

**Internal Revenue Service**

Department of the Treasury

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Date:

August 2, 1999

Distributing 1 =

Distributing 2 =

Controlled 1 =

Controlled 2 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

FSub 1 =

FSub 2 =

Newco LLC =

A =

B =

C =

D =

E =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

o =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Business A =

Business B =

Business C =

Business D =

Division E of Business B =

Division F of Business D =

Division G of Business D =

Investment Banker =

State X =

Country A =

Country B =

This is in reply to your letter dated April 5, 1999, requesting rulings on the federal income tax consequences of a proposed transaction. You submitted additional information in letters dated June 16, June 21 and July 19, 1999. The information submitted in the request and in subsequent correspondence is summarized below.

Distributing 2, a State X corporation, is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Distributing 2 is engaged in Business A, Business B, Business C, and Business D through its controlled subsidiaries. Distributing 2 has outstanding one class of common stock, which is publicly traded and widely held ("Common Stock"). As of Date 4, a shares of Common Stock were outstanding and held in the following percentages by the following 5 percent or greater shareholders of Distributing 2:

<u>Shareholder</u>	<u>Percentage</u>
A	<u>b</u>
B	<u>c</u>
C	<u>d</u>
D	<u>e</u>
E	<u>f</u>

Distributing 2 was formed as a result of a business combination on Date 1, in which Sub 2 and Sub 3 became wholly owned subsidiaries of Distributing 2 (the "Combination"). The taxpayer has represented that to the best of the taxpayer's knowledge and belief, the Combination qualified as tax-free reorganizations as to each of Sub 2 and Sub 3 under §§ 368(a)(1)(A) and 368(a)(2)(E) and § 368(a)(1)(B) of the Internal Revenue Code and that no gain or loss was recognized in the Combination, except by shareholders of Sub 2 that received cash in lieu of fractional shares. The taxpayer has represented that the Sub 2 merger was a reverse acquisition within the meaning of § 1.1502-75(d)(3) of the Income Tax Regulations.

On Date 2, Distributing 2 acquired Sub 4 as a result of a reverse subsidiary merger ("Sub 4 Merger"). The taxpayer has represented that to the best of the taxpayer's knowledge and belief, the Sub 4 Merger qualified as a tax-free reorganization under §§ 368(a)(1)(A) and 368(a)(2)(E) and § 368(a)(1)(B) and that no gain or loss was recognized in the Sub 4 Merger, except by shareholders of Sub 4 that received cash in lieu of fractional shares.

On Date 5, Sub 3 distributed all of the stock of its wholly owned subsidiary Sub 1 to Distributing 2. Immediately thereafter, Distributing 2 transferred all of the stock of its

wholly owned subsidiaries Sub 3 and Sub 4 to Sub 1.

Distributing 2 owns all of the stock of Sub 1. Sub 1 is engaged in Business A through Sub 3 and Sub 4, both of which are engaged in Business A.

Distributing 2 owns all of the stock of Sub 2. Sub 2 owns all of the stock of Distributing 1. In addition, Sub 2 owns stock and ownership interests in a number of foreign and domestic entities, some of which are engaged in Business B and Business D (collectively, "Other Sub 2 Subsidiaries" and each, individually, an "Other Sub 2 Subsidiary").

Distributing 1 is directly engaged in Business A, Business B, Business C, and Business D. These direct businesses are conducted through various divisions of Distributing 1 (including Division E of Business B, Division F of Business D, and Division G of Business D). Distributing 1 owns stock and ownership interests in a number of foreign and domestic entities engaged in Business B ("Business B Entities"). Distributing 1 also owns all of the stock of Sub 5, which is engaged in Business D.

Controlled 1 will be formed under the laws of State X as a wholly owned subsidiary of Distributing 1 to effectuate the transaction described below. Controlled 1 will be directly engaged in Business B.

Sub 6 will be formed under the laws of State X as a wholly owned subsidiary of Controlled 1. Sub 6 will be directly engaged in Business B.

FSub 1 will be formed under the laws of Country A as a wholly owned foreign subsidiary of Controlled 1 to acquire from an Other Sub 2 Subsidiary certain foreign assets used in Business B.

Controlled 2 will be formed under the laws of State X as a wholly owned subsidiary of Distributing 1 to effectuate the transaction described below. Controlled 2 will be engaged in Business D through its controlled subsidiaries.

Sub 7 will be formed under the laws of State X as a wholly owned subsidiary of Controlled 2. Sub 7 will be directly engaged in Business D.

Sub 8 will be formed under the laws of State X as a wholly owned subsidiary of Controlled 2. Sub 8 will be directly engaged in Business D.

FSub 2 has been formed under the laws of Country B as a wholly owned foreign subsidiary of Distributing 1 to acquire from an Other Sub 2 Subsidiary certain foreign assets used in Business D.

Distributing 2 has submitted financial information which indicates that Distributing 2 and Distributing 1 have, directly or through controlled subsidiaries, gross receipts and

operating expenses representative of the active conduct of a trade or business for each of the past 5 years.

In order to raise capital to expand Business B and Business D, Distributing 2 proposes that Controlled 1 and Controlled 2 offer additional equity to the public (collectively, the "Public Offerings"). Distributing 2 has been advised by Investment Banker, its financial advisor, that the Public Offerings should enable both Controlled 1 and Controlled 2 to raise equity capital at a lower cost, both in aggregate and on per share basis, if Controlled 1 and Controlled 2 are separated from Distributing 2.

Accordingly, Distributing 2 proposes the following transaction:

(i) Distributing 1 will incorporate Controlled 1. Distributing 1 will transfer to Controlled 1 all of its assets used in Business B, including all of its stock and ownership interests in Business B Entities (collectively, the "Business B Assets") and approximately \$g in exchange for all of the stock of Controlled 1 and the assumption of liabilities associated with the transferred assets.

(ii) Controlled 1 will incorporate Sub 6 and transfer all of the assets of Division E of Business B (the "Transferred Sub 6 Assets") and approximately \$h to Sub 6 in exchange for all of the stock of Sub 6 and the assumption of liabilities associated with the transferred assets.

(iii) Controlled 1 will form FSub 1 as a wholly owned subsidiary and will transfer approximately \$i to FSub 1.

(iv) Controlled 1 and its subsidiaries (including Sub 6 and FSub 1) will purchase from Other Sub 2 Subsidiaries certain assets, stock and ownership interests associated with Business B for fair market value.

(v) Distributing 1 will incorporate Controlled 2.

(vi) Distributing 1 will transfer to Controlled 2 all of its assets used in Business D (consisting of Division F of Business D and Division G of Business D), all of the stock of Sub 5 and FSub 2 (collectively, the "Business D Assets"), and approximately \$j in exchange for all of the stock of Controlled 2 and the assumption by Controlled 2 of liabilities associated with the transferred assets.

(vii) Controlled 2 will incorporate Sub 7 and transfer all of the assets of Division F of Business D (the "Transferred Sub 7 Assets") to Sub 7 in exchange for all of the stock of Sub 7 and the assumption of liabilities associated with the transferred assets.

(viii) Controlled 2 will incorporate Sub 8 and transfer all of the assets of Division G of Business D and all of the stock of Sub 5 (collectively, the "Transferred Sub 8

Assets”) to Sub 8 in exchange for all of the stock of Sub 8 and the assumption of liabilities associated with the transferred assets.

(ix) Controlled 2 will transfer approximately \$j to FSub 2 to enable FSub 2 to purchase from an Other Sub 2 Subsidiary all of its assets associated with Business D for fair market value.

(x) Distributing 2 will form Newco LLC and will contribute to Newco LLC all of the stock of Sub 2. Newco LLC will not elect to be treated as a corporation for federal tax purposes.

(xi) Sub 2 will distribute all of its assets to Newco LLC and will dissolve under the applicable state law (the “Sub 2 Liquidation”).

(xii) Distributing 1 will distribute all of the stock of Controlled 1 to Newco LLC (“First Controlled 1 Distribution”). Newco LLC will distribute all of the stock of Controlled 1 to Distributing 2.

(xiii) Distributing 1 will distribute all of the stock of Controlled 2 to Newco LLC (“First Controlled 2 Distribution”). Newco LLC will distribute all of the stock of Controlled 2 to Distributing 2.

(xiv) Distributing 2 will borrow from a third-party lender \$k (“Revolver 1 Debt”).

(xv) Distributing 2 will borrow from a third-party lender \$l (“Revolver 2 Debt”).

(xvi) Controlled 1 will assume the Revolver 1 Debt and Distributing 2 will be released from any liability therewith.

(xvii) Controlled 2 will assume the Revolver 2 Debt and Distributing 2 will be released from any liability therewith.

(xviii) Distributing 2 will distribute pro rata to its shareholders all of the stock of Controlled 1 (“Second Controlled 1 Distribution”).

(xix) Distributing 2 will distribute pro rata to its shareholders all of the stock of Controlled 2 (“Second Controlled 2 Distribution”).

(xx) Within one year after the Second Controlled 1 Distribution, Controlled 1 will consummate a public offering (“Controlled 1 Public Offering”) of up to m percent of its total issued and outstanding common stock (determined after giving effect to the Controlled 1 Public Offering). The Controlled 1 Public Offering is expected to raise approximately \$n.

(xxi) Within one year after the Second Controlled 2 Distribution, Controlled 2 will

consummate a public offering (“Controlled 2 Public Offering”) of up to m percent of its total issued and outstanding common stock (determined after giving effect to the Controlled 2 Public Offering). The Controlled 2 Public Offering is expected to raise approximately \$o.

The taxpayer has made the following representations with respect to the formation of Controlled 1, as described in step (i) of the proposed transaction:

- 1a. No stock or securities will be issued for services rendered to or for the benefit of Controlled 1 in connection with the proposed transaction, and no stock or securities will be issued for indebtedness of Controlled 1 that is not evidenced by a security or for interest on indebtedness of Controlled 1 which accrued on or after the beginning of the holding period of Distributing 1 for the debt.
- 1b. The proceeds received in collection of the income items will be included as ordinary income in computing the taxable income of the transferee.
- 1c. The patents or patent applications to be transferred to Controlled 1 qualify as “property” within the meaning of § 351. Distributing 1 will transfer all substantial rights in such patents or patent applications within the meaning of § 1253.
- 1d. All rights, title and interests for each copyright, in each medium of exploitation, will be transferred to Controlled 1.
- 1e. Distributing 1 will not retain any significant power, right, or continuing interest, within the meaning of § 1253(b), in the trademarks or trade names being transferred.
- 1f. None of the stock to be transferred is “section 306 stock” within the meaning of § 306(c).
- 1g. The transfer is not the result of the solicitation by a promoter, broker, or investment house.
- 1h. Distributing 1 will not retain any rights in the property transferred to Controlled 1.
- 1i. Any debt relating to the stock being transferred that is being assumed (or to which such stock is subject) was incurred to acquire such stock and was incurred when such stock was acquired, and Distributing 1 is transferring all of the stock for which the acquisition indebtedness being assumed (or to which such stock is subject) was incurred.
- 1j. The adjusted basis and fair market value of the assets to be transferred by Distributing 1 to Controlled 1 will, in each instance, be equal to or exceed the sum of the liabilities to be assumed by Controlled 1 plus any liabilities to which the transferred assets are subject.

- 1k. The liabilities of Distributing 1 to be assumed by Controlled 1 were incurred in the ordinary course of business and are associated with the assets to be transferred.
- 1l. There is no indebtedness between Controlled 1 and Distributing 1 and there will be no indebtedness created in favor of Distributing 1 as a result of the transaction.
- 1m. The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
- 1n. All exchanges will occur on approximately the same date.
- 1o. There is no plan or intention on the part of Controlled 1 to redeem or otherwise reacquire any stock or indebtedness to be issued in the proposed transaction.
- 1p. Taking into account any issuance of additional shares of Controlled 1 stock; any issuance of stock for services; the exercise of any Controlled 1 stock rights, warrants, or subscriptions; a public offering of Controlled 1 stock; the sale, exchange, transfer by gift, or other disposition of any of the stock of Controlled 1 to be received in the exchange, Distributing 1 will be in "control" of Controlled 1 within the meaning of § 368(c).
- 1q. Distributing 1 will receive stock, securities or other property approximately equal to the fair market value of the property transferred to Controlled 1.
- 1r. Controlled 1 will remain in existence and retain and use the property transferred to it in a trade or business.
- 1s. There is no plan or intention by Controlled 1 to dispose of the transferred property other than in the normal course of business operations.
- 1t. Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the proposed transaction.
- 1u. Controlled 1 will not be an investment company within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii).
- 1v. Distributing 1 is not under the jurisdiction of a court in title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy the indebtedness of such debtor.
- 1w. Controlled 1 will not be a personal service corporation within the meaning of § 269A.

The taxpayer has made the following representations with respect to the formation of Sub 6, as described in step (ii) of the proposed transaction:

- 2a. No stock or securities will be issued for services rendered to or for the

- benefit of Sub 6 in connection with the proposed transaction, and no stock or securities will be issued for indebtedness of Sub 6 that is not evidenced by a security or for interest on indebtedness of Sub 6 which accrued on or after the beginning of the holding period of Controlled 1 for the debt.
- 2b. The proceeds received in collection of the income items will be included as ordinary income in computing the taxable income of the transferee.
  - 2c. The patents or patent applications to be transferred to Sub 6 qualify as “property” within the meaning of § 351. Controlled 1 will transfer all substantial rights in such patents or patent applications within the meaning of § 1253.
  - 2d. All rights, title and interests for each copyright, in each medium of exploitation, will be transferred to Sub 6.
  - 2e. Controlled 1 will not retain any significant power, right, or continuing interest, within the meaning of § 1253(b), in the trademarks or trade names being transferred.
  - 2f. The transfer is not the result of the solicitation by a promoter, broker, or investment house.
  - 2g. Controlled 1 will not retain any rights in the property transferred to Sub 6.
  - 2h. The adjusted basis and fair market value of the assets to be transferred by Controlled 1 to Sub 6 will, in each instance, be equal to or exceed the sum of the liabilities to be assumed by Sub 6 plus any liabilities to which the transferred assets are subject.
  - 2i. The liabilities of Controlled 1 to be assumed by Sub 6 were incurred in the ordinary course of business and are associated with the assets to be transferred.
  - 2j. There is no indebtedness between Sub 6 and Controlled 1 and there will be no indebtedness created in favor of Controlled 1 as a result of the  
  
transaction.
  - 2k. The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
  - 2l. All exchanges will occur on approximately the same date.
  - 2m. There is no plan or intention on the part of Sub 6 to redeem or otherwise reacquire any stock or indebtedness to be issued in the proposed transaction.
  - 2n. Taking into account any issuance of additional shares of Sub 6 stock; any issuance of stock for services; the exercise of any Sub 6 stock rights,

warrants, or subscriptions; a public offering of Sub 6 stock; the sale, exchange, transfer by gift, or other disposition of any of the stock of Sub 6 to be received in the exchange, Controlled 1 will be in "control" of Sub 6 within the meaning of § 368(c).

- 2o. Controlled 1 will receive stock, securities or other property approximately equal to the fair market value of the property transferred to Sub 6.
- 2p. Sub 6 will remain in existence and retain and use the property transferred to it in a trade or business.
- 2q. There is no plan or intention by Sub 6 to dispose of the transferred property other than in the normal course of business operations.
- 2r. Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the proposed transaction.
- 2s. Sub 6 will not be an investment company within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii).
- 2t. Upon its formation, Controlled 1 will not be under the jurisdiction of a court in title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy the indebtedness of such debtor.
- 2u. Sub 6 will not be a personal service corporation within the meaning of § 269A.

The taxpayer has made the following representations with respect to the formation of Controlled 2, as described in steps (v) and (vi) of the proposed transaction:

- 3a. No stock or securities will be issued for services rendered to or for the benefit of Controlled 2 in connection with the proposed transaction, and no stock or securities will be issued for indebtedness of Controlled 2 that is not evidenced by a security or for interest on indebtedness of Controlled 2 which accrued on or after the beginning of the holding period of Distributing 1 for the debt.
- 3b. The proceeds received in collection of the income items will be included as ordinary income in computing the taxable income of the transferee.
- 3c. The patents or patent applications to be transferred to Controlled 2 qualify as "property" within the meaning of § 351. Distributing 1 will transfer all substantial rights in such patents or patent applications within the meaning of § 1253.
- 3d. All rights, title and interests for each copyright, in each medium of exploitation, will be transferred to Controlled 2.
- 3e. Distributing 1 will not retain any significant power, right, or continuing

interest, within the meaning of § 1253(b), in the trademarks or trade names being transferred.

- 3f. None of the stock to be transferred is “section 306 stock” within the meaning of § 306(c).
- 3g. The transfer is not the result of the solicitation by a promoter, broker, or investment house.
- 3h. Distributing 1 will not retain any rights in the property transferred to Controlled 2.
- 3i. Any debt relating to the stock being transferred that is being assumed (or to which such stock is subject) was incurred to acquire such stock and was incurred when such stock was acquired, and Distributing 1 is transferring all of the stock for which the acquisition indebtedness being assumed (or to which such stock is subject) was incurred.
- 3j. The adjusted basis and fair market value of the assets to be transferred by Distributing 1 to Controlled 2 will, in each instance, be equal to or exceed the sum of the liabilities to be assumed by Controlled 2 plus any liabilities to which the transferred assets are subject.
- 3k. The liabilities of Distributing 1 to be assumed by Controlled 2 were incurred in the ordinary course of business and are associated with the assets to be transferred.
- 3l. There is no indebtedness between Controlled 2 and Distributing 1 and there will be no indebtedness created in favor of Distributing 1 as a result of the transaction.
- 3m. The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
- 3n. All exchanges will occur on approximately the same date.
- 3o. There is no plan or intention on the part of Controlled 2 to redeem or otherwise reacquire any stock or indebtedness to be issued in the proposed transaction.
- 3p. Taking into account any issuance of additional shares of Controlled 2 stock; any issuance of stock for services; the exercise of any Controlled 2 stock rights, warrants, or subscriptions; a public offering of Controlled 2 stock; the sale, exchange, transfer by gift, or other disposition of any of the stock of Controlled 2 to be received in the exchange, Distributing 1 will be in “control” of Controlled 2 within the meaning of § 368(c).
- 3q. Distributing 1 will receive stock, securities or other property approximately equal to the fair market value of the property transferred to Controlled 2.
- 3r. Controlled 2 will remain in existence and retain and use the property

transferred to it in a trade or business.

- 3s. There is no plan or intention by Controlled 2 to dispose of the transferred property other than in the normal course of business operations.
- 3t. Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the proposed transaction.
- 3u. Controlled 2 will not be an investment company within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii).
- 3v. Distributing 1 is not under the jurisdiction of a court in title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy the indebtedness of such debtor.
- 3w. Controlled 2 will not be a personal service corporation within the meaning of § 269A.

The taxpayer has made the following representations with respect to the formation of Sub 7, as described in step (vii) of the proposed transaction:

- 4a. No stock or securities will be issued for services rendered to or for the benefit of Sub 7 in connection with the proposed transaction, and no stock or securities will be issued for indebtedness of Sub 7 that is not evidenced by a security or for interest on indebtedness of Sub 7 which accrued on or after the beginning of the holding period of Controlled 2 for the debt.
- 4b. The proceeds received in collection of the income items will be included as ordinary income in computing the taxable income of the transferee.
- 4c. The patents or patent applications to be transferred to Sub 7 qualify as "property" within the meaning of § 351. Controlled 2 will transfer all substantial rights in such patents or patent applications within the meaning of § 1253.
- 4d. All rights, title and interests for each copyright, in each medium of exploitation, will be transferred to Sub 7.
- 4e. Controlled 2 will not retain any significant power, right, or continuing interest, within the meaning of § 1253(b), in the trademarks or trade names being transferred.
- 4f. The transfer is not the result of the solicitation by a promoter, broker, or investment house.
- 4g. Controlled 2 will not retain any rights in the property transferred to Sub 7.
- 4h. The adjusted basis and fair market value of the assets to be transferred by Controlled 2 to Sub 7 will, in each instance, be equal to or exceed the sum

of the liabilities to be assumed by Sub 7 plus any liabilities to which the transferred assets are subject.

