

Internal Revenue Service

Number: **200501025**

Release Date: 01/07/2005

Index Number: 355.01-00, 368.04-00,
368.05-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:BO3

PLR-123337-04

Date:

June 14, 2004

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

Sub 13 =

Sub 14 =

Sub 15 =

Sub 16 =

Sub 17 =

Sub 18 =

Sub 19 =

Sub 20 =

Sub 21 =

Sub 22 =

Sub 23 =

Sub 24 =

Contributed Subs =

Subgroup Subs =

LLC 1 =

LLC 2 =

LLC 3 =

LLC 4 =

LLC 5 =

LP =

Acquisition Corp. =

Newco 1 =

Newco 2 =

Sub 13 LLC =

Sub 22 LLC =

Business A =

Business B =

Business C =

Operations =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

a =

b =

c =

<u>d</u>	=
<u>e</u>	=
<u>f</u>	=
<u>g</u>	=
<u>h</u>	=
<u>i</u>	=
<u>j</u>	=
<u>k</u>	=
Consultant	=

Dear

This letter responds to your April 22, 2004 request for rulings on certain federal income tax consequences of the series of proposed transactions described below (the "Proposed Transactions"). The information provided in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material 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 made no determination regarding whether any distribution described below satisfies the business purpose requirement of §1.355-2(b) of the Income Tax Regulations, whether any distribution described below is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)), or whether any distribution described below 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 Distributing or Controlled (see § 355(e) and § 1.355-7T).

Summary of Facts

Distributing is a publicly traded corporation and the common parent of an affiliated group that files a consolidated federal income tax return. The group conducts Business A and Business B. Business C is a significant component of Business B. Distributing wholly owns Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, and each of the 11 Contributed Subs. Restricted shares of Distributing common stock that have been awarded to certain Distributing employees ("Distributing Restricted Stock") will be outstanding at the time of the Proposed Transactions.

Distributing acquired Sub 1 on Date 1 (less than five years ago) in a transaction intended to qualify both as a reorganization under § 368(a)(1)(A) and as a reverse acquisition under § 1.1502-75(d)(3) (the "Sub 1 Acquisition"). Sub 1 wholly owns Sub 8, Sub 9, Sub 10, Sub 11, Sub 12, and Sub 13. Sub 9 wholly owns Sub 14, LLC 1, and LLC 2. LLC 1 and LLC 2 are limited liability companies, each of which is disregarded as separate from its owner for federal tax purposes under § 301.7701-3 of the Procedure and Administrative Regulations (a "disregarded entity"). Sub 9 directly operates Business C, and LLC 2 has employees related to Business B. Sub 11 wholly owns Sub 15 and directly conducts Operations. Sub 13 wholly owns Sub 16 and Sub 17.

Sub 2 wholly owns Sub 18, Sub 19, and Sub 20.

Distributing acquired Sub 3 on Date 2 (less than 2 years ago) in a transaction intended to qualify as an asset acquisition under § 338(h)(10) (the "Sub 3 Acquisition").

Sub 4 wholly owns six entities collectively referred to as the Subgroup Subs.

Sub 5 is engaged in Business A and Business C and wholly owns Sub 21. Sub 21 wholly owns LLC 3, which is classified as a corporation for federal tax purposes.

On Date 3 (less than three years ago), Distributing and Sub 1 received a percent of the Sub 7 stock (less than "control," as defined under § 368(c)) in exchange for all the stock of five subsidiaries in transactions designed to qualify under § 368(a)(1)(A) and (a)(2)(E) or § 368(a)(1)(B) (at the time, Sub 7 was the unrelated acquiring corporation) (the "Subs Disposition"). For business reasons not related to the business purposes for the Proposed Transactions, Distributing later decided to acquire control of Sub 7 and did so in the following manner:

(a) On Date 4 (more than two years after the Subs Disposition and more than eight months ago), Sub 1 exchanged its Sub 7 common shares for newly issued Sub 7 preferred shares in a transaction intended to qualify under § 368(a)(1)(E) (the "Recapitalization"). This exchange reduced Sub 1's voting interest in Sub 7 to less than 20 percent.

(b) Also on Date 4, Distributing merged newly formed Acquisition Corp into Sub 7 with Sub 7 surviving (the "Acquisition"). As a result of the Recapitalization and Acquisition, Distributing now owns b (more than 80) percent of the vote and c (less than 80) percent of the value of Sub 7, and Sub 1 owns the remaining d percent of the vote and e percent of the value. The Date 5 prospectus for the Recapitalization and Acquisition made no mention of the Proposed Transactions.

Sub 7 wholly owns Sub 22, Sub 23, LLC 4, and LLC 5. LLC 4 and LLC 5 are disregarded entities. On Date 6 (less than two years ago), Sub 7 acquired all the stock of Sub 22 (including Distributing's f-percent interest) in a transaction intended to qualify as a reorganization under § 368(a)(1)(B) (the "Sub 22 Acquisition"). LLC 4 and LLC 5 own g percent and h percent, respectively, of limited partnership LP, a disregarded entity. Sub 22 wholly owns Sub 24.

The financial information submitted by Distributing indicates that Business A (as conducted by each of Sub 1, Sub 4, Sub 5, Sub 9, Sub 11, Sub 22, and the six Subgroup Subs), Business B (as conducted by each of Sub 7, Sub 11, Sub 15, and Sub 23), and Business C (as conducted by each of Sub 5 and Sub 9) has, in the case of each named entity, had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years. To consolidate the payroll function, all employees of the Distributing group are housed in LLC 2, and a fee is charged to each entity for which services are performed. Controlled will have a similar arrangement with Newco 1 following the Proposed Transactions.

The management of Distributing has determined, based on the advice of Consultant and other information, that the aggregate stock value of Distributing (with Business A) and Controlled (with Business B) as separate companies will significantly exceed the value of Distributing stock absent the separation (the "Separation"). The added value will allow Controlled to (i) more effectively use its stock in acquisitions, (ii) more effectively attract, motivate, and retain key employees, and (iii) raise significantly more funds per share in the Offering (described below). The Separation will also resolve certain systemic and management difficulties that result from conducting Business A and Business B in the same affiliated group.

