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Department of the Treasury

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Date:
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Common Parent =

Subsidiary 1 =

Subsidiary 2 =

Subsidiary 3 =

Date a =

Dear

This letter responds to your July 25, 2001, request (as supplemented by additional submissions) for rulings concerning the federal income tax consequences of a proposed transaction. The information submitted for consideration is summarized below.

Common Parent acquired all of the outstanding common stock of Subsidiary 1 on Date a. Common Parent represents that the acquisition of the Subsidiary 1 common stock qualified as a reorganization under sections 368(a)(1)(A) / 368(a)(2)(E) and section 368(a)(1)(B). Subsidiary 1 is engaged in two major business segments. Common Parent believes it necessary to distribute one of Subsidiary 1's two major business segments to its shareholders. To achieve this, Subsidiary 1 will contribute the assets of the business segment to be retained to a newly formed and wholly owned corporation, Subsidiary 2. Subsidiary 1 will then distribute the stock of Subsidiary 2 to Common Parent (the first distribution or distribution one). It is anticipated that the first distribution will occur within five years of date a. Common Parent will then contribute the stock of Subsidiary 1 to Subsidiary 3 and Distribute Subsidiary 3 to its shareholders (the second distribution or distribution two). Certain borrowings and acquisitions of debt will occur in connection with distributions one and two. Common Parent represents that to the best of its knowledge distributions one and two will each qualify as a distribution

to which section 355(a) applies and has provided documentation in support of its representations.

Section 355(d) will prevent the first distribution from qualifying for nonrecognition treatment under section 355(c) or 361(c)(2) if Common Parent acquired fifty percent or more of the stock of Subsidiary 1 by purchase. If Common Parent's acquisition of Subsidiary 1 qualified as a reorganization under sections 368(a)(1)(A) / 368(a)(2)(E) and 368(a)(1)(B), the general rule of §1.355-6(d)(5)(i) treats Common Parent as purchasing an amount of Subsidiary 1 stock equal to the higher of:

(A) The amount of surviving corporation stock that would be treated as purchased (on the date of the deemed section 351 transfer) by the controlling corporation if the controlling corporation acquired the surviving corporation's assets and assumed its liabilities in a transaction in which the controlling corporation's basis in the surviving corporation assets was determined under section 362(b), and then transferred the acquired assets and liabilities to the surviving corporation in a section 351 transfer (see §§1.358-6(c)(1) and (2)(ii)(A), and 1.1502-30(b) ("deemed asset acquisition and transfer by controlling corporation")); or;

(B) The amount of surviving corporation stock that would be treated as purchased (on the date the surviving corporation shareholders purchased their surviving corporation stock) if the controlling corporation acquired the stock of the surviving corporation in a transaction in which the basis in the surviving corporation's stock was determined under section 362(b) (see §§1.358-6(c)(2)(ii)(B) and 1.1502-30(b)) ("deemed stock acquisition").

However, the general rule is subject to an exception. Under §1.355-6(d)(5)(ii), if a taxpayer receives a letter ruling and enters into a closing agreement in which it agrees to determine its basis in surviving corporation stock under §1.358-6(c)(2)(ii)(A), or under §1.1502-30(b) by applying §1.358-6(c)(2)(ii)(A), then for purposes of determining the amount of surviving corporation stock that is treated as purchased, within the meaning of §355(d), the taxpayer effectively uses the method described in §1.355-6(d)(5)(i)(A). Common Parent has agreed to determine its basis in Subsidiary 1 common stock under §1.1502-30(b) by applying §1.358-6(c)(2)(ii)(A) and has entered into a closing agreement to that effect. We therefore rule that section 355(d)(5)(B) and §1.355-6(d)(3)(i) through (iv) apply (and section 355(d)(5)(C) and §1.355-6(e)(2) do not apply) in determining the amount of stock in Subsidiary 1 that is to be treated as purchased by Common Parent as a result of the date a acquisition.

No opinion is expressed about the tax treatment of the proposed transaction under other provisions of the Code and its regulations, or about the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction that are not specifically covered by the above rulings. Specifically, no opinion is expressed regarding the qualification of distributions one and two as distributions described in §355. In particular no opinion is expressed as to whether distribution one or two will be a disqualified distribution as defined in §355(d)(2) or a distribution to which section

355(a) applies.

This ruling is addressed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. It is important that a copy of this letter be attached to the federal income tax returns of the taxpayers involved for the taxable years in which the transaction covered by this letter is consummated.

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

Sincerely yours,
Charles Whedbee
Senior Technical Reviewer, Branch 5
Office of Associate Chief Counsel
(Corporate)

cc: