

Contribution and Controlled 1 External Distribution

Based solely on the information submitted and the representations set forth above, we rule as follows on the Contribution and Controlled 1 External Distribution (steps (iii) and (v)):

(6) The Contribution followed by the Controlled 1 External Distribution 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).

(7) Distributing 1 will recognize no gain or loss on the Contribution (§ 361(a), 361(b)(1)(A) and (3)).

(8) Controlled 1 will recognize no gain or loss on the Contribution (§ 1032(a)).

(9) The basis of each asset received by Controlled 1 in the Contribution will be determined in accordance with § 362(b) and (e).

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

(11) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Parent on its receipt of the Controlled 1 common stock (§ 355(a)).

(12) No gain or loss will be recognized by Distributing 1 on the distribution to Parent of all of the Controlled 1 common stock (§ 361(c)).

(13) The aggregate basis of the Distributing 1 common stock, the Controlled 1 common stock and the Controlled 2 common stock in the hands of Parent after the External Distributions will equal the aggregate basis of the Distributing 1 common stock held by Parent immediately before the External Distributions, allocated in the manner described in § 1.358-2 (§ 358(b)(2) and (c)).

(14) The holding period of the Controlled 1 common stock (including fractional share interests to which Parent may be entitled) received by Parent in the Controlled 1 External Distribution will include the holding period of the Distributing 1 common stock on which the Controlled 1 External Distribution is made, provided the Distributing 1

common stock is held as a capital asset on the date of the Controlled 1 External Distribution (§ 1223(1)).

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

#### Controlled 2 External Distribution

Based solely on the information submitted and the representations set forth above, we rule as follows on the Controlled 2 External Distribution (step (v)):

(16) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Parent on the Controlled 2 External Distribution (§ 355(a)).

(17) No gain or loss will be recognized by Distributing 1 on the Controlled 2 External Distribution (§ 355(c)(1)).

(18) The aggregate basis of the Distributing 1 common stock, the Controlled 1 common stock and the Controlled 2 common stock in the hands of Parent after the External Distributions will equal the aggregate basis of the Distributing 1 common stock held by Parent immediately before the External Distributions, allocated in the manner described in § 1.358-2 (§ 358(b)(2) and (c)).

(19) The holding period of the Controlled 2 common stock (including fractional share interests to which Parent may be entitled) received by Parent will include the holding period of the Distributing 1 common stock on which the Controlled 2 External Distribution is made, provided the Distributing 1 common stock is held as a capital asset on the date of the Controlled 2 External Distribution (§ 1223(1)).

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

#### **Caveats**

We express no opinion about the tax treatment of any transaction described above under other provisions of the Code and regulations or the tax treatment of any condition 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:

(1) Whether each of the Internal Distribution, the Controlled 1 External Distribution, and the Controlled 2 External Distribution satisfies the business purpose requirement of § 1.355-2(b);

(2) Whether each of the Internal Distribution, the Controlled 1 External Distribution, and the Controlled 2 External Distribution 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) and § 1.355-2(d));

(3) Whether each of the Internal Distribution, the Controlled 1 External Distribution, and the Controlled 2 External Distribution and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii);

(4) Whether § 1.367(e)-1 applies to the Controlled 1 External Distribution and the Controlled 2 External Distribution.

(5) The federal tax treatment of steps (ii), (iv), (vi), (vii) and (viii) of the Proposed Transactions; and

(6) The federal tax treatment of the conversions of Sub 2 into LLC 3 and of Sub 1 into LLC 4.

(7) The federal tax treatment of any cost-based transaction described herein.

### **Procedural Matters**

This ruling letter 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 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,

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