Proposed Transactions

To effect the Separation, Distributing proposes the following series of transactions (again, the Proposed Transactions):

(i) Sub 7 will distribute the stock of Sub 22 to Sub 1 in exchange for part of the Sub 7 preferred shares ("Distribution 1").

(ii) Sub 7 will distribute the stock of Sub 23 to Sub 1 in exchange for the remaining Sub 7 preferred shares ("Distribution 2"). Immediately before

Distribution 2, Sub 23 will distribute cash to Sub 7 in an amount that will equate the value of the remaining Sub 7 preferred shares with the value of the Sub 23 stock (the "Equalizing Distribution").

(iii) LLC 2 will transfer all of its employees who are involved in Business B to newly formed Newco 1 in exchange for all the stock of Newco 1, and will distribute the Newco 1 stock to Sub 9 ("Contribution 1").

(iv) Sub 9 will contribute its Business C, the ownership interest in LLC 1, and the stock of Newco 1 to Sub 14 ("Contribution 2") and distribute the stock of Sub 14 to Sub 1 ("Distribution 3").

(v) Sub 11 will contribute its Operations to Sub 15 ("Contribution 3") and distribute the stock of Sub 15 to Sub 1 ("Distribution 4").

(vi) Sub 13 will convert into Sub 13 LLC, a disregarded entity. As a result, Sub 1 will be treated as acquiring and directly holding the assets, and assuming the liabilities, of Sub 13 for federal tax purposes ("Liquidation 1"). Following Liquidation 1, Sub 13 LLC will distribute the stock of Sub 16 and Sub 17 to Sub 1.

(vii) Sub 22 will convert into Sub 22 LLC, a disregarded entity. As a result, Sub 1 will be treated as acquiring and directly holding the assets, and assuming the liabilities, of Sub 22 for federal tax purposes ("Liquidation 2"). Following Liquidation 2, Sub 22 LLC will distribute all of its properties, including the stock of Sub 24, to Sub 1.

(viii) Sub 1 will contribute the stock of Sub 8, Sub 12, Sub 14, Sub 15, Sub 16, Sub 17, and Sub 24 to Sub 23 ("Contribution 4") and distribute the stock of Sub 23 to Distributing ("Distribution 5").

(ix) Sub 2 will liquidate and distribute all of its properties, including the stock of Sub 18, Sub 19, and Sub 20, to Distributing ("Liquidation 3").

(x) Sub 5 will contribute its Business C and the stock of Sub 21 to newly formed Newco 2 in exchange for all the stock of Newco 2 ("Contribution 5") and distribute the stock of Newco 2 to Distributing ("Distribution 6").

(xi) Distributing will contribute the stock of Newco 2 to Sub 23 ("Contribution 6").

(xii) Newco 2 will merge into Sub 14 (the "Merger").

(xiii) Sub 4 will liquidate and distribute its properties, including the stock of the Subgroup Subs, to Distributing ("Liquidation 4").

(xiv) Each of the Subgroup Subs will convert into a single-member limited liability company, and each will be a disregarded entity (the "Conversions").

(xv) Distributing will contribute the stock of Sub 3, Sub 7, Sub 18, Sub 19, Sub 20, the Contributed Subs, and Sub 23 to newly formed Controlled in exchange for all the stock of Controlled ("Contribution 7").

(xvi) Controlled will contribute the stock of Sub 3, Sub 18, Sub 19, Sub 20, and the Contributed Subs to Sub 7 ("Contribution 8").

(xvii) Before the Offering described below in step (xviii), Controlled will declare a dividend to Distributing of i million dollars (the "Dividend Declaration").

(xviii) On or about Date 7, Controlled will sell i (less than 20) percent of its stock to the public (the "Offering").

(xix) Following the Offering, and before Distribution 7 described below in step (xx), Controlled will distribute i million dollars (pursuant to the Dividend Declaration) of the Offering's proceeds to Distributing (the "Cash Distribution"). The Cash Distribution will be transferred by Distributing to its creditors no later than one year following Distribution 7 to pay borrowings incurred or liabilities accrued at or before Distribution 7 that were not incurred or accrued in connection with the Proposed Transactions.

(xx) On Date 8 or as soon as practicable thereafter, Distributing will distribute its Controlled stock (representing k (greater than 80) percent of Controlled) to Distributing's shareholders pro rata ("Distribution 7"). To avoid the receipt of Controlled stock by certain subsidiaries of Distributing that currently hold Distributing stock, these subsidiaries will dispose of their Distributing stock before Distribution 7 through open market sales or sales or distributions to Distributing (the "Distributing Stock Dispositions").

In connection with the Proposed Transactions, Distributing and Controlled will enter into a Tax Sharing Agreement that may necessitate payments between the parties after Distribution 7.

Representations

The Acquisition

Distributing makes the following representations regarding the Acquisition (described above in the Summary of Facts at (b)):

(a) The Recapitalization qualified as a reorganization under § 368(a)(1)(E).

(b) The fair market value of the Distributing common stock received by each Sub 7 shareholder who participated in the Acquisition was approximately equal to the fair market value of the Sub 7 common stock surrendered by that shareholder in the Acquisition.

(c) At the time of the Acquisition, Sub 7 did not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Sub 7 that, if exercised or converted, would affect Distributing's acquisition or retention of control (within the meaning of § 368(c)) of Sub 7.

(d) There was at the time of the Acquisition, and is now, no plan or intention for Distributing, or any person related (as defined in § 1.368-1(e)(3)) to Distributing, to acquire, directly or indirectly, any Distributing stock issued in the Acquisition. Further, during the five-year period ending on the date of the Acquisition, (i) except in the Subs Disposition described above, neither Distributing nor any person related (as defined in § 1.368-1(e)(3)) to Distributing had acquired, directly or indirectly, any stock of Sub 7 with consideration other than Distributing stock; and (ii) no distributions were made on Sub 7 stock (other than ordinary, regular dividend distributions) either directly or indirectly.

