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This letter responds to your September 22, 1999 request for rulings on certain

federal income tax consequences of a proposed transaction.

The rulings contained in this letter are based on 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 materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

### **Summary of Facts**

Publicly traded Distributing is the common parent of a consolidated group. Distributing wholly owns Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, and Sub 6. Sub 1 owns a percent of Sub 7. Sub 2 owns the remaining b percent of Sub 7 and wholly owns 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 30 and Sub 42. Sub 7 wholly owns Sub 22, Sub 23, and Sub 44. Sub 18 wholly owns Sub 24 and Sub 25. Sub 19 wholly owns Sub 26. Sub 20 wholly owns Sub 27. Sub 21 wholly owns Sub 28. Sub 3 wholly owns Sub 29. Sub 13 wholly owns Sub 32 and Sub 36. Sub 40, an indirect subsidiary of Sub 23, wholly owns Sub 41. Sub 3, Subs 8 through 17, Sub 21, and Subs 22 through 27 each is directly engaged in Business A. Sub 3 and Sub 24 each is also directly engaged in Business B. Sub 7 and Subs 18 through 20 are holding companies (the "Sub 2 Holdcos"), as are Distributing and Sub 2. Sub 24 is an existing credit claimant under § 936(j)(9)(A)(i) of the Internal Revenue Code.

We have received financial information indicating that Business A (as conducted by each of Sub 3, Subs 8 through 17, and Subs 22 through 28) and Business B (as conducted by each of Sub 3, Sub 4, and Sub 24) has in each case had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Business B relies on technology and operational systems that are fundamentally different from those used by Business A. Because Business B represents only a small proportion of the Distributing group's total business, however, its special needs have been given a lesser priority by controlling management. This has prevented Business B from developing its own growth and operational strategies and has, along with a general lack of synergy between the two businesses, prevented Business B from effectively competing in its industry's marketplace.

### **Proposed Transactions**

To give Business B the ability to focus more fully on its own affairs, Distributing, based on its own studies and the advice of Consultants, now proposes to separate the two businesses in the following series of transactions:

(i) Sub 1 will merge into Sub 2 in a transaction intended to qualify as a reorganization under §§ 354 and 368(a)(1)(D) (the "Merger"), making Sub 7 a wholly owned subsidiary of Sub 2.

(ii) Sub 3 will contribute its Business B assets (excluding certain intangibles related to Business B (the "Intangibles")) to a newly formed limited liability company ("LLC") in exchange for all of the interests in LLC and the assumption by LLC of related liabilities. It is intended that LLC be treated as a disregarded entity under § 301.7701-3(b)(1)(ii) of the Procedure and Administration Regulations.

(iii) Sub 3 will contribute to newly formed Controlled Sub 1 the Intangibles, all of the interests in LLC, and the Sub 29 stock in exchange for Controlled Sub 1 stock and the assumption by Controlled Sub 1 of related liabilities, including Sub 3's intercompany obligation to Sub 2 ("Contribution 1").

(iv) Sub 3 will distribute the Controlled Sub 1 stock to Distributing ("Distribution 1").

(v) Sub 24 will contribute all of its Business B assets to newly formed Controlled Sub 2 in exchange for Controlled Sub 2 stock and the assumption by Controlled Sub 2 of related liabilities ("Contribution 2").

(vi) Sub 24 will distribute the Controlled Sub 2 stock to Sub 18 ("Distribution 2"). Following Distribution 2, Controlled Sub 2 will sell equipment constituting less than c percent of its assets to a branch of Controlled Sub 6 operating in Country A (the "Relocation").

(vii) Sub 18 will distribute the Controlled Sub 2 stock to Sub 2 ("Distribution 3").

(viii) Sub 2 will contribute all of its Business B assets, including the stock of Controlled Sub 2, to newly formed Controlled Sub 4 in exchange for Controlled Sub 4 stock and the assumption by Controlled Sub 4 of related liabilities, including Sub 2's intercompany obligation to Distributing ("Contribution 3").

(ix) Various foreign restructuring transactions will be undertaken to reposition Business A and Business B assets. Among these transactions will be transfers by Sub 2 of Business B foreign operations to Controlled Sub 4 (as part of Contribution 3), sales of assets by foreign subsidiaries of Sub 2 to foreign subsidiaries of Controlled, and transfers intended to qualify for nonrecognition treatment that result in distributions to Sub 2 of foreign subsidiary stock that Sub 2 will contribute to Controlled Sub 4 (as part of Contribution 3). More specifically, as to certain of these transactions:

(a) The First Restructuring Transaction. Sub 21, a Country D corporation, will contribute its Business B assets to newly formed Controlled Sub 6, a

Country D corporation, in exchange for Controlled Sub 6 stock. Sub 21 will distribute the Controlled Sub 6 stock to Sub 2. These steps are intended to qualify as a reorganization under §§ 368(a)(1)(D) and 355. Sub 2 will contribute the Controlled Sub 6 stock to Controlled Sub 4 as part of Contribution 3. Controlled Sub 4 will transfer the Controlled Sub 6 stock to newly formed Controlled Sub 5, a Country D corporation, in a transaction intended to qualify under § 351.

(b) The Second Restructuring Transaction. Sub 9, a Country E corporation, will contribute its Business B assets to newly formed Controlled Sub 14, a Country E corporation, in exchange for Controlled Sub 14 stock. Sub 9 will distribute the Controlled Sub 14 stock to Sub 2. These steps are intended to qualify as a reorganization under §§ 368(a)(1)(D) and 355. Sub 2 will contribute the Controlled Sub 14 stock to Controlled Sub 4 as part of Contribution 3. Controlled Sub 4 will transfer the Controlled Sub 14 stock to newly formed Controlled Sub 8, a Country F corporation, in a transaction intended to qualify under § 351. Controlled Sub 4 will transfer the Controlled Sub 8 stock to Controlled Sub 5 in a transaction intended to qualify under § 351.

(c) The Third Restructuring Transaction. Sub 7, a Country D corporation, will contribute its stock in Sub 22, a Country G corporation, and Sub 44, a Country D corporation, to Sub 43 in a transaction intended to qualify under § 351. Sub 22 will liquidate, and Sub 43 will transfer the Sub 22 assets to Sub 45, a Country G corporation. Sub 45 will elect to be disregarded as an entity separate from Sub 43 under § 301.7701-3. The acquisition of Sub 22 by Sub 43 and the conversion of Sub 22 into Sub 45 are intended to qualify as a reorganization under §§ 368(a)(1)(D) and 354.

(d) Sub 2 will transfer the Sub 30 stock to Controlled Sub 4 as part of Contribution 3.

(x) Controlled Sub 4 will contribute the Controlled Sub 2 stock to newly formed Controlled Sub 3 in exchange for Controlled Sub 3 stock and the assumption by Controlled Sub 3 of related liabilities ("Contribution 4").

(xi) Sub 2 will distribute the Controlled Sub 4 stock to Distributing ("Distribution 4").

(xii) Distributing will contribute all of its Business B assets, including certain intangibles and its stock in Sub 4, Controlled Sub 1, Controlled Sub 4, and Sub 5, to newly formed Controlled in exchange for all of the Controlled stock (the "Controlled Stock") and the assumption by Controlled of related liabilities, including Distributing's intercompany obligation to Sub 6 ("Contribution 5").

(xiii) Controlled will borrow d dollars in cash, and the proceeds will be applied by

Controlled, Controlled Sub 1, and Controlled Sub 4 to satisfy an equivalent amount of liabilities assumed, respectively, from Distributing, Sub 3, and Sub 2.

(xiv) Distributing will distribute the Controlled Stock pro rata to its shareholders (“Distribution 5”). Shareholders entitled to fractional shares will instead receive cash from a distribution agent who will have aggregated these shares and sold them on the open market.

Distributing, Controlled, and their respective subsidiaries have agreed to indemnify each other regarding certain securities law, tax, and other matters related to their businesses (the “Indemnification Arrangements”). In addition, Distributing, Controlled, and their respective subsidiaries may for transitional purposes (i) enter into operating and support arrangements, (ii) enter into supply and distribution arrangements, and (iii) share certain physical facilities (collectively, the “Transitional Arrangements”).

## **Representations**

### Contribution 1 and Distribution 1

Distributing makes the following representations concerning Contribution 1 and Distribution 1:

(a) Any indebtedness owed by Controlled Sub 1 to Sub 3 after Distribution 1 will not constitute stock or securities.

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

(c) The five years of financial information submitted on behalf of Business A and Business B (as conducted by Sub 3) represents, in each case, its present operations, and there have been no substantial operational changes since the date of the last financial statements submitted.

(d) Following Distribution 1, Sub 3 and Controlled Sub 1 each will continue the active conduct of its business, independently and with its separate employees, except for services provided under the Transitional Arrangements.

(e) Distribution 1 is being carried to facilitate Distribution 5, which is being carried out to allow the management of Business B to focus on the needs of Business B. Distribution 1 is motivated, in whole or substantial part, by this corporate business purpose.

(f) Apart from the contribution of Controlled Sub 1 stock to Controlled in Contribution 5, there is no plan or intention by Distributing to sell, exchange, transfer by gift, or otherwise dispose of any stock of Sub 3 or Controlled Sub 1 after Distribution 1.

(g) There is no plan or intention by either Sub 3 or Controlled Sub 1, directly or through any subsidiary corporation, to purchase any of its outstanding stock after Distribution 1.

(h) There is no plan or intention to liquidate either Sub 3 or Controlled Sub 1, 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.

(i) To the extent required by law, 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 P.L. 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect an early disposition of the property.

(j) The total adjusted basis and the fair market value of the assets to be transferred to Controlled Sub 1 by Sub 3 each equals or exceeds the liabilities assumed (within the meaning of § 357(d)) by Controlled Sub 1.

(k) The liabilities to be assumed (within the meaning of § 357(d)) in Contribution 1 were incurred in the ordinary course of business and are associated with the assets being transferred.

(l) No intercorporate debt will exist between Sub 3 and Controlled Sub 1 at the time of, or after, Distribution 1, except for any indebtedness incurred in the ordinary course of business or pursuant to any Indemnification Arrangement or Transitional Arrangement.

(m) Immediately before Distribution 1, any 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 of the Income Tax Regulations 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). Any excess loss account Sub 3 may have in Controlled Sub 1 stock will be included in income immediately before Distribution 1 as required by the applicable regulations (see § 1.1502-19).

(n) Payments made in any continuing transactions between Sub 3 and Controlled Sub 1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arms' length, except for certain payments to be made under

the Transitional Arrangements.

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

(p) Distribution 1 is not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire, directly or indirectly, stock possessing 50 percent or more of the total combined voting power of all classes of either Sub 3 or Controlled Sub 1 stock entitled to vote, or stock possessing 50 percent or more of the total value of shares of all classes of either Sub 3 or Controlled Sub 1 stock.

(q) For purposes of § 355(d), immediately after Distribution 1, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Sub 3 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Sub 3 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 1.

(r) For purposes of § 355(d), immediately after Distribution 1, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled Sub 1 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled Sub 1 stock that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 1 or (ii) attributable to distributions on Sub 3 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 1.

#### Contribution 2 and Distribution 2

Distributing makes the following representations concerning Contribution 2 and Distribution 2:

(s) Sub 24 was actively conducting Business B in Possession on October 13, 1995.

(t) Sub 24 had an election in effect under § 936 with respect to Business B for its taxable year which included October 13, 1995.

(u) At the time of Contribution 2, Controlled Sub 2 will acquire all the Business B assets held by Sub 24.

(v) Any indebtedness owed by Controlled Sub 2 to Sub 24 after Distribution 2

will not constitute stock or securities.

(w) No part of the consideration distributed by Sub 24 will be received by Sub 18 as a creditor, employee, or in any capacity other than that of a Sub 24 shareholder.

(x) The five years of financial information submitted on behalf of Business A and Business B (as conducted by Sub 24) represents, in each case, its present operations, and there have been no substantial operational changes since the date of the last financial statements submitted.

(y) Following Distribution 2, Sub 24 and Controlled Sub 2 each will continue the active conduct of its business, independently and with its separate employees, except for services provided under Transitional Arrangements.

(z) Distribution 2 is being carried out to facilitate Distribution 5, which is being carried out to allow the management of Business B to focus on the needs of Business B. Distribution 2 is motivated, in whole or substantial part, by this corporate business purpose.

(aa) Apart from the distribution of Controlled Sub 2 stock to Sub 2 in Distribution 3, there is no plan or intention by Sub 18 to sell, exchange, transfer by gift, or otherwise dispose of any stock of Sub 24 or Controlled Sub 2 after Distribution 2.

(bb) There is no plan or intention by either Sub 24 or Controlled Sub 2, directly or through any subsidiary corporation, to purchase any of its outstanding stock after Distribution 2.

(cc) There is no plan or intention to liquidate either Sub 24 or Controlled Sub 2, 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 or pursuant to the Relocation.

(dd) To the extent required by law, 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 P.L. 101-508, if applicable) to reflect an early disposition of the property.

(ee) The total adjusted basis and the fair market value of the assets transferred to Controlled Sub 2 by Sub 24 each equals or exceeds the liabilities assumed (within the meaning of § 357(d)) by Controlled Sub 2.

(ff) The liabilities assumed (within the meaning of § 357(d)) in Contribution 2 were incurred in the ordinary course of business and are associated with the assets being transferred.

(gg) No intercorporate debt will exist between Sub 24 and Controlled Sub 2 at the time of, or after, Distribution 2, except for any indebtedness incurred in the ordinary course of business or pursuant to an Indemnification Arrangement or Transitional Arrangement.

(hh) Immediately before Distribution 2, any 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). Any excess loss account Sub 24 may have in Controlled Sub 2 stock will be included in income immediately before Distribution 2 as required by the applicable regulations (see § 1.1502-19).

(ii) Payments made in any continuing transactions between Sub 24 and Controlled Sub 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arms' length, except for certain payments to be made under the Transitional Arrangements.

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

(kk) Distribution 2 is not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire, directly or indirectly, stock possessing 50 percent or more of the total combined voting power of all classes of either Sub 24 or Controlled Sub 2 stock entitled to vote, or stock possessing 50 percent or more of the total value of shares of all classes of either Sub 24 or Controlled Sub 2 stock.

(ll) For purposes of § 355(d), immediately after Distribution 2, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Sub 24 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Sub 24 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 2.

(mm) For purposes of § 355(d), immediately after Distribution 2, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled Sub 2 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled Sub 2 stock that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 2 or (ii) attributable to distributions on Sub 24 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 2.

### Distribution 3

Distributing makes the following representations concerning Distribution 3:

(nn) Any indebtedness owed by Controlled Sub 2 to Sub 18 after Distribution 3 will not constitute stock or securities.

(oo) No part of the consideration distributed by Sub 18 will be received by Sub 2 as a creditor, employee, or in any capacity other than that of a Sub 18 shareholder.

(pp) The five years of financial information submitted on behalf of Business A (as conducted by each of Sub 24 and Sub 25) and Business B (as conducted by Controlled Sub 2) represents, in each case, its present operations, and there have been no substantial operational changes since the date of the last financial statements submitted.

(qq) Immediately after Distribution 3, at least 90 percent of the fair market value of the gross assets of Sub 18 will consist of the stock and securities of controlled corporations (Sub 24 and Sub 25) that are engaged in the active conduct of Business A.

(rr) Following Distribution 3, Sub 24, Sub 25, and Controlled Sub 2 each will continue the active conduct of its business, independently and with its separate employees, except for certain services provided under the Transitional Arrangements.

(ss) Distribution 3 is being carried out to facilitate Distribution 5, which is being carried out to allow the management of Business B to focus on the needs of Business B. Distribution 3 is motivated, in whole or substantial part, by this corporate business purpose.

(tt) Apart from the contribution of Controlled Sub 2 stock to Controlled Sub 4 in Contribution 3, there is no plan or intention by Sub 2 to sell, exchange, transfer by gift, or otherwise dispose of any stock of Sub 18 or Controlled Sub 2 after Distribution 3.

(uu) There is no plan or intention by either Sub 18 or Controlled Sub 2, directly or through any subsidiary corporation, to purchase any of its outstanding stock after Distribution 3.

(vv) There is no plan or intention to liquidate either Sub 18 or Controlled Sub 2, 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.

(ww) No intercorporate debt will exist between Sub 18 and Controlled Sub 2 at

the time of, or after, Distribution 3, except for any indebtedness incurred in the ordinary course of business or pursuant to an Indemnification Arrangement or Transitional Arrangement.

(xx) Immediately before Distribution 3, any 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). Any excess loss account Sub 18 may have in Controlled Sub 2 stock will be included in income immediately before Distribution 3 as required by the applicable regulations (see § 1.1502-19).

(yy) Payments made in any continuing transactions between Sub 18 and Controlled Sub 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arms' length, except for certain payments to be made under the Transitional Arrangements.

(zz) Distribution 3 is not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire, directly or indirectly, stock possessing 50 percent or more of the total combined voting power of all classes of either Sub 18 or Controlled Sub 2 stock entitled to vote, or stock possessing 50 percent or more of the total value of shares of all classes of either Sub 18 or Controlled Sub 2 stock.