- 4i. The liabilities of Controlled 2 to be assumed by Sub 7 were incurred in the ordinary course of business and are associated with the assets to be transferred.
- 4j. There is no indebtedness between Sub 7 and Controlled 2 and there will be no indebtedness created in favor of Controlled 2 as a result of the transaction.
- 4k. The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
- 4l. All exchanges will occur on approximately the same date.
- 4m. There is no plan or intention on the part of Sub 7 to redeem or otherwise reacquire any stock or indebtedness to be issued in the proposed transaction.
- 4n. Taking into account any issuance of additional shares of Sub 7 stock; any issuance of stock for services; the exercise of any Sub 7 stock rights, warrants, or subscriptions; a public offering of Sub 7 stock; the sale, exchange, transfer by gift, or other disposition of any of the stock of Sub 7 to be received in the exchange, Controlled 2 will be in "control" of Sub 7 within the meaning of § 368(c).
- 4o. Controlled 2 will receive stock, securities or other property approximately equal to the fair market value of the property transferred to Sub 7.
- 4p. Sub 7 will remain in existence and retain and use the property transferred to it in a trade or business.
- 4q. There is no plan or intention by Sub 7 to dispose of the transferred property other than in the normal course of business operations.
- 4r. Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the proposed transaction.
- 4s. Sub 7 will not be an investment company within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii).
- 4t. Upon its formation, Controlled 2 will not be under the jurisdiction of a court in title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy the indebtedness of such debtor.
- 4u. Sub 7 will not be a personal service corporation within the meaning of § 269A.

The taxpayer has made the following representations with respect to the

formation of Sub 8, as described in step (viii) of the proposed transaction:

- 5a. No stock or securities will be issued for services rendered to or for the benefit of Sub 8 in connection with the proposed transaction, and no stock or securities will be issued for indebtedness of Sub 8 that is not evidenced by a security or for interest on indebtedness of Sub 8 which accrued on or after the beginning of the holding period of Controlled 2 for the debt.
- 5b. The proceeds received in collection of the income items will be included as ordinary income in computing the taxable income of the transferee.
- 5c. The patents or patent applications to be transferred to Sub 8 qualify as "property" within the meaning of § 351. Controlled 2 will transfer all substantial rights in such patents or patent applications within the meaning of § 1253.
- 5d. All rights, title and interests for each copyright, in each medium of exploitation, will be transferred to Sub 8.
- 5e. Controlled 2 will not retain any significant power, right, or continuing interest, within the meaning of § 1253(b), in the trademarks or trade names being transferred.
- 5f. None of the stock to be transferred is "section 306 stock" within the meaning of § 306(c).
- 5g. The transfer is not the result of the solicitation by a promoter, broker, or investment house.
- 5h. Controlled 2 will not retain any rights in the property transferred to Sub 8.
- 5i. Any debt relating to the stock being transferred that is being assumed (or to which such stock is subject) was incurred to acquire such stock and was incurred when such stock was acquired, and Controlled 2 is transferring all of the stock for which the acquisition indebtedness being assumed (or to which such stock is subject) was incurred.
- 5j. The adjusted basis and fair market value of the assets to be transferred by Controlled 2 to Sub 8 will, in each instance, be equal to or exceed the sum of the liabilities to be assumed by Sub 8 plus any liabilities to which the transferred assets are subject.
- 5k. The liabilities of Controlled 2 to be assumed by Sub 8 were incurred in the ordinary course of business and are associated with the assets to be transferred.
- 5l. There is no indebtedness between Sub 8 and Controlled 2 and there will be no indebtedness created in favor of Controlled 2 as a result of the transaction.

- 5m. The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
- 5n. All exchanges will occur on approximately the same date.
- 5o. There is no plan or intention on the part of Sub 8 to redeem or otherwise reacquire any stock or indebtedness to be issued in the proposed transaction.
- 5p. Taking into account any issuance of additional shares of Sub 8 stock; any issuance of stock for services; the exercise of any Sub 8 stock rights, warrants, or subscriptions; a public offering of Sub 8 stock; the sale, exchange, transfer by gift, or other disposition of any of the stock of Sub 8 to be received in the exchange, Controlled 2 will be in "control" of Sub 8 within the meaning of § 368(c).
- 5q. Controlled 2 will receive stock, securities or other property approximately equal to the fair market value of the property transferred to Sub 8.
- 5r. Sub 8 will remain in existence and retain and use the property transferred to it in a trade or business.
- 5s. There is no plan or intention by Sub 8 to dispose of the transferred property other than in the normal course of business operations.
- 5t. Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the proposed transaction.
- 5u. Sub 8 will not be an investment company within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii).
- 5v. Upon its formation, Controlled 2 will not be under the jurisdiction of a court in title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy the indebtedness of such debtor.
- 5w. Sub 8 will not be a personal service corporation within the meaning of § 269A.

The taxpayer has made the following representations with respect to the Sub 2 Liquidation, as described in steps (x) and (xi) of the proposed transaction:

- 6a. Distributing 2 will remain the sole owner of Newco LLC. In addition, Newco LLC will not elect to be treated as a corporation for federal tax purposes.
- 6b. Distributing 2, on the date of adoption of the plan of liquidation, and at all times until the final liquidating distribution is completed, will be the owner of at least 80 percent of the single outstanding class of Sub 2 stock.
- 6c. No shares of Sub 2 stock will have been redeemed during the three years

preceding the adoption of the plan of complete liquidation.

- 6d. All distributions from Sub 2 to Distributing 2 pursuant to the plan of complete liquidation will be made within a single taxable year of Sub 2.
- 6e. As soon as the first liquidating distribution has been made, Sub 2 will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and distributing its remaining assets to its shareholder, Distributing 2.
- 6f. Sub 2 will retain no assets following the final liquidating distribution.
- 6g. Sub 2 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years prior to the date of adoption of the plan of liquidation.
- 6h. Except for certain investment assets sold by Sub 2 to unrelated parties, no assets of Sub 2 have been, or will be, disposed of by either Sub 2 or Distributing 2 except for dispositions in the ordinary course of business and dispositions occurring more than three years prior to adoption of the plan of liquidation.
- 6i. The liquidation of Sub 2 will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation (Recipient) of any of the businesses or assets of Sub 2, if persons holding, directly or indirectly, more than 20 percent in value of the Sub 2 stock also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of § 318(a) as modified by § 304(c).
- 6j. Prior to the adoption of the liquidation plan, no assets of Sub 2 will have been distributed in kind, transferred, or sold to Distributing 2, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years prior to adoption of the liquidation plan.
- 6k. Sub 2 will report all earned income represented by assets that will be distributed to Distributing 2 such as receivables, if any, being reported on a cash basis, commissions due, etc.
- 6l. The fair market value of the assets of Sub 2 will exceed its liabilities both at the time of the adoption of the plan of complete liquidation and immediately prior to the time the first liquidating distribution is made.
- 6m. There is no intercorporate debt existing between Distributing 2 and Sub 2 and none has been canceled, forgiven, or discounted.
- 6n. Distributing 2 is not an organization that is exempt from federal income tax

under § 501 or any other provision of the Code.

- 6o. All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the proposed liquidation of Sub 2 have been fully disclosed.

The taxpayer has made the following representations with respect to the First Controlled 1 Distribution, as described in steps (i) - (iv) and (xii) of the proposed transaction:

- 7a. No part of the consideration to be distributed by Distributing 1 will be received by Distributing 2 as a creditor or in any capacity other than that of a shareholder of Distributing 1.
- 7b. The 5 years of financial information submitted on behalf of Distributing 1 is representative of its present operations, and there have been no substantial operational changes since the date of the last financial statement submitted.
- 7c. Following the First Controlled 1 Distribution, Distributing 1 and Controlled 1 will each continue the active conduct of its businesses independently and with its separate employees.
- 7d. The First Controlled 1 Distribution will be carried out for the following business purpose: to facilitate a public stock offering by Controlled 1. The First Controlled 1 Distribution is motivated, in whole or substantial part, by this corporate business purpose.
- 7e. Other than the Second Controlled 1 Distribution and the Controlled 1 Public Offering, there is no plan or intention by Distributing 2 to sell, exchange, transfer by gift, or otherwise dispose of any of its stock in either Distributing 1 or Controlled 1 after the First Controlled 1 Distribution.
- 7f. There is no plan or intention by either Distributing 1 or Controlled 1, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the First Controlled 1 Distribution, other than through stock purchases meeting the requirements of 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696, 705.
- 7g. There is no plan or intention to liquidate either Distributing 1 or Controlled 1, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the First Controlled 1 Distribution, except in the ordinary course of business.
- 7h. The income tax liability for the taxable year in which investment credit property (including any building to which § 47(d) applies) is transferred will be adjusted pursuant to § 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if

- applicable) to reflect an early disposition of the property.
- 7i. Distributing 1 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.
  - 7j. No intercorporate debt will exist between Distributing 1 and Controlled 1 at the time of, or subsequent to, the First Controlled 1 Distribution.
  - 7k. 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.
  - 7l. Neither Distributing 1 nor Controlled 1 is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).
  - 7m. At the time of Distributing 2's acquisition of Sub 2, less than 50 percent of Sub 2's assets were cash, cash items, or marketable stock or securities.
  - 7n. Less than 50 percent of the vote and value of Sub 2's stock in Distributing 1 was received or deemed received by Sub 2 in exchange for cash, cash items, marketable stock or securities, or Sub 2 debt during the 5 years period ending on the date of the distribution.

The taxpayer has made the following representations with respect to the First Controlled 2 Distribution, as described in steps (v) - (ix) and (xiii) of the proposed transaction:

- 8a. No part of the consideration to be distributed by Distributing 1 will be received by Distributing 2 as a creditor or in any capacity other than that of a shareholder of Distributing 1.
- 8b. The 5 years of financial information submitted on behalf of Distributing 1 is representative of its present operations, and there have been no substantial operational changes since the date of the last financial statement submitted.
- 8c. Immediately after the First Controlled 2 Distribution, at least 90 percent of the fair market value of the gross assets of Controlled 2 will consist of the stock of controlled corporations (Sub 7 and Sub 8) that are engaged in the active conduct of business as defined in § 355(b) (2).
- 8d. Following the First Controlled 2 Distribution, Distributing 1 and Controlled 2 will each continue the active conduct of its businesses independently and with its separate employees.
- 8e. The First Controlled 2 Distribution will be carried out for the following business purpose: to facilitate a public stock offering by Controlled 2. The First Controlled 2 Distribution is motivated, in whole or substantial part, by

this corporate business purpose.

- 8f. Other than the Second Controlled 2 Distribution and the Public Offering of Controlled 2 stock, there is no plan or intention by Distributing 2 to sell, exchange, transfer by gift, or otherwise dispose of any of its stock in either Distributing 1 or Controlled 2 after the First Controlled 2 Distribution.
- 8g. There is no plan or intention by either Distributing 1 or Controlled 2, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the First Controlled 2 Distribution, other than through stock purchases meeting the requirements of 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696, 705.
- 8h. There is no plan or intention to liquidate either Distributing 1 or Controlled 2, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the First Controlled 2 Distribution, except in the ordinary course of business.
- 8i. The income tax liability for the taxable year in which investment credit property (including any building to which § 47(d) applies) is transferred will be adjusted pursuant to § 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect an early disposition of the property.
- 8j. Distributing 1 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.
- 8k. No intercorporate debt will exist between Distributing 1 and Controlled 2 at the time of, or subsequent to, the First Controlled 2 Distribution.
- 8l. 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.
- 8m. Controlled 2 is not an investment company as defined in § 368(a)(2)(F)(iii) and (iv).
- 8n. At the time of Distributing 2's acquisition of Sub 2, less than 50 percent of Sub 2's assets were cash, cash items, or marketable stock or securities.
- 8o. Less than 50 percent of the vote and value of Sub 2's stock in Distributing 1 was received or deemed received by Sub 2 in exchange for cash, cash items, marketable stock or securities, or Sub 2 debt during the 5 years period ending on the date of the distribution.

The taxpayer has made the following representations with respect to the Second Controlled 1 Distribution, as described in step (xviii) of the proposed transaction:

- 9a. The indebtedness, if any, owed by Controlled 1 to Distributing 2 after the Second Controlled 1 Distribution will not constitute stock or securities.
- 9b. No part of the consideration to be distributed by Distributing 2 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.
- 9c. The 5 years of financial information submitted on behalf of Distributing 2 and Distributing 1 is representative of each corporation's present operations, and, with regard to each corporation, there have been no substantial operational changes since the date of the last financial statement submitted.
- 9d. Immediately after the Second Controlled 1 Distribution, at least 90 percent of the fair market value of the gross assets of Distributing 2 will consist of the stock and securities of controlled corporations (Distributing 1 and Sub 1) that are engaged in the active conduct of business as defined in § 355(b)(2).
- 9e. Following the Second Controlled 1 Distribution, Distributing 2 and Controlled 1 will each continue the active conduct of its businesses independently and with its separate employees.
- 9f. The Second Controlled 1 Distribution is carried out for the following business purpose: to facilitate a stock offering by Controlled 1. The Second Controlled 1 Distribution is motivated, in whole or substantial part, by this corporate business purpose.
- 9g. There is no plan or intention by any Distributing 2 shareholder who owns 5 percent or more of Distributing 2 stock, and the management of Distributing 2, to its best knowledge, is not aware of any plan or intention on the part of any particular remaining shareholder or security holder of Distributing 2 to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, either Distributing 2 or Controlled 1 after the Second Controlled 1 Distribution.
- 9h. There is no plan or intention by either Distributing 2 or Controlled 1 directly or through any subsidiary corporation, to purchase any of its outstanding stock after the Second Controlled 1 Distribution, other than through stock purchases meeting the requirements of 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696, 705.
- 9i. There is no plan or intention to liquidate either Distributing 2 or Controlled 1, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the Second Controlled 1 Distribution, except in the ordinary course of business.
- 9j. Distributing 2 neither accumulated its receivables nor made extraordinary

payment of its payables in anticipation of the transaction.

- 9k. No intercorporate debt will exist between Distributing 2 and Controlled 1 at the time of, or subsequent to, the Second Controlled 1 Distribution.
- 9l. Immediately before the Second Controlled 1 Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations. Further, Distributing 2's excess loss account, if any, with respect to Controlled 1 stock will be included in income immediately before the Second Controlled 1 Distribution.
- 9m. Payments made in connection with all continuing transactions, if any, between Distributing 2 and Controlled 1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- 9n. The Second Controlled 1 Distribution is not part of a plan (or series of related transactions) pursuant to which one or more persons will acquire, directly or indirectly, stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 2 or Controlled 1 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing 2 or Controlled 1 stock.
- 9o. Neither Distributing 2 nor Controlled 1 is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).

The taxpayer has made the following representations with respect to the Second Controlled 2 Distribution, as described in step (xix) of the proposed transaction:

- 10a. The indebtedness, if any, owed by Controlled 2 to Distributing 2 after the Second Controlled 2 Distribution will not constitute stock or securities.
- 10b. No part of the consideration to be distributed by Distributing 2 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.
- 10c. The 5 years of financial information submitted on behalf of Distributing 2 and Distributing 1 is representative of each corporation's present operations, and, with regard to each corporation, there have been no substantial operational changes since the date of the last financial statement submitted.
- 10d. Immediately after the Second Controlled 2 Distribution, at least 90 percent of the fair market value of the gross assets of Distributing 2 will consist of the stock and securities of controlled corporations (Distributing 1 and Sub 1) that are engaged in the active conduct of business as defined in § 355(b)(2).

- 10e. Immediately after the Second Controlled 2 Distribution, at least 90 percent of the fair market value of the gross assets of Controlled 2 will consist of the stock of controlled corporations (Sub 7 and Sub 8) that are engaged in the active conduct of business as defined in § 355(b)(2).
- 10f. Following the Second Controlled 2 Distribution, Distributing 2 and Controlled 2 will each continue the active conduct of its businesses independently and with its separate employees.
- 10g. The Second Controlled 2 Distribution is carried out for the following business purpose: to facilitate a stock offering by Controlled 2. The Second Controlled 2 is motivated, in whole or substantial part, by this corporate business purpose.
- 10h. There is no plan or intention by any Distributing 2 shareholder who owns 5 percent or more of Distributing 2 stock, and the management of Distributing 2, to its best knowledge, is not aware of any plan or intention on the part of any particular remaining shareholder or security holder of Distributing 2 to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, either Distributing 2 or Controlled 2 after the Second Controlled 2 Distribution.
- 10i. There is no plan or intention by either Distributing 2 or Controlled 2, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the Second Controlled 2 Distribution, other than  
  
through stock purchases meeting the requirements of 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696, 705.
- 10j. There is no plan or intention to liquidate either Distributing 2 or Controlled 2, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the Second Controlled 2 Distribution, except in the ordinary course of business.
- 10k. Distributing 2 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.
- 10l. No intercorporate debt will exist between Distributing 2 and Controlled 2 at the time of, or subsequent to, the Second Controlled 2 Distribution.
- 10m. Immediately before the Second Controlled 2 Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations. Further, Distributing 2's excess loss account, if any, with respect to Controlled 2 stock will be included in income immediately before the Second Controlled 2 Distribution.
- 10n. 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.

- 10o. The Second Controlled 2 Distribution is not part of a plan (or series of related transactions) pursuant to which one or more persons will acquire, directly or indirectly, stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 2 or Controlled 2 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing 2 or Controlled 2 stock.

Based solely on the information submitted and on the representations set forth above, we hold as follows with respect to the formation of Controlled 1, as described in step (i) of the proposed transaction:

- (1) The transfer by Distributing 1 of cash and Business B Assets to Controlled 1 in exchange for stock of Controlled 1 and the assumption of liabilities will be a transfer to a controlled corporation within the meaning of § 351(a). The subsequent distribution by Distributing 1 of the stock of Controlled 1 to Distributing 2 and the distribution by Distributing 2 of the stock of Controlled 1 to the Distributing 2 shareholders will not cause the transfer of the assets to Controlled 1 to fail to qualify under § 351(a) (§ 351(c)). Moreover, the subsequent transfer of some of the transferred assets to Sub 6 will not cause the transfer of the assets to Controlled 1 to fail to qualify under § 351(a) (Rev. Rul. 77-449, 1977-2 C.B. 110).
- (2) Distributing 1 will recognize no gain or loss on the transfer of the Business B Assets to Controlled 1 in exchange for the stock of Controlled 1 and the assumption by Controlled 1 of the liabilities (§ 351(a) and (c) and § 357(a) and (c)).
- (3) Controlled 1 will recognize no gain or loss upon the receipt of the Business B Assets in exchange for the issuance of Controlled 1 stock (§ 1032(a)).
- (4) Controlled 1's basis in Business B Assets will be the same as the basis of such assets in the hands of Distributing 1 immediately prior to the transfer (§ 362(a)).
- (5) The holding period of Business B Assets in the hands of Controlled 1 will include, in each instance, the period during which the assets were held by Distributing 1 (§ 1223(2)).
- (6) Distributing 1's basis in the stock of Controlled 1 received in exchange for Business B Assets will be the same as the basis of Business B Assets immediately prior to the exchange, decreased by the amount of the liabilities assumed by Controlled 1 (§ 358(a) and (d)).
- (7) The holding period of the stock of Controlled 1 received by Distributing 1

will include the holding period of Business B Assets transferred to Controlled 1, provided that Business B Assets were held by Distributing 1 as capital assets on the date of the exchange (§ 1223(1)).

Based solely on the information submitted and on the representations set forth above, we hold as follows with respect to the formation of Sub 6, as described in step (ii) of the proposed transaction:

- (1) The transfer by Controlled 1 of cash and the Transferred Sub 6 Assets to Sub 6 in exchange for stock of Sub 6 and the assumption of liabilities will be a transfer to a controlled corporation within the meaning of § 351(a).
- (2) Controlled 1 will recognize no gain or loss on the transfer of the Transferred Sub 6 Assets to Sub 6 in exchange for the stock of Sub 6 and the assumption by Sub 6 of the liabilities (§ 351(a) and (c) and § 357(a) and (c)).
- (3) Sub 6 will recognize no gain or loss upon the receipt of the Transferred Sub 6 Assets in exchange for the issuance of Sub 6 stock (§ 1032(a)).
- (4) Sub 6's basis in the Transferred Sub 6 Assets will be the same as the basis of such assets in the hands of Controlled 1 immediately prior to the transfer (§ 362(a)).
- (5) The holding period of the Transferred Sub 6 Assets in the hands of Sub 6

will include, in each instance, the period during which the assets were held by Controlled 1 (§ 1223(2)).

- (6) Controlled 1's basis in the stock of Sub 6 received in exchange for the Transferred Sub 6 Assets will be the same as the basis of such assets immediately prior to the exchange, decreased by the amount of the liabilities assumed by Controlled 1 (§ 358(a) and (d)).
- (7) The holding period of the stock of Sub 6 received by Controlled 1 will include the holding period of the Transferred Sub 6 Assets, provided that such assets were held by Controlled 1 as capital assets on the date of the exchange. (§ 1223(1)).

Based solely on the information submitted and on the representations set forth above, we hold as follows with respect to the formation of Controlled 2, as described in steps (v) and (vi) of the proposed transaction:

- (1) The transfer by Distributing 1 of cash and Business D Assets to Controlled 2 in exchange for stock of Controlled 2 and the assumption of liabilities will be a transfer to a controlled corporation within the meaning of § 351(a). The subsequent distribution by Distributing 1 of the stock of Controlled 2 to

Distributing 2 and the distribution by Distributing 2 of the stock of Controlled 2 to the Distributing 2 shareholders will not cause the transfer of the assets to Controlled 2 to fail to qualify under § 351(a) (§ 351(c)). Moreover, the subsequent transfer of Business D Assets to Sub 7 and Sub 8 will not cause the transfer of Business D Assets to Controlled 2 to fail to qualify under § 351(a) (Rev. Rul. 77-449, 1977-2 C.B. 110).

- (2) Distributing 1 will recognize no gain or loss on the transfer of Business D Assets to Controlled 2 in exchange for the stock of Controlled 2 and the assumption by Controlled 2 of the liabilities (§ 351(a) and (c) and § 357(a) and (c)).
- (3) Controlled 2 will recognize no gain or loss upon the receipt of Business D Assets in exchange for the issuance of Controlled 2 stock (§ 1032(a)).
- (4) Controlled 2's basis in Business D Assets will be the same as the basis of such assets in the hands of Distributing 1 immediately prior to the transfer (§ 362(a)).
- (5) The holding period of Business D Assets in the hands of Controlled 2 will include, in each instance, the period during which the assets were held by Distributing 1 (§ 1223(2)).
- (6) Distributing 1's basis in the stock of Controlled 2 received in exchange for Business D Assets will be the same as the basis of Business D Assets

immediately prior to the exchange, decreased by the amount of the liabilities assumed by Controlled 2 (§ 358(a) and (d)).

- (7) The holding period of the stock of Controlled 2 received by Distributing 1 will include the holding period of Business D Assets transferred to Controlled 2, provided that Business D Assets were held by Distributing 1 as capital assets on the date of the exchange (§ 1223(1)).

Based solely on the information submitted and on the representations set forth above, we hold as follows with respect to the formation of Sub 7, as described in step (vii) of the proposed transaction:

- (1) The transfer by Controlled 2 of the Transferred Sub 7 Assets in exchange for stock of Sub 7 and the assumption of liabilities will be a transfer to a controlled corporation within the meaning of § 351(a).
- (2) Controlled 2 will recognize no gain or loss on the transfer of the Transferred Sub 7 Assets to Sub 7 in exchange for the stock of Sub 7 and the assumption by Sub 7 of the liabilities (§ 351(a) and (c) and § 357(a) and (c)).
- (3) Sub 7 will recognize no gain or loss upon the receipt of the Transferred

Sub 7 Assets in exchange for the issuance of Sub 7 stock (§ 1032(a)).

- (4) Sub 7's basis in the Transferred Sub 7 Assets will be the same as the basis of such assets in the hands of Controlled 2 immediately prior to the transfer (§ 362(a)).
- (5) The holding period of the Transferred Sub 7 Assets in the hands of Sub 7 will include, in each instance, the period during which the assets were held by Controlled 2 (§ 1223(2)).
- (6) Controlled 2's basis in the stock of Sub 7 received in exchange for the Transferred Sub 7 Assets will be the same as the basis of such assets immediately prior to the exchange, decreased by the amount of the liabilities assumed by Controlled 2 (§ 358(a) and (d)).
- (7) The holding period of the stock of Sub 7 received by Controlled 2 will include the holding period of the Transferred Sub 7 Assets, provided that such assets were held by Controlled 2 as capital assets on the date of the exchange (§ 1223(1)).

Based solely on the information submitted and on the representations set forth above, we hold as follows with respect the formation of Sub 8, as described in step (viii) of the proposed transaction:

- (1) The transfer by Controlled 2 of the Transferred Sub 8 Assets to Sub 8 in exchange for stock of Sub 8 and the assumption of liabilities will be a transfer to a controlled corporation within the meaning of § 351(a).
- (2) Controlled 2 will recognize no gain or loss on the transfer of the Transferred Sub 8 Assets to Sub 8 in exchange for the stock of Sub 8 and the assumption by Sub 8 of the liabilities (§ 351(a) and (c) and § 357(a) and (c)).
- (3) Sub 8 will recognize no gain or loss upon the receipt of the Transferred Sub 8 Assets in exchange for the issuance of Sub 8 stock (§ 1032(a)).
- (4) Sub 8's basis in the Transferred Sub 8 Assets will be the same as the basis of such assets in the hands of Controlled 2 immediately prior to the transfer (§ 362(a)).
- (5) The holding period of the transferred assets in the hands of Sub 8 will include, in each instance, the period during which the Transferred Sub 8 Assets were held by Controlled 2 (§ 1223(2)).
- (6) Controlled 2's basis in the stock of Sub 8 received in exchange for the Transferred Sub 8 Assets will be the same as the basis of such assets immediately prior to the exchange, decreased by the amount of the liabilities assumed by Controlled 2 (§ 358(a) and (d)).

- (7) The holding period of the stock of Sub 8 received by Controlled 2 will include the holding period of the Transferred Sub 8 Assets, provided that such assets were held by Controlled 2 as capital assets on the date of the exchange (§ 1223(1)).

Based solely on the information submitted and on the representations set forth above, we hold as follows with respect to the Sub 2 Liquidation, as described in steps (x) and (xi) of the proposed transaction:

- (1) The transfer of all of the stock of Sub 2 to Newco LLC, an entity disregarded for federal tax purposes, followed by the dissolution of Sub 2, will be treated as a distribution by Sub 2 to Distributing 2 in complete liquidation (§ 332 and § 1.332-2(d)).
- (2) Distributing 2 will recognize no gain or loss on the receipt of the Sub 2 assets and liabilities in the Sub 2 Liquidation (§ 332(a)).
- (3) Sub 2 will recognize no gain or loss on its distribution of assets and liabilities to Distributing 2 in the Sub 2 Liquidation (§ 337(a)).
- (4) The basis of each asset of Sub 2 received by Distributing 2 in the Sub 2 Liquidation will be the same as the basis of that asset in the hands of Sub 2 immediately prior to the liquidation (§ 334(b)(1)).
- (5) The holding period of each asset of Sub 2 received by Distributing 2 in the Sub 2 Liquidation will include the period during which that asset was held by Sub 2, provided the asset is a capital asset as defined in section 1221 or property described in § 1231 in the hands of Sub 2 (§ 1223(1)).
- (6) Distributing 2 will succeed to and take into account the items of Sub 2 described in § 381(c), including the net operating loss carryovers and the earnings and profits or deficit in earnings and profits of Sub 2 as of the close of the date of the liquidating distribution, subject to the conditions and limitations specified in subsections (b) and (c) of § 381 (§ 381(a)).

Based solely on the information submitted and on the representations set forth above, we hold as follows with respect to the First Controlled 1 Distribution, as described in steps (i) - (iv) and (xii) of the proposed transaction:

- (1) No gain or loss will be recognized by Distributing 1 on the First Controlled 1 Distribution (§ 355(c)).
- (2) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 2 in the First Controlled 1 Distribution (§ 355(a)(1)).
- (3) The aggregate basis of the Distributing 1, Controlled 1 and Controlled 2 stock in the hands of Distributing 2 after the First Controlled 1 Distribution and the First Controlled 2 Distribution will equal the aggregate basis of

Distributing 1 stock held by Distributing 2 immediately before such distributions, allocated among the Distributing 1, Controlled 1 and Controlled 2 stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(b)(2)).

- (4) The holding period of Controlled 1 stock received by Distributing 2 will include the holding period of the Distributing 1 stock with respect to which the First Controlled 1 Distribution is made, provided that the Distributing 1 stock is held as a capital asset on the date of the First Controlled 1 Distribution (§ 1223(1)).
- (5) As provided in §312(h) of the Code, proper allocation of earnings and profits between Distributing 1, Controlled 1 and Controlled 2 will be made in accordance with § 1.312-10(b).

Based solely on the information submitted and on the representations set forth above, we hold as follows with respect to the First Controlled 2 Distribution, as described in steps (v) - (ix) and (xiii) of the proposed transaction:

- (1) No gain or loss will be recognized by Distributing 1 on the First Controlled 2 Distribution (§ 355(c)).
- (2) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 2 in the First Controlled 2 Distribution (§ 355(a)(1)).
- (3) The aggregate basis of the Distributing 1, Controlled 1 and Controlled 2 stock in the hands of Distributing 2 after the First Controlled 1 Distribution and the First Controlled 2 Distribution will equal the aggregate basis of Distributing 1 stock held by Distributing 2 immediately before such distributions, allocated among the Distributing 1, Controlled 1 and Controlled 2 stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (358(b)(2)).
- (4) The holding period of Controlled 2 stock received by Distributing 2 will include the holding period of the Distributing 1 stock with respect to which the First Controlled 2 Distribution is made, provided that the Distributing 1 stock is held as a capital asset on the date of the First Controlled 2 Distribution (§ 1223(1)).
- (5) As provided in § 312(h), proper allocation of earnings and profits between Distributing 1, Controlled 1 and Controlled 2 will be made under § 1.312-10(b).

Based solely on the information submitted and on the representations set forth above, we hold as follows with respect to the Second Controlled 1 Distribution, as described in step (xviii) of the proposed transaction:

- (1) No gain or loss will be recognized by Distributing 2 in the Second

Controlled 1 Distribution (§ 355(c)).

- (2) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 2's shareholders in the Second Controlled 1 Distribution (§ 355(a)(1)).
- (3) The aggregate basis of the Distributing 2 stock, Controlled 1 and Controlled 2 stock (including fractional interests) in the hands of the shareholders of Distributing 2 after the Second Controlled 1 Distribution and the Second Controlled 2 Distribution will equal the aggregate basis of Distributing 2 stock held by the shareholders of Distributing 2 immediately before such distributions, allocated among the Distributing 2 stock, Controlled 1 and Controlled 2 stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(b)(2)).
- (4) The holding period of Controlled 1 stock received by the shareholders of Distributing 2 (including fractional shares) will include their holding period of Distributing 2 stock with respect to which the Second Controlled 1 Distribution is made, provided that the Distributing 2 stock is held as a capital asset on the date of the Second Controlled 1 Distribution (§ 1223(1)).
- (5) As provided in § 312(h), proper allocation of earnings and profits between Distributing 2, Controlled 1 and Controlled 2 will be made under § 1.312-10(b).
- (6) If cash is received by a Distributing 2 shareholder in lieu of a fractional share of Controlled 1 stock, gain or loss will be recognized by the shareholder measured by the difference between the basis of the fractional share interest and the amount of cash received. If the fractional share qualifies as a capital asset in the hands of the shareholder, the gain or loss will be a capital gain or loss subject to the provisions and limitations of Subchapter P of Chapter 1 (§§ 1221 and 1222).
- (7) The assumption of Revolver 1 by Controlled 1 will be treated as a distribution by Controlled 1 to Distributing 2 under § 301 immediately prior to the Second Controlled 1 Distribution.

Based solely on the information submitted and on the representations set forth above, we hold as follows with respect to the Second Controlled 2 Distribution, as described in step (xix) of the proposed transaction:

- (1) No gain or loss will be recognized by Distributing 2 in the Second Controlled 2 Distribution (§ 355(c)).
- (2) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 2's shareholders in the Second Controlled 2

Distribution (§ 355(a)(1)).

- (3) The aggregate basis of the Distributing 2 stock, Controlled 1 and Controlled 2 stock (including fractional interests) in the hands of the shareholders of Distributing 2 after the Second Controlled 1 Distribution and the Second Controlled 2 Distribution will equal the aggregate basis of Distributing 2 stock held by the shareholders of Distributing 2 immediately before such distributions, allocated among the Distributing 2 stock, Controlled 1 and Controlled 2 stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(b)(2)).
- (4) The holding period of Controlled 2 stock received by the shareholders of Distributing 2 (including fractional shares) will include their holding period of Distributing 2 stock with respect to which the Second Controlled 2 Distribution is made, provided that the Distributing 2 stock is held as a capital asset on the date of the Second Controlled 2 Distribution (§ 1223(1)).
- (5) As provided in § 312(h), proper allocation of earnings and profits between Distributing 2, Controlled 1 and Controlled 2 will be made under § 1.312-10(b).
- (6) If cash is received by a Distributing 2 shareholder in lieu of a fractional share of Controlled 2 stock, gain or loss will be recognized by the shareholder measured by the difference between the basis of the fractional share interest and the amount of cash received. If the fractional share qualifies as a capital asset in the hands of the shareholder, the gain or loss will be a capital gain or loss subject to the provisions and limitations of Subchapter P of Chapter 1 (§§ 1221 and 1222).
- (7) The assumption of Revolver 2 by Controlled 2 will be treated as a distribution by Controlled 2 to Distributing 2 under § 301 immediately prior to the Second Controlled 2 Distribution.

No opinion is expressed concerning the federal income tax treatment of the proposed transaction under other provisions of the Code or Regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions that are not specifically covered by the above rulings. In particular, no opinion is given as to the status of Newco LLC as an entity disregarded for federal tax purposes.

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

A copy of this letter should be attached to the federal tax returns of the taxpayers involved for the taxable year in which the transaction covered by this ruling letter is

consummated.

In accordance with the power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely yours,

Assistant Chief Counsel  
(Corporate)

By: *Filiz A. Serbes*

Filiz A. Serbes  
Assistant to the Chief, Branch 5