(e) At the time of the Acquisition, Distributing had no plan or intention to liquidate or merge Sub 7 into another corporation, to sell or otherwise dispose of the stock of Sub 7, or to cause Sub 7 to sell or otherwise dispose of any of its assets, except for transfers made in the ordinary course of business or transfers of assets to a corporation controlled by Sub 7.

(f) Apart from Sub 7 stock received in the Subs Disposition, neither Distributing nor any affiliate of Distributing owned, at the time of the Acquisition stock in Sub 7, or did Distributing or any affiliate of Distributing own Sub 7 stock during the five years preceding the Acquisition.

(g) At the time of the Acquisition, (i) Sub 7 had no plan or intention to issue additional shares of stock that would result in Distributing losing control (within the meaning of § 368(c)) of Sub 7, and (ii) Sub 7 had no plan or intention to reacquire any of the stock issued in the Recapitalization or to alter in any way the effect of the Recapitalization (and no such alteration has since occurred).

(h) At the time of the Acquisition, Distributing had no plan or intention to reacquire any of its stock issued in the Acquisition.

(i) Distributing, Sub 7, and the shareholders of Sub 7 each paid their respective expenses, if any, incurred in the Acquisition.

(j) Distributing acquired Sub 7 common stock solely in exchange for Distributing voting stock. For this representation, Sub 7 common stock redeemed for cash or other property furnished by Distributing or an affiliate of Distributing is considered acquired by Distributing. Further, no liabilities of Sub 7 or its

shareholders were assumed by Distributing, nor was any of the Sub 7 common stock acquired by Distributing subject to any liabilities.

(k) No Sub 7 shareholders dissented from the Acquisition.

(l) Following the Acquisition, Sub 7 has continued, and will continue, its historic business or use a significant portion of its historic business assets in a business.

(m) At the time of the Acquisition, no two parties to the Acquisition were investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(n) At the time of the Acquisition, the fair market value of the assets of Sub 7 exceeded the sum of its liabilities plus the liabilities, if any, to which the assets were subject.

Distribution 1

Distributing makes the following representations regarding Distribution 1 (described above in step (i)):

(a1) Any indebtedness owed by Sub 22 to Sub 7 after Distribution 1 will not constitute stock or securities.

(b1) The fair market value of the Sub 22 stock received by Sub 1 will approximately equal the fair market value of the Sub 7 preferred shares surrendered by Sub 1 in Distribution 1.

(c1) No part of the consideration distributed by Sub 7 will be received by Sub 1 as a creditor, employee, or in any capacity other than that of a shareholder of Sub 7.

(d1) The five years of financial information submitted for Business B (as conducted by Sub 7) and Business A (as conducted by Sub 22) represents the present operation of these businesses, and regarding each, there have been no substantial operational changes since the date of the last financial statements submitted.

(e1) Following Distribution 1, Sub 7 and Sub 22 will each continue the active conduct of its business, independently and with its separate employees.

(f1) Distribution 1 will be carried out to facilitate Distribution 7 (the purpose for which is described below at representation (k7)). Distribution 1 is motivated, in whole or substantial part, by this corporate business purpose.

(g1) Except for Liquidation 2 and Distribution 2, there is no plan or intention to liquidate either Sub 7 or Sub 22, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after Distribution 1, except in the ordinary course of business.

(h1) Distribution 1 will not be used principally as a device for the distribution of earnings and profits of Sub 7 or Sub 22 or both.

(i1) No intercorporate debt will exist between Sub 7 and its subsidiaries, on the one hand, and Sub 22 and its subsidiaries, on the other hand, at the time of, or after, Distribution 1.

(j1) Payments made in any continuing transactions between Sub 7 and Sub 22 will be based on terms and conditions arrived at by the parties bargaining at arm's length.

(k1) Distribution 1 will not be a disqualified distribution (as defined in § 355(d)(2)) because immediately after Distribution 7: (i) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Sub 7 that will constitute a 50 percent or greater interest (defined in § 355(d)(4)) in Sub 7, and (ii) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Sub 22 that will constitute a 50 percent or greater interest (defined in § 355(d)(4)) in Sub 22.

(l1) Distribution 1 is not part of a plan or series of related transactions (within the meaning of § 1.355-7T) 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 7 or Sub 22 (including any predecessor or successor of any such corporation).

(m1) 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).

Distribution 2

Distributing makes the following representations regarding Distribution 2 (described above in step (ii)):

(a2) Any indebtedness owed by Sub 23 to Sub 7 after Distribution 2 will not constitute stock or securities.

(b2) The fair market value of the Sub 23 stock received by Sub 1 will approximately equal the fair market value of the Sub 7 preferred shares surrendered by Sub 1 in Distribution 2.

(c2) No part of the consideration distributed by Sub 7 will be received by Sub 1 as a creditor, employee, or in any capacity other than that of a shareholder of Sub 7.

(d2) The five years of financial information submitted for Business B (as conducted by Sub 7) and Business B (as conducted by Sub 23) represents the present operation of these businesses, and regarding each, there have been no substantial operational changes since the date of the last financial statements submitted.

(e2) Following Distribution 2, Sub 7 and Sub 23 will each continue the active conduct of its business, independently and with its separate employees.

(f2) Distribution 2 will be carried out to facilitate Distribution 7 (the purpose for which is described below at representation (k7)). Distribution 2 is motivated, in whole or substantial part, by this corporate business purpose.

(g2) There is no plan or intention to liquidate either Sub 7 or Sub 23, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after Distribution 2, except in the ordinary course of business.

(h2) Distribution 2 will not be used principally as a device for the distribution of earnings and profits of Sub 7 or Sub 23 or both.

(i2) No intercorporate debt will exist between Sub 7 and its subsidiaries, on the one hand, and Sub 23 and its subsidiaries, on the other hand, at the time of, or after, Distribution 2.

(j2) Payments made in any continuing transactions between Sub 7 and Sub 23 will be based on terms and conditions arrived at by the parties bargaining at arm's length.

(k2) Distribution 2 will not be a disqualified distribution (as defined in § 355(d)(2)) because immediately after Distribution 7: (i) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Sub 7 that will constitute a 50 percent or greater interest (defined in § 355(d)(4)) in Sub 7, and (ii) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Sub 23 that will constitute a 50 percent or greater interest (defined in § 355(d)(4)) in Sub 23.

(l2) Distribution 2 is not part of a plan or series of related transactions (within the meaning of § 1.355-7T) 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 7 or Sub 23 (including any predecessor or successor of any such corporation).

(m2) 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 and as currently in effect; § 1.1502-13 as published by T.D. 8597).

Contributions 1 and 2 and Distribution 3

Distributing makes the following representations regarding Contributions 1 and 2 and Distribution 3 (described above in steps (iii) and (iv)):

(a3) Any indebtedness owed by Sub 14 to Sub 9 after Distribution 3 will not constitute stock or securities.

(b3) No part of the consideration distributed by Sub 9 will be received by Sub 1 as a creditor, employee, or in any capacity other than that of a shareholder of Sub 9.

(c3) The five years of financial information submitted for Business A (as conducted by Sub 9) and Business C (as conducted by Sub 14) represents the present operation of these businesses, and regarding each, there have been no substantial operational changes since the date of the last financial statements submitted.

(d3) Following Distribution 3, Sub 9 and Sub 14 will each continue the active conduct of its business, independently and with its separate employees.

(e3) Distribution 3 will be carried out to facilitate Distribution 7 (the purpose for which is described below at representation (k7)). Distribution 3 is motivated, in whole or substantial part, by this corporate business purpose.

(f3) Except for the Merger, there is no plan or intention to liquidate either Sub 9 or Sub 14, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after Distribution 3, except in the ordinary course of business.

(g3) Distribution 3 will not be used principally as a device for the distribution of earnings and profits of Sub 9 or Sub 14 or both.

(h3) The total adjusted basis and the fair market value of the assets transferred in Contributions 1 and 2 will each equal or exceed the sum of the liabilities assumed (as determined under § 357(d)) by Sub 14.

(i3) The liabilities assumed (as determined under § 357(d)) by Sub 14 in Contributions 1 and 2 will have been incurred in the ordinary course of business and will be associated with the assets transferred.

(j3) Sub 9 will neither accumulate its receivables nor make extraordinary payments of its payables in anticipation of Distribution 3.

(k3) No intercorporate debt will exist between Sub 9 and its subsidiaries, on the one hand, and Sub 14 and its subsidiaries, on the other hand, at the time of, or after, Distribution 3.

(l3) Payments made in any continuing transactions between Sub 9 and Sub 14 will be based on terms and conditions arrived at by the parties bargaining at arm's length.

(m3) Neither Sub 9 nor Sub 14 is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).

(n3) Distribution 3 will not be a disqualified distribution (as defined in § 355(d)(2)) because immediately after Distribution 7: (i) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Sub 9 that will constitute a 50 percent or greater interest (defined in § 355(d)(4)) in Sub 9, and (ii) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Sub 14 that will constitute a 50 percent or greater interest (defined in § 355(d)(4)) in Sub 14.

(o3) Distribution 3 is not part of a plan or series of related transactions (within the meaning of § 1.355-7T) 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 9 or Sub 14 (including any predecessor or successor of any such corporation).

(p3) 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 and as currently in effect; § 1.1502-13 as published by T.D. 8597).

Contribution 3 and Distribution 4

Distributing makes the following representations regarding Contribution 3 and Distribution 4 (described above in step (v)):

(a4) Any indebtedness owed by Sub 15 to Sub 11 after Distribution 4 will not constitute stock or securities.

(b4) No part of the consideration distributed by Sub 11 will be received by Sub 1 as a creditor, employee, or in any capacity other than that of a shareholder of Sub 11.

(c4) The five years of financial information submitted for Business A (as conducted by Sub 11) and Business B (as conducted by Sub 15) represents the present operation of these businesses, and regarding each, there have been no substantial operational changes since the date of the last financial statements submitted.

(d4) Following Distribution 4, Sub 11 and Sub 15 will each continue the active conduct of its business, independently and with its separate employees.

(e4) Distribution 4 will be carried out to facilitate Distribution 7 (the purpose for which is described below at representation (k7)). Distribution 4 is motivated, in whole or substantial part, by this corporate business purpose.

(f4) There is no plan or intention to liquidate either Sub 11 or Sub 15, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after Distribution 4, except in the ordinary course of business.

(g4) Distribution 4 will not be used principally as a device for the distribution of earnings and profits of Sub 11 or Sub 15 or both.

(h4) The total adjusted basis and the fair market value of the assets transferred in Contribution 3 will each equal or exceed the sum of the liabilities assumed (as determined under § 357(d)) by Sub 15.

(i4) Any liabilities assumed (as determined under § 357(d)) by Sub 15 in Contribution 3 will have been incurred in the ordinary course of business and will be associated with the assets transferred.

(j4) Sub 11 will neither accumulate its receivables nor make extraordinary payments of its payables in anticipation of Distribution 4.

(k4) No intercorporate debt will exist between Sub 11 and its subsidiaries, on the one hand, and Sub 15 and its subsidiaries, on the other hand, at the time of, or after, Distribution 4.

(l4) Payments made in any continuing transactions between Sub 11 and Sub 15 will be based on terms and conditions arrived at by the parties bargaining at arm's length.

(m4) Neither Sub 11 nor Sub 15 is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).

(n4) Distribution 4 will not be a disqualified distribution (as defined in § 355(d)(2)) because immediately after Distribution 7: (i) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Sub 11 that will constitute a 50 percent or greater interest (defined in § 355(d)(4)) in Sub 11, and (ii) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Sub 15 that will constitute a 50 percent or greater interest (defined in § 355(d)(4)) in Sub 15.

(o4) Distribution 4 is not part of a plan or series of related transactions (within the meaning of § 1.355-7T) 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 11 or Sub 15 (including any predecessor or successor of any such corporation).

(p4) 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 and as currently in effect; § 1.1502-13 as published by T.D. 8597).

Contribution 4 and Distribution 5

Distributing makes the following representations regarding Contribution 4 and Distribution 5 (described above in step (viii)):

(a5) Liquidation 1 will qualify as a liquidation under § 332.

(b5) Liquidation 2 will qualify as a liquidation under § 332.

(c5) Any indebtedness owed by Sub 23 to Sub 1 after Distribution 5 will not constitute stock or securities.

(d5) No part of the consideration distributed by Sub 1 will be received by Distributing as a creditor, employee, or in any capacity other than that of a shareholder of Sub 1.

(e5) The five years of financial information submitted for Business A (as conducted by Sub 1) and Business B (as conducted by Sub 23) represents the present operation of these businesses, and regarding each, there have been no substantial operational changes since the date of the last financial statements submitted.

(f5) Following Distribution 5, Sub 1 and Sub 23 will each continue the active conduct of its business, independently and with its separate employees.

(g5) Distribution 5 will be carried out to facilitate Distribution 7 (the purpose for which is described below at representation (k7)). Distribution 5 is motivated, in whole or substantial part, by this corporate business purpose.

(h5) There is no plan or intention to liquidate either Sub 1 or Sub 23, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after Distribution 5, except in the ordinary course of business.

(i5) Distribution 5 will not be used principally as a device for the distribution of earnings and profits of Sub 1 or Sub 23 or both.

(j5) The total adjusted basis and the fair market value of the assets transferred in Contribution 4 will each equal or exceed the sum of the liabilities assumed (as determined under § 357(d)) by Sub 23.

(k5) Any liabilities assumed (as determined under § 357(d)) by Sub 23 in Contribution 4 will have been incurred in the ordinary course of business and will be associated with the assets transferred.

(l5) Sub 1 will neither accumulate its receivables nor make extraordinary payments of its payables in anticipation of Distribution 5.

(m5) No intercorporate debt will exist between Sub 1 and its subsidiaries, on the one hand, and Sub 23 and its subsidiaries, on the other hand, at the time of, or after, Distribution 5.

(n5) Payments made in any continuing transactions between Sub 1 and Sub 23 will be based on terms and conditions arrived at by the parties bargaining at arm's length.

(o5) Neither Sub 1 nor Sub 23 is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).

(p5) Distribution 5 will not be a disqualified distribution (as defined in § 355(d)(2)) because immediately after Distribution 7: (i) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Sub 1 that will constitute a 50 percent or greater interest (defined in § 355(d)(4)) in Sub 1, and (ii) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Sub 23 that will constitute a 50 percent or greater interest (defined in § 355(d)(4)) in Sub 23.

(q5) Distribution 5 is not part of a plan or series of related transactions (within the meaning of § 1.355-7T) 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 1 or Sub 23 (including any predecessor or successor of any such corporation).

(r5) 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 and as currently in effect; § 1.1502-13 as published by T.D. 8597).

Contribution 5 and Distribution 6

Distributing makes the following representations regarding Contribution 5 and Distribution 6 (described above in step (x)):

(a6) Liquidation 3 will qualify as a liquidation under § 332.

(b6) Any indebtedness owed by Newco 2 to Sub 5 after Distribution 6 will not constitute stock or securities.

(c6) No part of the consideration distributed by Sub 5 will be received by Distributing as a creditor, employee, or in any capacity other than that of a shareholder of Sub 5.

(d6) The five years of financial information submitted for Business A (as conducted by Sub 5) and Business C (as conducted by Sub 5) represents the present operation of these businesses, and regarding each, there have been no substantial operational changes since the date of the last financial statements submitted.

(e6) Following Distribution 6, Sub 5 and Newco 2 will each continue the active conduct of its business, independently and with its separate employees.

(f6) Distribution 6 will be carried out to facilitate Distribution 7 (the purpose for which is described below at representation (k7)). Distribution 6 is motivated, in whole or substantial part, by this corporate business purpose.

(g6) Except for the Merger, there is no plan or intention to liquidate either Sub 5 or Newco 2, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after Distribution 6, except in the ordinary course of business.

(h6) Distribution 6 will not be used principally as a device for the distribution of earnings and profits of Sub 5 or Newco 2 or both.

(i6) The total adjusted basis and the fair market value of the assets transferred in Contribution 5 will each equal or exceed the sum of the liabilities assumed (as determined under § 357(d)) by Newco 2.

(j6) The liabilities assumed (as determined under § 357(d)) by Newco 2 in Contribution 5 will have been incurred in the ordinary course of business and will be associated with the assets transferred.

(k6) Sub 5 will neither accumulate its receivables nor make extraordinary payments of its payables in anticipation of Distribution 6.

(l6) No intercorporate debt will exist between Sub 5 and its subsidiaries, on the one hand, and Newco 2 and its subsidiaries, on the other hand, at the time of, or after, Distribution 6.

(m6) Payments made in any continuing transactions between Sub 5 and Newco 2 will be based on terms and conditions arrived at by the parties bargaining at arm's length.

(n6) Neither Sub 5 nor Newco 2 is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).

(o6) Distribution 6 will not be a disqualified distribution (as defined in § 355(d)(2)) because immediately after Distribution 7: (i) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Sub 5 that will constitute a 50 percent or greater interest (defined in § 355(d)(4)) in Sub 5, and (ii) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Newco 2 that will constitute a 50 percent or greater interest (defined in § 355(d)(4)) in Newco 2.

(p6) Distribution 6 is not part of a plan or series of related transactions (within the meaning of § 1.355-7T) 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 5 or Newco 2 (including any predecessor or successor of any such corporation).

(q6) Immediately before Distribution 6, 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 and as currently in effect; § 1.1502-13 as published by T.D. 8597).

Contribution 7 and Distribution 7

Distributing makes the following representations regarding Contribution 7 and Distribution 7 (described above in steps (xv) and (xx)):

(a7) Contribution 6 will qualify as a § 351 exchange.

(b7) The Merger will qualify as a reorganization under § 368(a)(1)(D).

(c7) Liquidation 4 will qualify as a liquidation under § 332.

(d7) The Conversions each will qualify as a liquidation under § 332.

(e7) Contribution 8 will qualify as a § 351 exchange.

(f7) Any indebtedness owed by Controlled to Distributing after Distribution 7 will not constitute stock or securities.

(g7) No part of the consideration distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing, except for shares of Controlled stock received by holders of Distributing Restricted Stock.