(aaa) For purposes of § 355(d), immediately after Distribution 3, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Sub 18 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Sub 18 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 3.

(bbb) For purposes of § 355(d), immediately after Distribution 3, no person (determined after applying § 355(d)(7)) held stock possessing 50 percent or more of the total combined voting power of all classes of Controlled Sub 2 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled Sub 2 stock that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 3 or (ii) attributable to distributions on Sub 18 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 3.

#### Contribution 3 and Distribution 4

Distributing makes the following representations concerning Contribution 3 and

Distribution 4:

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

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

(eee) The five years of financial information submitted on behalf of Business A (as conducted by each of Subs 8 through 17 and 22 through 28) and Business B (as conducted by Controlled Sub 2) represents, in each case, its present operations, and there have been no substantial operational changes since the date of the last financial statements submitted.

(fff) Immediately after Distribution 4, at least 90 percent of the fair market value of the gross assets of Sub 2 will consist of the stock and securities of controlled corporations that are directly (Subs 8 through 17 and Sub 21) or indirectly (Subs 22 through 27) engaged in the active conduct of Business A (collectively, the "Sub 2 Direct and Indirect Active Subs"), at least 90 percent of the fair market value of the gross assets of each Sub 2 Holdco will consist of the stock and securities of controlled corporations (Subs 22 through 27) that are engaged in the active conduct of Business A, and at least 90 percent of the fair market value of the gross assets of Controlled Sub 4 will consist of a controlled corporation (Controlled Sub 2) that is engaged in the active conduct of Business B.

(ggg) Following Distribution 4, the Sub 2 Direct and Indirect Active Subs and Controlled Sub 2 each will continue the active conduct of its business, independently and with its separate employees, except for services provided under the Transitional Arrangements.

(hhh) Distribution 4 is being carried out to facilitate Distribution 5, which is being carried out to allow the management of Business B to focus on the needs of Business B. Distribution 4 is motivated, in whole or substantial part, by this corporate business purpose.

(iii) Apart from the contribution of Controlled Sub 4 stock to Controlled in Contribution 5, there is no plan or intention by Distributing to sell, exchange, transfer by gift, or otherwise dispose of any stock of Sub 2 or Controlled Sub 4 after Distribution 4.

(jjj) There is no plan or intention by either Sub 2 or Controlled Sub 4, directly or through any subsidiary corporation, to purchase any of its outstanding stock after Distribution 4.

(kkk) There is no plan or intention to liquidate either Sub 2 or Controlled Sub 4, 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.

(lll) To the extent required by law, 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 P.L. 101-508, if applicable) to reflect an early disposition of the property.

(mmm) The total adjusted basis and the fair market value of the assets transferred to Controlled Sub 4 by Sub 2 each equals or exceeds the liabilities assumed (within the meaning of § 357(d)) by Controlled Sub 4.

(nnn) The liabilities assumed (within the meaning of § 357(d)) in Contribution 3 were incurred in the ordinary course of business and are associated with the assets being transferred.

(ooo) No intercorporate debt will exist between Sub 2 and Controlled Sub 4 at the time of, or after, Distribution 4, except for any indebtedness incurred in the ordinary course of business or pursuant to an Indemnification Arrangement or Transitional Arrangement.

(ppp) Immediately before Distribution 4, any 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). Any excess loss account Sub 2 may have in Controlled Sub 4 stock will be included in income immediately before Distribution 4 as required by the applicable regulations (see § 1.1502-19).

(qqq) Payments made in any continuing transactions between Sub 2 and Controlled Sub 4 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arms' length, except for certain payments to be made under the Transitional Arrangements.

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

(sss) Distribution 4 is not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire, directly or indirectly, stock possessing 50 percent or more of the total combined voting power of all classes of either Sub 2 or Controlled Sub 4 stock entitled to vote, or stock possessing 50 percent or more of the total value of shares of all classes of either Sub 2 or

Controlled Sub 4 stock.

(ttt) For purposes of § 355(d), immediately after Distribution 4, no person (determined after applying § 355(d)(7)) held stock possessing 50 percent or more of the total combined voting power of all classes of Sub 2 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Sub 2 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 4.

(uuu) For purposes of § 355(d), immediately after Distribution 4, no person (determined after applying § 355(d)(7)) held stock possessing 50 percent or more of the total combined voting power of all classes of Controlled Sub 4 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled Sub 4 stock that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 4 or (ii) attributable to distributions on Sub 2 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 4.

#### Contribution 5 and Distribution 5

Distributing makes the following representations concerning Contribution 5 and Distribution 5:

(vvv) Any indebtedness owed by Controlled to Distributing after Distribution 5 will not constitute stock or securities.

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

(xxx) The five years of financial information submitted on behalf of Business A (as conducted by each of Sub 3 and the Sub 2 Direct and Indirect Active Subs) and Business B (as conducted by each of Sub 3, Sub 4, and Sub 24) represents, in each case, its present operations, and there have been no substantial operational changes since the date of the last financial statements submitted.

(yyy) Immediately after Distribution 5, at least 90 percent of the fair market value of the gross assets of Distributing will consist of the stock and securities of controlled corporations (Sub 3 and Sub 2 (through the Sub 2 Direct and Indirect Active Subs)) that are engaged in the active conduct of Business A, and 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 directly (Controlled Sub 1 and Sub 4) or indirectly (Controlled Sub 4) engaged in the active conduct of Business B, at least 90 percent of

the fair market value of the gross assets of Controlled Sub 4 will consist of the stock and securities of Controlled Sub 3, and at least 90 percent of the fair market value of the gross assets of Controlled Sub 3 will consist of a controlled corporation (Controlled Sub 2) that is engaged in the active conduct of Business B.

(zzz) Following Distribution 5, Distributing (through Sub 3 and the Sub 2 Direct and Indirect Active Subs) and Controlled (through Controlled Sub 1, Sub 4, and Controlled Sub 2) each will continue the active conduct of its business, independently and with its separate employees, except for services provided under the Transitional Arrangements.

(aaaa) Distribution 5 is being carried out to allow the management of Business B to focus on the needs of Business B. Distribution 5 is motivated, in whole or substantial part, by this corporate business purpose.

(bbbb) The management of Distributing, to its best knowledge, is not aware of any plan or intention by any Distributing shareholder to sell, exchange, transfer by gift, or otherwise dispose of any stock of Distributing or Controlled after Distribution 5.

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

(dddd) 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 5, except in the ordinary course of business.

(eeee) To the extent required by law, 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 P.L. 101-508, if applicable) to reflect an early disposition of the property.

(ffff) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing each equals or exceeds the liabilities assumed (within the meaning of § 357(d)) by Controlled.

(gggg) The liabilities assumed (within the meaning of § 357(d)) in Contribution 5 were incurred in the ordinary course of business and are associated with the assets being transferred.

(hhhh) No intercorporate debt will exist between Distributing and Controlled at the time of, or after, Distribution 5, except for any indebtedness incurred in the ordinary

course of business or pursuant to an Indemnification Arrangement or Transitional Arrangement.

(iii) Immediately before Distribution 5, any 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). Any excess loss account Distributing may have in Controlled stock will be included in income immediately before Distribution 5 as required by the applicable regulations (see § 1.1502-19).

(jjjj) Payments made in any continuing transactions between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arms' length, except for certain payments to be made under the Transitional Arrangements.

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

(llll) Distribution 5 is not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire, directly or indirectly, stock possessing 50 percent or more of the total combined voting power of all classes of either Distributing or Controlled stock entitled to vote, or stock possessing 50 percent or more of the total value of shares of all classes of either Distributing or Controlled stock.

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

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

(oooo) The payment of cash will be provided through a sale by a distribution

agent of aggregated fractional shares of Controlled stock. The sale of fractional shares is merely a method of rounding off fractional share interests and is undertaken solely for the purpose of avoiding the expense and inconvenience of issuing and transferring fractional shares and does not represent separately bargained for consideration. The method used for handling fractional share interests is intended to limit the amount of cash received by any one shareholder to less than the value of one full share of Controlled stock.

(pppp) Neither Distributing nor Controlled has been or will be a “United States real property holding corporation” (“USRPHC”), as defined in § 897(c)(2), at any time during the five-year period ending on the date of Distribution 5, and neither Distributing nor Controlled will be a USRPHC immediately after Distribution 5.

(qqqq) It is not contemplated that Distributing or Controlled, or their respective domestic subsidiaries, will transfer property, directly or indirectly, to any foreign corporation in an exchange described in § 367(a), except as otherwise specified herein.

(rrrr) It is not contemplated that Distributing or Controlled, or their respective domestic subsidiaries, will transfer any intangible property, directly or indirectly, to any foreign corporation in an exchange described in § 367(d).

(ssss) It is not contemplated that Distributing or Controlled, or their respective domestic subsidiaries, will transfer property to a foreign partnership that would be subject to the reporting requirements of § 6038B.

(tttt) Distributing and/or one or more of its domestic or foreign subsidiaries may license certain property rights to Controlled and/or one or more of Controlled’s domestic or foreign subsidiaries, but any such license(s) will be entered into for fair market value consideration based on terms and conditions that are consistent with standards under § 482.

(uuuu) Controlled and/or one or more of its domestic or foreign subsidiaries may license certain property rights to Distributing and/or one or more of Distributing’s domestic or foreign subsidiaries, but any such license(s) will be entered into for fair market value consideration based on terms and conditions that are consistent with standards under § 482.

(vvvv) Controlled and/or one or more of its domestic subsidiaries may enter into license agreements for property rights with one or more of Controlled’s foreign subsidiaries. Any such license(s) will be entered into for fair market value consideration based on terms and conditions that are consistent with standards under § 482.

#### First Restructuring Transaction

(www) Each of Sub 21 and Controlled Sub 6 will be a controlled foreign corporation, within the meaning of § 957(a), before and immediately after the transfer by Sub 21 of its Business B assets to Controlled Sub 6 and the distribution by Sub 21 of the Controlled Sub 6 stock to Sub 2 (the “First Restructuring Distribution”).

(xxxx) Regarding each of Sub 21 and Controlled Sub 6, Sub 2 will be a “section 1248 shareholder,” within the meaning of § 1.367(b)-2(b), before and immediately after the First Restructuring Distribution.

(yyyy) Neither Sub 21 nor Controlled Sub 6 is, or will be, a passive foreign investment company, within the meaning of § 1297(a), immediately before or after the First Restructuring Distribution.

#### Second Restructuring Transaction

(zzzz) Each of Sub 9 and Controlled Sub 14 will be a controlled foreign corporation, within the meaning of § 957(a), before and immediately after the transfer by Sub 9 of its Business B assets to Controlled Sub 14 and the distribution by Sub 9 of the Controlled Sub 14 stock to Sub 2 (the “Second Restructuring Distribution”).

(aaaa) Regarding each of Sub 9 and Controlled Sub 14, Sub 2 will be a “section 1248 shareholder,” within the meaning of § 1.367(b)-2(b), before and immediately after the Second Restructuring Distribution.

(bbbb) Neither Sub 9 nor Controlled Sub 14 is, or will be, a passive foreign investment company, within the meaning of § 1297(a), immediately before or after the Second Restructuring Distribution.

#### Third Restructuring Transaction

(cccc) Each of Sub 7, Sub 22, Sub 43, and Sub 44 will be a controlled foreign corporation, within the meaning of § 957(a), before the transfer by Sub 7 of the stock of Sub 22 and Sub 44 to Sub 43 and the liquidation of Sub 22 into Sub 43 (the “Third Restructuring Transfer”). Each of Sub 7, Sub 43, and Sub 44 will be a controlled foreign corporation, within the meaning of § 957(a), immediately after the Third Restructuring Transfer.

(dddd) Regarding each of Sub 7, Sub 22, Sub 43, and Sub 44, Sub 2 will be a “section 1248 shareholder,” within the meaning of § 1.367(b)-2(b), before the Third Restructuring Transfer. Regarding each of Sub 7, Sub 43, and Sub 44, Sub 2 will be a “section 1248 shareholder,” within the meaning of § 1.367(b)-2(b), immediately after the Third Restructuring Transfer.

(eeee) Sub 43 has no current plan or intention to sell or otherwise dispose of

its interest in Sub 45 during the period ending twelve months after the effective date of Sub 45's election under § 301.7701-3 to be disregarded as an entity separate from its owner. However, it is anticipated that Sub 45 will be liquidated into Sub 43, and this liquidation could occur within the twelve-month period.

(ffff) None of Sub 7, Sub 22, Sub 43, or Sub 44 is, or will be, a passive foreign investment company, within the meaning of § 1297(a), immediately before or after the Third Restructuring Transfer.

## **Rulings**

### Contribution 1 and Distribution 1

Based solely on the information submitted and the representations set forth above, we rule as follows on Contribution 1 and Distribution 1:

(1) Contribution 1, followed by Distribution 1, will be a reorganization under § 368(a)(1)(D). Sub 3 and Controlled Sub 1 each will be “a party to a reorganization” under § 368(b).

(2) No gain or loss will be recognized by Sub 3 on Contribution 1 (§§ 357(a) and 361(a)).

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

(4) The basis of each asset received by Controlled Sub 1 in Contribution 1 will equal the basis of that asset in the hands of Sub 3 immediately before its transfer (§ 362(b)).

(5) The holding period of each asset received by Controlled Sub 1 in Contribution 1 will include the period during which Sub 3 held that asset (§ 1223(2)).

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

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

(8) The holding period of the Controlled Sub 1 stock received by Distributing will include the period during which Distributing has held the Sub 3 stock on which Distribution 1 is made, provided the Sub 3 stock is held as a capital asset on the date of Distribution 1 (§ 1223(1)).

(9) Earnings and profits will be allocated between Sub 3 and Controlled Sub 1 in accordance with §§ 312(h), 1.312-10(a), and 1.1502-33(f)(2)).

### Contribution 2 and Distribution 2

Based solely on the information submitted and the representations set forth above, we rule as follows on Contribution 2 and Distribution 2:

(10) Contribution 2, followed by Distribution 2, will be a reorganization under § 368(a)(1)(D). Sub 24 and Controlled Sub 2 each will be “a party to a reorganization” under § 368(b).

(11) No gain or loss will be recognized by Sub 24 on Contribution 2 (§§ 357(a) and 361(a)).

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

(13) The basis of each asset received by Controlled Sub 2 in Contribution 2 will equal the basis of that asset in the hands of Sub 24 immediately before its transfer (§ 362(b)).

(14) The holding period of each asset received by Controlled Sub 2 in Contribution 2 will include the period during which Sub 24 held that asset (§ 1223(2)).

(15) No gain or loss will be recognized by Sub 24 on Distribution 2 (§ 361(c)(1)).

(16) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Sub 18 on its receipt of the Controlled Sub 2 stock in Distribution 2 (§ 355(a)(1)).

(17) The holding period of the Controlled Sub 2 stock received by Sub 18 will include the period during which Sub 18 has held the Sub 24 stock on which Distribution 2 is made, provided the Sub 24 stock is held as a capital asset on the date of Distribution 2 (§ 1223(1)).

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

(19) Immediately after Contribution 2, Controlled Sub 2 will be an existing credit claimant under § 936(j)(9)(A)(ii).

(20) Provided that Sub 24 passes the gross income and assets test of

§ 1.936-11(c) without the benefit of the Business B income and assets, Contribution 2 will have no effect on the qualification of Sub 24 as an existing credit claimant under § 936(j)(9)(A)(i).

### Distribution 3

Based solely on the information submitted and the representations set forth above, we rule as follows on Distribution 3:

(21) No gain or loss will be recognized by Sub 18 on Distribution 3 (§ 361(c)(1)).

(22) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Sub 2 on its receipt of the Controlled Sub 2 stock in Distribution 3 (§ 355(a)(1)).

(23) The holding period of the Controlled Sub 2 stock received by Sub 2 will include the period during which Sub 2 has held the Sub 18 stock on which Distribution 3 is made, provided the Sub 18 stock is held as a capital asset on the date of Distribution 3 (§ 1223(1)).

(24) Earnings and profits will be allocated between Sub 18 and Controlled Sub 2 in accordance with §§ 312(h), and 1.312-10(b).

### 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:

(25) Contribution 3, followed by Distribution 4, will be a reorganization under § 368(a)(1)(D). Sub 2 and Controlled Sub 4 each will be “a party to a reorganization” under § 368(b).

(26) No gain or loss will be recognized by Sub 2 on Contribution 3 (§§ 357(a) and 361(a)).

(27) No gain or loss will be recognized by Controlled Sub 4 on Contribution 3 (§ 1032(a)).

(28) The basis of each asset received by Controlled Sub 4 in Contribution 3 will equal the basis of that asset in the hands of Sub 2 immediately before its transfer (§ 362(b)).

(29) The holding period of each asset received by Controlled Sub 4 in Contribution 3 will include the period during which Sub 2 held that asset (§ 1223(2)).

(30) No gain or loss will be recognized by Sub 2 on Distribution 4 (§ 361(c)(1)).

(31) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing on its receipt of the Controlled Sub 4 stock in Distribution 4 (§ 355(a)(1)).

(32) The holding period of the Controlled Sub 4 stock received by Distributing will include the period during which Distributing has held the Sub 2 stock on which Distribution 4 is made, provided the Sub 2 stock is held as a capital asset on the date of Distribution 4 (§ 1223(1)).

(33) Earnings and profits will be allocated between Sub 2 and Controlled Sub 4 in accordance with §§ 312(h), 1.312-10(a), and 1.1502-33(f)(2)).

(34) Earnings and profits of Sub 30, to the extent attributable to Sub 30 stock under § 1.1248-2 or § 1.1248-3 (whichever is applicable), that were accumulated in taxable years of such foreign corporation beginning after December 31, 1962 and during the period Sub 30 was a controlled foreign corporation, shall be attributable to such stock now held by Controlled Sub 4 (§ 1.1248-1(a)(1)).

(35) Provided that Controlled Sub 4's contribution of the Controlled Sub 6 stock to Controlled Sub 5 satisfies the requirements of § 351, upon the filing by Controlled Sub 4 of a five-year gain recognition agreement pursuant to § 1.367(a)-8, no gain or loss will be recognized by Controlled Sub 4 under § 367(a) on the transfer of the Controlled Sub 6 stock to Controlled Sub 5 (§ 1.367(a)-3(b)(1)(ii)).

(36) Provided that Controlled Sub 4's contribution of the Controlled Sub 14 stock to Controlled Sub 8 satisfies the requirements of § 351, upon the filing by Controlled Sub 4 of a five-year gain recognition agreement pursuant to § 1.367(a)-8, no gain or loss will be recognized by Controlled Sub 4 under § 367(a) on the transfer of the Controlled Sub 14 stock to Controlled Sub 8 (§ 1.367(a)-3(b)(1)(ii)).

(37) Provided that Controlled Sub 4's contribution of the Controlled Sub 8 stock to Controlled Sub 5 satisfies the requirements of § 351, upon the filing by Controlled Sub 4 of a five-year gain recognition agreement pursuant to § 1.367(a)-8, no gain or loss will be recognized by Controlled Sub 4 under § 367(a) on the transfer of the Controlled Sub 8 stock to Controlled Sub 5 (§ 1.367(a)-3(b)(1)(ii)).

#### Contribution 5 and Distribution 5

Based solely on the information submitted and the representations set forth above, we rule as follows on Contribution 5 and Distribution 5:

(38) Contribution 5, followed by Distribution 5, will be a reorganization under § 368(a)(1)(D). Distributing and Controlled each will be “a party to a reorganization” under § 368(b).

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

(40) No gain or loss will be recognized by Controlled on Contribution 5 (§1032(a)).

(41) The basis of each asset received by Controlled in Contribution 5 will equal the basis of that asset in the hands of Distributing immediately before its transfer (§ 362(b)).

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

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

(44) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the Distributing shareholders on their receipt of Controlled stock in Distribution 5 (§ 355(a)(1)).

(45) The aggregate basis of the Distributing and Controlled stock in the hands of each Distributing shareholder after Distribution 5 (including fractional shares in Controlled to which the shareholder would have been entitled if cash were not distributed in lieu thereof) will equal the aggregate basis of the Distributing stock held by the shareholder immediately before Distribution 5, allocated between the Distributing and Controlled stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§§ 358(a)(1), (b), and (c)).

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

(47) 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)).

(48) To the extent a Distributing shareholder receives cash in exchange for a fractional share of Controlled stock, gain or loss will be recognized by the shareholder measured by the difference between the cash received and the basis of the fractional share of Controlled stock (as determined in ruling (45) above). If the fractional share

interest is a capital asset under § 1221 in the hands of the shareholder, the gain or loss will be capital gain or loss, subject to the provisions of Subchapter P of the Internal Revenue Code (§§ 1221 and 1222).

#### First Restructuring Transaction

Provided the First Restructuring Transaction qualifies as a reorganization under §§ 355 and 368(a)(1)(D), we rule as follows:

(49) Sub 21's transfer of Business B assets to Controlled Sub 6 in exchange for Controlled Sub 6 stock is a reorganization to which §§ 1.367(b)-1(c)(2) and 1.367(b)-4(a) apply.

(50) Sub 21's transfer of the Controlled Sub 6 stock to Sub 2 is a distribution to which §§ 1.367(b)-1(c)(2), 1.367(b)-5(a), 1.367(b)-5(c) and 1.367(b)-5(f) apply. If Sub 2's postdistribution amount with respect to Sub 21 or Controlled Sub 6 is less than Sub 2's predistribution amount with respect to Sub 21 or Controlled Sub 6, Sub 2's basis in such stock immediately after the distribution will be reduced by the amount of the difference. However, Sub 2's basis in such stock will not be reduced below zero, and to the extent the foregoing reduction would have reduced basis below zero, Sub 2 will instead include such amount in income as a deemed dividend from such corporation.

(51) The earnings and profits of Controlled Sub 6, to the extent attributable to Controlled Sub 6 stock under § 1.1248-2 or § 1.1248-3 (whichever is applicable), that were accumulated in taxable years of such foreign corporation beginning after December 31, 1962 and during the period Controlled Sub 6 was a controlled foreign corporation, shall be attributable to such stock now held by Controlled Sub 4 (§ 1.1248-1(a)(1)).

#### Second Restructuring Transaction

Provided that the Second Restructuring Transaction qualifies as a reorganization under §§ 355 and 368(a)(1)(D), we rule as follows:

(52) Sub 9's transfer of Business B assets to Controlled Sub 14 in exchange for Controlled Sub 14 stock is a reorganization to which §§ 1.367(b)-1(c)(2) and 1.367(b)-4(a) apply.

(53) Sub 9's transfer of the Controlled Sub 14 stock to Sub 2 is a distribution to which §§ 1.367(b)-1(c)(2), 1.367(b)-5(a), 1.367(b)-5(c) and 1.367(b)-5(f) apply. If Sub 2's postdistribution amount with respect to Sub 9 or Controlled Sub 14 is less than Sub 2's predistribution amount with respect to Sub 9 or Controlled Sub 14, Sub 2's basis in such stock immediately after the distribution will be reduced by the amount of the difference. However, Sub 2's basis in such stock shall not be reduced below zero, and

to the extent the foregoing reduction would have reduced basis below zero, Sub 2 will instead include such amount in income as a deemed dividend from such corporation.

(54) The earnings and profits of Controlled Sub 14, to the extent attributable to Controlled Sub 14 stock under § 1.1248-2 or § 1.1248-3 (whichever is applicable), that were accumulated in taxable years of such foreign corporation beginning after December 31, 1962 and during the period Controlled Sub 14 was a controlled foreign corporation, shall be attributable to such stock now held by Controlled Sub 4 (§ 1.1248-1(a)(1)).

### Third Restructuring Transaction

Provided that the Third Restructuring Transaction qualifies as a reorganization under §§ 355 and 368(a)(1)(D), we rule as follows:

(55) Sub 7's transfer of the Sub 22 and Sub 44 stock in exchange for Sub 43 stock is a reorganization to which §§ 1.367(b)-1(c)(2) and 1.367(b)-4(a) apply.

### **Caveats**

We express no opinion on the tax treatment of the transactions under other sections of the Code or regulations or 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, we express no opinion about:

- (i) The Merger described above in step (i);
- (ii) The assumption of intercompany obligations described above in steps (iii), (viii), and (xii) and their removal from the Distributing group in step (xiv) (see § 1.1502-13(g));
- (iii) The tax effect of non-arm's-length payments made under the Transitional Arrangements (see representations (n ),(ii), (yy), (qqq), and (jjjj) above;
- (iv) The § 358 basis allocations under Distribution 1, 2, 3, and 4;
- (v) Contribution 4 in step (x) above;
- (vi) Whether gain recognized in the following sales of Business B assets is characterized as Subpart F income by: (a) Sub 35 on the sale to Controlled Sub 7; (b) Sub 21 on the sale to Controlled Sub 9; (c) Sub 32 on the sale to Controlled Sub 10; (d) Sub 8 on the sale to Controlled Sub 11; (e) Sub 13 on the sale to Controlled Sub 13; (f) Sub 35 on the sale to Controlled Sub 15; (g) Sub 31 on the sale to Controlled Sub 16; (h) Sub 26 on the sale to Controlled Sub 17; (i) Sub 14 on the sale to Controlled Sub

19; (j) Sub 11 on the sale to Controlled Sub 20; (k) Sub 36 on the sale to Controlled Sub 21; (l) Sub 42 on the sale to Controlled Sub 22; (m) Sub 10 on the sale of an option to Controlled Sub 23 to acquire Business B assets in Country B; (n) Sub 10 if Controlled Sub 23 exercises its option to acquire Sub 10's Business B's assets in Country B;

(vii) Whether gain will be recognized by (a) Controlled Sub 18 or Sub 10 on the formation and funding of the Country B partnership or (b) Sub 10, Controlled Sub 18, or Controlled Sub 23 upon the termination and liquidation of the Country B partnership if Controlled Sub 23 exercises its option to acquire Sub 10's Business B assets in Country B;

(viii) The extent to which § 304 applies to Sub 40's sale of all the Sub 41 stock to Controlled Sub 4;

(ix) The tax consequences of the First Restructuring Transaction, the Second Restructuring Transaction, the Third Restructuring Transaction and any other transaction that is not specifically ruled on above under any other provision of the Code;

(x) The tax consequences of the Country C restructuring, including, but not limited to the tax consequences of (a) Sub 34's transfer of assets to Controlled Sub 12 under § 351, (b) Sub 34's sale of all of the Controlled Sub 12 stock to Controlled Sub 8 under § 304, if an election is not in effect to treat Controlled Sub 12 as an entity that is disregarded as an entity separate from its owner under § 301.7701-3, (c) Sub 34's sale of all of the Controlled Sub 12 stock to Controlled Sub 8 under Prop. Reg. § 301.7707-3(h) if an election is in effect to treat Controlled Sub 12 as an entity that is disregarded as an entity separate from its owner under § 301.7701-3;

(xi) The applicability of any transfer pricing issues under § 482; and

(xii) Whether any or all of the above referenced foreign corporations are passive foreign investment companies (within the meaning of § 1297(a) and the regulations to be promulgated thereunder). If it is determined that any or all of the above described foreign corporations are passive foreign corporations, no opinion is expressed on the application of §§ 1291 through 1298 to the proposed transactions. In particular, in a transaction in which gain is not otherwise recognized, regulations under § 1291(f) may require gain recognition notwithstanding any other provision of the Code.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling letter have not yet been adopted (including regulations under § 358(g)). Therefore, this ruling letter may be revoked or modified upon the issuance of temporary or final regulations (or a notice with respect to their future issuance). See § 12.04 of Rev. Proc. 2000-1, 2000-1 I.R.B. 4, which discusses in greater detail the revocation or modification of ruling letters. However, when the criteria in § 12.05 of Rev. Proc. 2000-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual

circumstances.

### **Procedural Statements**

This ruling has no effect on any earlier document and 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 should be attached to the federal income tax return of each affected taxpayer for the taxable year in which the transactions covered by this letter are completed.

Under a power of attorney on file in this office, a copy of this letter is being sent to the taxpayer and a second authorized representative.

Sincerely,

Assistant Chief Counsel (Corporate)

By: \_\_\_\_\_  
Wayne T. Murray  
Senior Technician/Reviewer  
Branch 4