(h7) The five years of financial information submitted for Business A (as currently conducted by Sub 7 and the Subgroup Subs and to be conducted by Distributing) and Business B (as conducted by Sub 7 and Sub 23 and to be indirectly conducted by Controlled) represents the present operation of these businesses, and regarding each, there have been no substantial operational changes since the date of the last financial statements submitted.

(i7) Immediately after Distribution 7, at least 90 percent of the fair market value of the gross assets of Controlled will consist of the stock and securities of controlled corporations that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(j7) Following Distribution 7, Distributing, and Controlled and its subsidiaries, each will continue the active conduct of its business, independently and with its separate employees.

(k7) Distribution 7 will be carried out so that Controlled may (i) more effectively use its stock in acquisitions, (ii) more effectively attract, motivate, and retain key employees, (iii) raise significantly more funds per share in the Offering, and (iv) resolve certain systemic and management difficulties that result from conducting Business A and Business B in the same affiliated group. Distribution 7 is motivated, in whole or substantial part, by these corporate business purposes.

(l7) There is no plan or intention to liquidate either Distributing or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after Distribution 7, except in the ordinary course of business.

(m7) Distribution 7 will not be used principally as a device for the distribution of earnings and profits of Distributing or Controlled, or both.

(n7) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing in Contribution 7 will each equal or exceed the sum of the liabilities assumed (within the meaning of § 357(d)) by Controlled (excluding liabilities to which § 357(c)(3) applies) plus the Cash Distribution.

(o6) The liabilities assumed (as determined under § 357(d)) by Controlled in Contribution 7 will have been incurred in the ordinary course of business and will be associated with the assets transferred.

(p7) Distributing will neither accumulate its receivables nor make extraordinary payments of its payables in anticipation of Distribution 7.

(q7) No intercorporate debt will exist between Distributing and Controlled at the time of, or after, Distribution 7.

(r7) Payments made in any continuing transactions between Distributing and its subsidiaries, on the one hand, and Controlled and its subsidiaries, on the other hand, will be based on terms and conditions arrived at by the parties bargaining at arm's length.

(s7) Neither Distributing nor Controlled is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).

(t7) Distribution 7 will not be a disqualified distribution (as defined in § 355(d)(2)) because immediately after Distribution 7: (i) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Distributing that will constitute a 50 percent or greater interest (defined in § 355(d)(4)) in

Distributing, and (ii) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Controlled that will constitute a 50 percent or greater interest (defined in § 355(d)(4)) in Controlled.

(u7) Distribution 7 is not part of a plan or series of related transactions (within the meaning of § 1.355-7T) 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 or Controlled (including any predecessor or successor of any such corporation).

(v7) Immediately before Distribution 7, 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 may have in the Controlled stock, and any excess loss account in any direct or indirect affiliate of either Distributing or Controlled, will be included in income immediately before Distribution 7 to the extent required by applicable regulations (see § 1.1502-19).

(w7) Shares of Controlled stock distributed with respect to shares of Distributing Restricted Stock will not exceed, in the aggregate, 20 percent of the Controlled stock outstanding immediately after Distribution 7.

(x7) The Cash Distribution will be transferred by Distributing to its creditors no later than one year following Distribution 7 to pay borrowings incurred or liabilities accrued at or before Distribution 7 that were not incurred or accrued in connection with the Proposed Transactions.

Additional Representation

No election will be made under § 301.7701-3 that would cause any of LLC 1, LLC 2, LLC 4, LLC 5, LP or any other disregarded entity involved in the Proposed Transactions to be classified as other than an entity disregarded as separate from its owner for federal tax purposes.

Rulings

The Acquisition

Based solely on the information submitted and the representations set forth above, we rule as follows on the Acquisition (described above in the Summary of Facts at (b)):

(1) The acquisition by Distributing of all the outstanding stock of Sub 7 not already owned by Distributing in exchange solely for shares of Distributing voting

stock qualified as a reorganization under § 368(a)(1)(B). Distributing and Sub 7 each was “a party to a reorganization” under § 368(b).

(2) No gain or loss was recognized by Distributing on the receipt of Sub 7 stock solely for Distributing stock (§ 1032(a)).

(3) The basis of the Sub 7 stock acquired by Distributing in the Acquisition equals the basis of that stock in the hands of the Sub 7 shareholders immediately before the Acquisition (§ 362(b)).

(4) The holding period of the Sub 7 stock acquired by Distributing in the Acquisition includes the holding period of the Sub 7 stock in the hands of the former Sub 7 shareholders (§ 1223(2)).

(5) No gain or loss was recognized by any Sub 7 shareholder on the exchange of Sub 7 stock solely for Distributing voting stock (§ 354(a)(1)).

(6) The basis of the Distributing voting stock received by each Sub 7 shareholder in the Acquisition equals the basis of the Sub 7 stock surrendered in the Acquisition (§ 358(a)(1)).

(7) The holding period a Sub 7 shareholder has for the Distributing stock received in the Acquisition includes the holding period of the Sub 7 stock surrendered in the Acquisition, provided the Sub 7 stock was a capital asset in the Sub 7 shareholder’s hands on the date of the Acquisition (§ 1223(1)).

Distribution 1

Based solely on the information submitted and the representations set forth above, we rule as follows on Distribution 1 (described above in step (i)):

(8) No gain or loss will be recognized by Sub 7 on Distribution 1 (§ 355(c)(1)).

(9) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Sub 1 on its receipt of Sub 22 stock in exchange for part of its Sub 7 preferred shares (§ 355(a)(1)).

(10) The basis of the Sub 22 stock received by Sub 1 will equal the basis of the Sub 7 preferred shares surrendered in Distribution 1 (§ 358(a)(1)).

(11) The holding period of the Sub 22 stock received by Sub 1 will include the holding period of the Sub 7 preferred shares surrendered in Distribution 1, provided the Sub 7 preferred shares are a capital asset in Sub 7’s hands on the date of Distribution 1 (§ 1223(1)).

(12) Earnings and profits will be allocated between Sub 7 and Sub 22 in accordance with §§ 312(h), 1.312-10(b), and 1.1502-33(f)(2).

Distribution 2

Based solely on the information submitted and the representations set forth above, we rule as follows on Distribution 2 (described above in step (ii)):

(13) No gain or loss will be recognized by Sub 7 on Distribution 2 (§ 355(c)(1)).

(14) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Sub 1 on its receipt of Sub 23 stock in exchange for part of its Sub 7 preferred shares (§ 355(a)(1)).

(15) The basis of the Sub 23 stock received by Sub 1 will equal the basis of the Sub 7 preferred shares surrendered in Distribution 2 (§ 358(a)(1)).

(16) The holding period of the Sub 23 stock received by Sub 1 will include the holding period of the Sub 7 preferred shares surrendered in Distribution 2, provided the Sub 7 preferred shares are a capital asset in Sub 7's hands on the date of Distribution 2 (§ 1223(1)).

(17) Earnings and profits will be allocated between Sub 7 and Sub 23 in accordance with §§ 312(h), 1.312-10(b), and 1.1502-33(f)(2).

Contributions 1 and 2 and Distribution 3

Based solely on the information submitted and the representations set forth above, we rule as follows on Contributions 1 and 2 and Distribution 3 (described above in steps (iii) and (iv)):

(18) Contributions 1 and 2, followed by Distribution 3, will qualify as a reorganization under § 368(a)(1)(D). Sub 9 and Sub 14 each will be "a party to the reorganization" under § 368(b).

(19) No gain or loss will be recognized by Sub 9 on Contributions 1 and 2 (§§ 361(a) and 357(a)).

(20) No gain or loss will be recognized by Sub 14 on Contributions 1 and 2 (§ 1032(a)).

(21) The basis of each asset received by Sub 14 will equal the basis of that asset in the hands of Sub 9 immediately before Contributions 1 and 2 (§ 362(b)).

(22) The holding period of each asset received by Sub 14 will include the period during which Sub 9 held that asset (§ 1223(2)).

(23) No gain or loss will be recognized by Sub 9 on Distribution 3 (§ 361(c)(1)).

(24) No gain or loss will be recognized by Sub 1 on Distribution 3 (§ 355(a)(1)).

(25) The aggregate basis of the Sub 9 stock and the Sub 14 stock in the hands of Sub 1 immediately after Distribution 3 will equal the aggregate basis of the Sub 9 stock held by Sub 1 immediately before Distribution 3. The total basis will be allocated between the Sub 9 stock and the Sub 14 stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(a), (b), and (c)).

(26) The holding period of the Sub 14 stock received by Sub 1 in Distribution 3 will include the holding period of the Sub 9 stock on which Distribution 3 is made, provided the Sub 14 stock is held as a capital asset on the date of Distribution 3 (§ 1223(1)).

(27) Earnings and profits will be allocated between Sub 9 and Sub 14 in accordance with §§ 312(h), 1.312-10(a), and 1.1502-33(f)(2).

Contribution 3 and Distribution 4

Based solely on the information submitted and the representations set forth above, we rule as follows on Contribution 3 and Distribution 4 (described above in step (v)):

(28) Contribution 3, followed by Distribution 4, will qualify as a reorganization under § 368(a)(1)(D). Sub 11 and Sub 15 each will be “a party to the reorganization” under § 368(b).

(29) No gain or loss will be recognized by Sub 11 on Contribution 3 (§§ 361(a) and 357(a)).

(30) No gain or loss will be recognized by Sub 15 on Contribution 3 (§ 1032(a)).

(31) The basis of each asset received by Sub 15 will equal the basis of that asset in the hands of Sub 11 immediately before Contribution 3 (§ 362(b)).

(32) The holding period of each asset received by Sub 15 will include the period during which Sub 11 held that asset (§ 1223(2)).

(33) No gain or loss will be recognized by Sub 11 on Distribution 4 (§ 361(c)(1)).

(34) No gain or loss will be recognized by Sub 1 on Distribution 4 (§ 355(a)(1)).

(35) The aggregate basis of the Sub 11 stock and the Sub 15 stock in the hands of Sub 1 immediately after Distribution 4 will equal the aggregate basis of the Sub 11 stock held by Sub 1 immediately before Distribution 4. The total basis will be allocated between the Sub 11 stock and the Sub 15 stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(a), (b), and (c)).

(36) The holding period of the Sub 15 stock received by Sub 1 will include the holding period of the Sub 11 stock on which Distribution 4 is made, provided the Sub 15 stock is held as a capital asset on the date of Distribution 4 (§ 1223(1)).

(37) Earnings and profits will be allocated between Sub 11 and Sub 15 in accordance with §§ 312(h), 1.312-10(a), and 1.1502-33(f)(2).

Contribution 4 and Distribution 5

Based solely on the information submitted and the representations set forth above, we rule as follows on Contribution 4 and Distribution 5 (described above in step (viii)):

(38) Contribution 4, followed by Distribution 5, will qualify as a reorganization under § 368(a)(1)(D). Sub 1 and Sub 23 each will be “a party to the reorganization” under § 368(b).

(39) No gain or loss will be recognized by Sub 1 on Contribution 4 (§§ 361(a) and 357(a)).

(40) No gain or loss will be recognized by Sub 23 on Contribution 4 (§ 1032(a)).

(41) The basis of each asset received by Sub 23 will equal the basis of that asset in the hands of Sub 1 immediately before Contribution 4 (§ 362(b)).

(42) The holding period of each asset received by Sub 23 will include the period during which Sub 1 held that asset (§ 1223(2)).

(43) No gain or loss will be recognized by Sub 1 on Distribution 5 (§ 361(c)(1)).

(44) No gain or loss will be recognized by Distributing on Distribution 5 (§ 355(a)(1)).

(45) The aggregate basis of the Sub 1 stock and the Sub 23 stock in the hands of Distributing immediately after Distribution 5 will equal the aggregate basis of the Sub 1 stock held by Distributing immediately before Distribution 5. The total basis will be allocated between the Sub 1 stock and the Sub 23 stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(a), (b), and (c)).

(46) The holding period of the Sub 23 stock received by Distributing will include the holding period of the Sub 1 stock on which Distribution 5 is made, provided the Sub 23 stock is held as a capital asset on the date of Distribution 5 (§ 1223(1)).

(47) Earnings and profits will be allocated between Sub 1 and Sub 23 in accordance with §§ 312(h), 1.312-10(a) and 1.1502-33(f)(2).

Contribution 5 and Distribution 6

Based solely on the information submitted and the representations set forth above, we rule as follows on Contribution 5 and Distribution 6 (described above in step (x)):

(48) Contribution 5, followed by Distribution 6, will qualify as a reorganization under § 368(a)(1)(D). Sub 5 and Newco 2 each will be “a party to the reorganization” under § 368(b).

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

(50) No gain or loss will be recognized by Newco 2 on Contribution 5 (§ 1032(a)).

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

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

(53) No gain or loss will be recognized by Sub 5 on Distribution 6 (§ 361(c)(1)).

(54) No gain or loss will be recognized by Distributing on Distribution 6 (§ 355(a)(1)).

(55) The aggregate basis of the Sub 5 stock and the Newco 2 stock in the hands of Distributing immediately after Distribution 6 will equal the aggregate basis of the Sub 5 stock held by Distributing immediately before Distribution 6. The total basis will be allocated between the Sub 5 stock and the Newco 2 stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(a), (b), and (c)).

(56) The holding period of the Newco 2 stock received by Distributing will include the holding period of the Sub 5 stock on which Distribution 6 is made, provided the Newco 2 stock is held as a capital asset on the date of Distribution 6 (§ 1223(1)).

(57) Earnings and profits will be allocated between Sub 5 and Newco 2 in accordance with §§ 312(h), 1.312-10(a), and 1.1502-33(f)(2).

Contribution 7 and Distribution 7

Based solely on the information submitted and the representations set forth above, we rule as follows on Contribution 7 and Distribution 7 (described above in steps (xv) and (xx)):

(58) Contribution 7, followed by Distribution 7, will qualify as a reorganization under § 368(a)(1)(D). Distributing and Controlled each will be “a party to the reorganization” under § 368(b).

(59) No gain or loss will be recognized by Distributing on Contribution 7 (§§ 361(a), 361(b), and 357(a)).

(60) No gain or loss will be recognized by Controlled on Contribution 7 (§ 1032(a)).

(61) The basis of each asset received by Controlled will equal the basis of that asset in the hands of Distributing immediately before Contribution 7 (§ 362(b)).

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

(63) No gain or loss will be recognized by Distributing on Distribution 7 (§ 361(c)(1)).

(64) No gain or loss will be recognized by the shareholders of Distributing on Distribution 7 (§ 355(a)(1)).

(65) The aggregate basis of the Distributing stock and the Controlled stock in the hands of each shareholder of Distributing immediately after Distribution 7 will equal the aggregate basis of the Distributing stock held by that shareholder immediately before Distribution 7. The total basis will be allocated between the Distributing stock and the Controlled stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(a), (b), and (c)).

(66) The holding period of the Controlled stock received by each shareholder of Distributing will include the holding period of the Distributing stock on which Distribution 7 is made, provided the Controlled stock is held as a capital asset on the date of Distribution 7 (§ 1223(1)).

(67) Earnings and profits will be allocated between Distributing and Controlled in accordance with §§ 312(h), 1.312-10(a), and 1.1502-33(e)(3) and (e)(5)(f).

(68) Payments made between Distributing and its affiliates, on one hand, and Controlled and its affiliates, on the other, under the Tax Sharing Agreement that (i) have arisen or will arise for a taxable period ending on or before Distribution 7, or for a taxable period beginning before and ending after Distribution 7 and (ii) have not become fixed or ascertainable until after Distribution 7, will be treated as occurring immediately before Distribution 7 (*cf. Arrowsmith v. Comm.*, 344 U.S. 6 (1952) (tax characterization of later transaction will derive from earlier, related transaction); Rev. Rul. 83-73, 1983-1 C.B. 84).

(69) If a party to the Proposed Transactions does not at the time of Distribution 7 intend to transfer stock in Distributing or Controlled after Distribution 7, a transfer of any such stock following Distribution 7 that results from a change in circumstances not anticipated at the time of Distribution 7 will be disregarded in determining whether Distribution 7 (i) is part of a plan under § 355(e) or (ii) is used principally as a device for the distribution of earnings and profits (see Rev. Rul. 2003-55, 2003-22 I.R.B. 961).

(70) Should Distributing retain stock of Controlled following Distribution 7, the determination of whether the retention has as one of its principal purposes the avoidance of federal income tax (see § 355(a)(1)(D)(ii)) may be made in connection with the examination of Distributing's federal income tax return.

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 effect resulting from, any of these transactions that is not specifically covered by the above rulings. In particular, no opinion is given (and none was requested) regarding:

(i) Whether any distribution described above satisfies the business purpose requirement of § 1.355-2(b);

(ii) Whether any distribution described above is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both;

(iii) Whether any distribution described above and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii);

(iv) The tax treatment of the Sub 1 Acquisition, the Sub 3 Acquisition, the Sub 22 Acquisition, the Subs Disposition, and the Recapitalization, all described above in the Summary of Facts;

(v) The tax treatment of the Equalizing Distribution described above in step (ii), Liquidation 1 (step (vi)), Liquidation 2 (step (vii)), Liquidation 3 (step (ix)), Liquidation 4 (step (xiii)), the Merger (step (xii)), Contribution 6 (step (xi)), the Conversions (step (xiv)), Contribution 8 (step (xvi)), and the Distributing Stock Dispositions (step (xx)); and

(vi) Whether any entity described as a disregarded entity actually qualifies as a disregarded entity under § 301.7701-3.

Procedural Matters

This ruling 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 ruling letter must be attached to the federal income tax return of each party involved in the Proposed Transactions for the taxable year in which the Proposed Transactions are completed.

Under the power of attorney on file in this office, a copy of this letter has been sent to your authorized representative.

Sincerely yours,

Associate Chief Counsel (Corporate)

By: Wayne T. Murray

Wayne T. Murray

Special Counsel to the Associate Chief
Counsel (Corporate)

cc: