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August 06, 2010

Legend:

Taxpayer =
A =
Partnership 1 =
Partnership 2 =
Partnership 3 =
Sub 1 =
Sub 2 =
Sub 3 =
NewCo 1 =
NewCo 2 =
OpCo =
Bank =
Third Party =

Expenses =

Stock Exchange =

Country A =
Business A =
Business B =
Business C =
Business D =
Year 1 =
Year 2 =
Date A =
a =
b =
c =
d =
e =
f =
g =
h =
j =
k =
m =
n =

Dear

This letter is in reply to your letter dated November 30, 2009, requesting rulings as to the Federal income tax consequences of a Proposed Transaction (defined below). The information provided in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

FACTS

Taxpayer and A (a Country A tax resident and not a US taxpayer) directly and indirectly own *a*% and *b*%, respectively, of Partnership 1, a Country A entity that is classified as a partnership for Federal tax purposes. Prior to the Proposed Transaction (described below), Partnership 1 engaged directly (including through entities that are disregarded for Federal tax purposes) in Business A, Business B, and Business C predominantly in Country A. The assets associated with these businesses are referred to as the "Partnership 1 Operations," and the liabilities as the "Operations Liabilities."

Prior to the Proposed Transaction, Partnership 1 owned directly or indirectly 100% of the sole class of stock of Sub 1 and Sub 2, each a Country A entity classified as a corporation for Federal tax purposes; a *c*% general partner interest in Partnership 2 and a *d*% limited partner interest in Partnership 3, each a Country A entity classified as a partnership for US Federal tax purposes; and 100% of the stock of each of several small entities ("Operations Subsidiaries") that are non-US entities classified as corporations for Federal tax purposes. Sub 2 owned directly and indirectly the remaining partnership interest in Partnership 2, and Taxpayer owned directly the remaining partnership interest in Partnership 3.

Prior to the Proposed Transaction, Partnership 1 also beneficially owned *e* shares (greater than 50%) of the sole class of stock of Sub 3, a Country A entity classified as a corporation for Federal tax purposes. Of the *e* shares, Partnership 1 directly owned *f* shares and Third Party held only legal title to *g* shares. The remaining *h* shares of Sub 3 stock were publicly held and traded on Stock Exchange.

Sub 1 engages directly and indirectly in Business A and Business B predominantly outside of Country A; Sub 2 engages directly and indirectly in Business A predominantly in Country A; and Sub 3 engages directly and indirectly in Business A and Business D in numerous countries.

Prior to the Proposed Transaction, Partnership 1 purchased its *e* shares of Sub 3 stock during Year 1 and Year 2. Such purchases included shares that A sold to Partnership 1 and shares Partnership 1 acquired through a partnership directly and indirectly owned by Taxpayer and A ("Related Party Shares").

Partnership 1 financed the purchase of the Sub 3 stock and related costs (including Expenses) with proceeds from a term loan facility ("Bank Facility") provided by Bank. Partnership 1's obligation under the Bank Facility ("Sub 3 Acquisition Debt") was recourse to Partnership 1. Partnership 1 also had a debt to Sub 1 ("Sub 1 Debt"), a portion of which was incurred to pay (i) interest on the Sub 3 Acquisition Debt and (ii) Expenses.

On Date A, Bank and Partnership 1 agreed to amend and restructure the Sub 3 Acquisition Debt by dividing it into two tranches: the Senior Debt in the amount of *j* and the Junior Debt in the amount of *k*. The amount of the Senior Debt does not exceed the sum of (i) the purchase price of the *f* directly held Sub 3 shares plus (ii) Expenses incurred in connection with the acquisition of those shares. In connection with and as a condition subsequent to amending and restructuring the Sub 3 Acquisition Debt, and for other business reasons, Partnership 1 intends to restructure its group as described in the Proposed Transaction.

PROPOSED TRANSACTION

To accomplish the foregoing business objectives, Taxpayer proposes the following steps (collectively, the "Proposed Transaction"), some of which have already occurred:

(1) Partnership 1, together with a disregarded entity owned by Partnership 1, formed a new Country A entity, OpCo. OpCo is an "eligible entity" within the meaning of Reg. §301.7701-3(a), and its default classification is a disregarded entity. Partnership 1 (and its disregarded entity) contributed the Partnership 1 Operations, all of the stock in the Operations Subsidiaries, and cash to OpCo in exchange for all the equity interests in OpCo and OpCo's assumption of the Operations Liabilities and all or a portion of the Sub 1 Debt. OpCo will elect to be classified as a corporation for Federal tax purposes pursuant to Reg. §301.7701-3(c) (the "OpCo Exchange").

(2) Partnership 1 formed a new Country A entity, NewCo 1, which has a single class of equity outstanding, is an "eligible entity" within the meaning of Reg. §301.7701-3(a), and has elected to be disregarded as a separate entity of Partnership 1 for Federal tax purposes pursuant to Reg. §301.7701-3(c) effective on the date of its formation. Partnership 1 contributed to NewCo 1 its (i) OpCo interests, (ii) Sub 1 shares, (iii) directly and indirectly held Sub 2 shares, (iv) *f* Sub 3 shares, (v) *g* Sub 3 shares held through Third Party, (vi) *c*% partnership interest in Partnership 2, and (vii) *d*% partnership interest in Partnership 3 in exchange for (1) all the stock of NewCo 1, (2) NewCo 1's assumption of the Senior Debt, Junior Debt, and any portion of the Sub 1 Debt not assumed by OpCo in the OpCo Exchange, and (3) additional consideration ("NewCo 1 Exchange").

(3) NewCo 1 formed a new Country A entity, NewCo 2, which has a single class of equity outstanding, is an "eligible entity" within the meaning of Reg. §301.7701-3(a), and has elected to be disregarded as a separate entity of Partnership 1 for Federal tax purposes pursuant to §301.7701-3(c) effective on the date of its formation. NewCo 1 contributed to NewCo 2 its (i) OpCo interests, (ii) Sub 1 shares, (iii) directly and indirectly held Sub 2 shares, (iv) *f* Sub 3 shares (none of which are Related Party Shares), (v) *c*% partnership interest in Partnership 2, and (vi) *d*% partnership interest in Partnership 3 in exchange for (1) all the stock of NewCo 2 and (2) NewCo 2's assumption of the Senior Debt and the portion of the Sub 1 Debt assumed by NewCo 1. NewCo 2 will elect to be classified as a corporation for Federal tax purposes pursuant to Reg. §301.7701-3(c) (the "NewCo 2 Exchange").

(4) NewCo 2 purchased for cash Taxpayer's interest in Partnership 3.

(5) NewCo 2 will contribute its *c*% partnership interest in Partnership 2 to Sub 2 in exchange for additional shares of Sub 2 (the "Sub 2 Contribution").

(6) As part of the same plan, NewCo 2 will contribute its (i) Sub 1 shares (ii) and directly and indirectly owned Sub 2 shares to OpCo in exchange for additional equity interests in OpCo ("OpCo Contribution").

(7) NewCo 2 will convert to a Country A entity that is described in Reg. §301.7701-2(b)(8)(i) (i.e., a so-called per se corporation).

The term "Assumed Acquisition Debt" will be used to refer collectively to (i) the Senior Debt and (ii) the Sub 1 Debt assumed by NewCo 2 in the NewCo 2 Exchange to the extent incurred to pay interest on, and Expenses related to, the portion of the Sub 3 Acquisition Debt that was restructured into the Senior Debt, both of which are for Federal tax purposes assumed by NewCo 2 in the NewCo 2 Exchange. On the effective date of this step, the trading price of a share of Sub 3 stock is expected to be between *m* and *n*, and thus the value of the *f* shares of Sub 3 stock contributed to NewCo 2 in the NewCo 2 Exchange is expected to be less than the amount of the Assumed Acquisition Debt.

REPRESENTATIONS

The following representations have been submitted with regard to the OpCo Exchange, the NewCo 2 Exchange, and the OpCo Contribution:

A. OpCo Exchange

(a) No stock or securities will be issued for services rendered to or for the benefit of OpCo in connection with the OpCo Exchange, and no stock or securities will be issued for indebtedness of OpCo that is not evidenced by a security or for interest on indebtedness of OpCo which accrued on or after the beginning of the holding period of Partnership 1 for the debt.

(b) No assets to be transferred to OpCo were received by Partnership 1 as part of a plan of liquidation of another corporation.

(c) The OpCo Exchange is not the result of the solicitation by a promoter, broker, or investment house.

(d) Partnership 1 will not retain any rights in the property transferred to OpCo.

(e) To the extent that any patents, patent applications, or technical "know-how" are transferred in the OpCo Exchange, such items will qualify as property within the meaning of section 351 and Partnership 1 will transfer all substantial rights in such patents or patent applications within the meaning of section 1235.

(f) To the extent that any copyrights are transferred in the OpCo Exchange, all rights, title, and interests for each copyright held by Partnership 1, in each medium of exploitation, will be transferred to OpCo.

(g) To the extent that trademarks or trade names are transferred in the OpCo Exchange, Partnership 1 will not retain any significant power, right, or continuing interest, within the meaning of section 1253(b), in the trademarks or trade names.

(h) No licenses, leases, etc., will be granted in exchange for stock or securities, and no material property to be transferred to OpCo will be leased back to Partnership 1.

(i) The adjusted basis of the assets to be transferred by Partnership 1 to OpCo will exceed the sum of the liabilities to be assumed by OpCo (within the meaning of section 357(d)) plus any liabilities to which the transferred assets are subject.

(j) The total fair market value of the assets to be transferred by Partnership 1 to OpCo will exceed the sum of (i) the amount of liabilities assumed by OpCo in connection with the exchange, (ii) the amount of liabilities owed to OpCo that are extinguished in connection with the exchange, and (iii) the amount of any money and the fair market value of any other property received by Partnership 1 in connection with the exchange. The fair market value of the assets of OpCo will exceed the amount of its liabilities immediately after the OpCo Exchange.

(k) The aggregate fair market value of the assets to be transferred by Partnership 1 to OpCo will equal or exceed the aggregate adjusted basis of those assets.

(l) The liabilities of Partnership 1 to be assumed by OpCo were incurred in the ordinary course of business and are associated with the assets to be transferred.

(m) There will be no indebtedness created in favor of Partnership 1 as a result of the OpCo Exchange.

(n) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.

(o) All exchanges in the OpCo Exchange will occur on approximately the same date.

(p) No OpCo interest issued will be placed in escrow, issued later under a contingent stock arrangement, or issued in the near future.

(q) There is no plan or intention on the part of Partnership 1 to dispose of shares of OpCo after the OpCo Exchange, other than in the NewCo 1 Exchange and NewCo 2 Exchange as described above.

(r) There is no plan or intention on the part of OpCo to redeem or otherwise reacquire any OpCo interest or indebtedness to be issued in the OpCo Exchange.

(s) Prior to the transfer of OpCo interest in the NewCo 2 Exchange, taking into account any issuance of additional shares of OpCo interest; any issuance of stock for services; the exercise of any OpCo interest rights, warrants, or subscriptions; a public offering of OpCo interest; and the sale, exchange, transfer by gift, or other disposition of any of the interest of OpCo to be received in the exchange, Partnership 1 will be in "control" of OpCo within the meaning of section 368(c).

(t) Partnership 1 will receive interests approximately equal to the net fair market value of the property transferred to OpCo.

(u) OpCo will remain in existence and retain and use the property transferred to it in a trade or business.

(v) There is no plan or intention by OpCo to dispose of the transferred property other than in the normal course of business operations.

(w) Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the OpCo Exchange.

(x) OpCo will not be an investment company within the meaning of section 351(e)(1) and Reg. §1.351-1(c)(1)(ii).

(y) Partnership 1 is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy the indebtedness of such debtor.

(z) OpCo will not be a "personal service corporation" within the meaning of section 269A.

(aa) OpCo will be a controlled foreign corporation, within the meaning of section 957, after the transaction.

(bb) The transfer of the Partnership 1 Operations and Operations Subsidiaries by Partnership 1 to OpCo will, for purposes of section 367(a)(1) and Reg. §1.367(a)-1T(c)(3)(i), be treated as a transfer by Taxpayer of his proportionate share of the Partnership 1 Operations and Operations Subsidiaries to OpCo. If gain is realized on the deemed transfer of the stock of the Operations Subsidiaries by Taxpayer to OpCo,

Taxpayer will comply with the requirements of Reg. §1.367(a)-3(b)(1)(ii) and -8(c) by entering into a five-year gain recognition agreement in accordance with Reg. §1.367(a)-8(d) and -8(g).

(cc) The Partnership 1 Operations transferred to OpCo will be used by OpCo in the active conduct of a trade or business outside the US within the meaning of section 367(a)(3)(A) and Reg. §1.367(a)-2T.

(dd) Taxpayer will recognize the gain, if any, that is required to be recognized under section 367(a)(3)(B) notwithstanding the application of section 367(a)(3)(A).

(ee) Taxpayer will recognize his share of income, if any, that is required to be recognized under Reg. §1.367(a)-4T or -5T.

(ff) Taxpayer will recognize his share of income, if any, that is required to be recognized under section 367(d) on the transfer of intangible property as defined under section 936(h)(3)(B).

(gg) To the extent section 304(a)(1) applies to the OpCo Exchange, the transfer by Partnership 1 to OpCo of its shares of each of the Operations Subsidiary's stock in exchange for OpCo's respective assumption of liabilities will be treated as a transfer of stock of a foreign corporation to OpCo in exchange for stock of OpCo in a transaction to which section 351(a) applies ("Deemed Section 351 Exchange") followed by a redemption of the OpCo stock received in the Deemed Section 351 Exchange ("Deemed Redemption"). No amount of the distribution received by Partnership 1 in the Deemed Redemption will be applied against and reduce (in whole or in part), pursuant to section 301(c)(2), the basis of the stock of OpCo held by Partnership 1 other than the OpCo stock deemed issued in the Deemed Section 351 Exchange.

B. NewCo 2 Exchange

(hh) NewCo 1 will retain its initial classification as an entity disregarded from its sole owner, Partnership 1, for Federal tax purposes pursuant to Reg. §301.7701-3(b)(2)(i)(C) at the time of the NewCo 1 Exchange and after the Transaction.

(ii) There is no plan or intention to make an election to classify NewCo 1 as a corporation for US tax purposes.

(jj) No stock or securities will be issued for services rendered to or for the benefit of NewCo 2 in connection with the NewCo 2 Exchange, and no stock or securities will be issued for indebtedness of NewCo 2 that is not evidenced by a security or for interest on indebtedness of NewCo 2 which accrued on or after the beginning of the holding period of Partnership 1 for the debt.

(kk) No assets to be transferred to NewCo 2 were received by Partnership 1 or NewCo 1 as part of a plan of liquidation of another corporation.

(ll) No patents or patent applications, copyrights, trademarks, or trade names are being transferred to NewCo 2 pursuant to the NewCo 2 Exchange, and the transaction does not involve an agreement that purports to furnish technical “know-how” in exchange for stock.

(mm) The NewCo 2 Exchange is not the result of the solicitation by a promoter, broker, or investment house.

(nn) Partnership 1 through NewCo 1 will not retain any rights in the property transferred to NewCo 2.

(oo) No licenses, leases, etc., will be granted in exchange for stock or securities, and no material property to be transferred to NewCo 2 will be leased back to Partnership 1 or to NewCo 1.

(pp) The adjusted basis of the assets to be transferred by Partnership 1 through NewCo 1 to NewCo 2 will exceed the sum of the liabilities to be assumed by NewCo 2 (within the meaning of section 357(d)) plus any liabilities to which the transferred assets are subject.

(qq) The total fair market value of the assets to be transferred by Partnership 1 through NewCo 1 to NewCo 2 will exceed the sum of (i) the amount of liabilities assumed by NewCo 2 in connection with the exchange, (ii) the amount of liabilities owed to NewCo 2 that are extinguished in connection with the exchange, and (iii) the amount of any money and the fair market value of any other property received by Partnership 1 through NewCo 1 in connection with the exchange. The fair market value of the assets of NewCo 2 will exceed the amount of its liabilities immediately after the NewCo 2 Exchange.

(rr) The aggregate fair market value of the assets to be transferred by Partnership 1 through NewCo 1 to NewCo 2 will equal or exceed the aggregate adjusted basis of those assets.

(ss) Except for debt related to the Sub 3 acquisition, the liabilities of Partnership 1 through NewCo 1 to be assumed by NewCo 2 were incurred in the ordinary course of business and are associated with the assets to be transferred.

(tt) There will be no indebtedness created in favor of Partnership 1 or NewCo 1 as a result of the NewCo 2 Exchange.

(uu) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.

(vv) All exchanges in the NewCo 2 Exchange will occur on approximately the same date.

(ww) No stock issued will be placed in escrow, issued later under a contingent stock arrangement, or issued in the near future.

(xx) There is no plan or intention on the part of Partnership 1 through NewCo 1 to dispose of shares of NewCo 2 after the exchange.

(yy) There is no plan or intention on the part of NewCo 2 to redeem or otherwise reacquire any NewCo 2 stock or indebtedness to be issued in the NewCo 2 Exchange.

(zz) Taking into account any issuance of additional shares of NewCo 2 stock; any issuance of stock for services; the exercise of any NewCo 2 stock rights, warrants, or subscriptions; a public offering of NewCo 2 stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of NewCo 2 to be received in the exchange, Partnership 1 through NewCo 1 will be in “control” of NewCo 2 within the meaning of section 368(c) immediately after the NewCo 2 Exchange.

(aaa) Partnership 1 through NewCo 1 will receive stock, securities, or other property approximately equal to the fair market value of the property transferred to NewCo 2.

(bbb) NewCo 2 will remain in existence and retain and use the property transferred to it in a trade or business.

(ccc) There is no plan or intention by NewCo 2 to dispose of the transferred property other than (i) NewCo 2’s contribution of property to Sub 2 in the Sub 2 Contribution, (ii) NewCo 2’s contribution of property to OpCo in the OpCo Contribution, and (iii) in the normal course of business operations.

(ddd) Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the NewCo 2 Exchange.

(eee) NewCo 2 will not be an investment company within the meaning of section 351(e)(1) and Reg. §1.351-1(c)(1)(ii).

(fff) Partnership 1 and NewCo 1 are not under the jurisdiction of a court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)) and the stock or

securities received in the exchange will not be used to satisfy the indebtedness of such debtor.

(ggg) NewCo 2 will not be a “personal service corporation” within the meaning of section 269A.

(hhh) The assumption of the Senior Debt and whatever portion of the Sub 1 Debt by NewCo 2 will be a valid and legally binding assumption of the indebtedness under applicable Country A law.

(iii) None of the Sub 3 stock to be transferred is section 306 stock within the meaning of section 306(c).

(jjj) Immediately before the NewCo 2 Exchange, Partnership 1 is the owner for Federal tax purposes of the shares of Sub 3 stock held as to legal title by Third Party.

(kkk) NewCo 2 will be a controlled foreign corporation, within the meaning of section 957, after the transaction.

(lll) Any non-stock assets transferred to NewCo 2 will be used in the active conduct of a trade or business outside of the United States.

(mmm) Taxpayer will recognize the gain, if any, that is required to be recognized under section 367(a)(3)(B) notwithstanding the application of section 367(a)(3)(A).

(nnn) Taxpayer will recognize his share of income, if any, that is required to be recognized under Reg. §1.367(a)-4T or -5T.

(ooo) Taxpayer will recognize his share of income, if any, that is required to be recognized under section 367(d) on the transfer of intangible property as defined under section 936(h)(3)(B).

(ppp) The transfer by Partnership 1 through NewCo 1 to NewCo 2 of its shares of Sub 2, Sub 1, Sub 3 and OpCo stock will, for purposes of section 367(a)(1) and Reg. §1.367(a)-1T(c)(3)(i), be treated as a transfer by Taxpayer of his proportionate share of the Sub 2, Sub 1, Sub 3 and OpCo stock to NewCo 2. If gain is realized on the deemed transfer by Taxpayer of such shares to NewCo 2, Taxpayer will comply with the requirements of Reg. §1.367(a)-3(b)(1)(ii), -8(c), and -8(k) by entering into a five-year gain recognition agreement in accordance with Reg. §1.367(a)-8(d) and -8(g).

(qqq) To the extent section 304(a)(1) applies to the NewCo 2 Exchange, the transfer by Partnership 1 to NewCo 2 of its shares of each of Sub 1, Sub 2, Sub 3, or OpCo stock in exchange for NewCo 2’s respective assumption of liabilities will be treated as a transfer of stock of a foreign corporation to NewCo 2 in exchange for stock

of NewCo 2 in a transaction to which section 351(a) applies ("Deemed Section 351 Exchange") followed by a redemption of the NewCo 2 stock received in the Deemed Section 351 Exchange ("Deemed Redemption"). No amount of the distribution received by Partnership 1 in the Deemed Redemption will be applied against and reduce (in whole or in part), pursuant to section 301(c)(2), the basis of the stock of NewCo 2 held by Partnership 1 other than the NewCo 2 stock deemed issued in the Deemed Section 351 Exchange.

C. OpCo Contribution

(rrr) No stock or securities will be issued for services rendered to or for the benefit of OpCo in connection with the OpCo Contribution, and no stock or securities will be issued for indebtedness of OpCo that is not evidenced by a security or for interest on indebtedness of OpCo which accrued on or after the beginning of the holding period of NewCo 2 for the debt.

(sss) No assets to be transferred to OpCo were received by NewCo 2 as part of a plan of liquidation of another corporation.

(ttt) No patents or patent applications, copyrights, trademarks, or trade names are being transferred to OpCo pursuant to the OpCo Contribution, and the transaction does not involve an agreement that purports to furnish technical “know-how” in exchange for stock.

(uuu) The OpCo Contribution is not the result of the solicitation by a promoter, broker, or investment house.

(vvv) NewCo 2 will not retain any rights in the property transferred to OpCo.

(www) No licenses, leases, etc., will be granted in exchange for stock or securities, and no material property to be transferred to OpCo will be leased back to NewCo 2.

(xxx) The adjusted basis and the fair market value of the assets to be transferred by NewCo 2 to OpCo will exceed the sum of the liabilities to be assumed by OpCo, if any, plus any liabilities to which the transferred assets are subject.

(yyy) The liabilities of NewCo 2 to be assumed by OpCo, if any, were incurred in the ordinary course of business and are associated with the assets to be transferred.

(zzz) There will be no indebtedness created in favor of NewCo 2 as a result of the OpCo Contribution.

(aaaa) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.

(bbbb) All exchanges will occur on approximately the same date.

(cccc) No OpCo stock issued will be placed in escrow, issued later under a contingent stock arrangement, or issued in the near future.

(dddd) There is no plan or intention on the part of NewCo 2 to dispose of shares of OpCo after the exchange.

(eeee) There is no plan or intention on the part of OpCo to redeem or otherwise reacquire any stock or indebtedness to be issued in the transaction.

(ffff) Taking into account any issuance of additional shares of OpCo stock; any issuance of stock for services; the exercise of any OpCo stock rights, warrants, or subscriptions; a public offering of OpCo stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of OpCo to be received in the exchange, NewCo 2 will be in “control” of OpCo within the meaning of section 368(c).

(gggg) NewCo 2 will receive stock, securities, or other property approximately equal to the fair market value of the property transferred to OpCo.

(hhhh) OpCo will remain in existence and retain and use the property transferred to it in a trade or business.

(iiii) There is no plan or intention by OpCo to dispose of the transferred property other than in the normal course of business operations.

(jjjj) Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the OpCo Contribution.

(kkkk) OpCo will not be an investment company within the meaning of section 351(e)(1) and Reg. §1.351-1(c)(1)(ii).

(llll) NewCo 2 is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy the indebtedness of such debtor.

(mmmm)OpCo will not be a “personal service corporation” within the meaning of section 269A.

(nnnn) To the extent a five year gain recognition agreement was entered into by Taxpayer with respect to the transfer of Sub 1 and Sub 2 shares in the NewCo 2

Exchange, Taxpayer will comply with the requirements of Reg. §1.367(a)-8(c) and -8(k) by entering into a five-year gain recognition agreement in accordance with Reg. §1.367(a)-8(d) and -8(g).

D. Sub 2 Contribution

(oooo) The transfer by NewCo 2 of its Partnership 2 interest to Sub 2 following Partnership 1's transfer of the Partnership 2 interest to NewCo 2 will, for purposes of section 367(a)(1) and Reg. §1.367(a)-3(d)(1)(vi), be treated as a transfer by Taxpayer of his proportionate share of the Sub 2 stock (received in exchange for the Partnership 2 interest) to NewCo 2. If gain is realized on the deemed transfer by Taxpayer of such shares to NewCo 2, Taxpayer will comply with the requirements of Reg. §§1.367(a)-3(d)(1)(vi) and -(d)(2), and 1.367(a)-1T(c)(3)(i), by entering into a five-year gain recognition agreement in accordance with Reg. §1.367(a)-8(d) and -(g).

RULINGS

Based solely on the information submitted and representations made above, we rule as follows regarding the OpCo Exchange, the NewCo 2 Exchange, and the OpCo Contribution:

A. OpCo Exchange

(1) Except as provided in ruling 2, Partnership 1 will recognize no gain or loss in connection with the OpCo Exchange (sections 351(a) and 357(a) and (c), and Rev. Rul. 2003-51, 2003-1 C.B. 938).

(2) Section 304(a) (and not section 351 and not so much of sections 357 and 358 as relates to section 351) will apply to OpCo's acquisition of the portion of the stock of the Operations Subsidiaries treated as received in exchange for OpCo's assumption of the Operations Liabilities and the portion of the Sub 1 Debt assumed by OpCo (section 304(b)(3)(A)). The acquisition by OpCo of the portion of the stock of the Operations Subsidiaries treated as received in exchange for OpCo's assumption of the Operations Liabilities and a portion of the Sub 1 Debt will be treated as a distribution in redemption of a corresponding portion of OpCo stock. Partnership 1 and OpCo will be treated in the same manner as if Partnership 1 had transferred that portion of the stock of the Operations Subsidiaries to OpCo in exchange for a corresponding portion of OpCo stock in a transaction to which section 351(a) applies, and then OpCo had redeemed the corresponding portion of OpCo stock it was treated as issuing (section 304(a)(1)). The deemed distribution in redemption of OpCo stock will constitute a dividend to the extent of the earnings and profits of OpCo and, as the case may be, of the Operations Subsidiaries. The balance of the deemed distribution in redemption of OpCo stock, if any, will reduce Partnership 1's basis in the OpCo stock (section 301(c)(2)). The

remaining balance of the deemed distribution in redemption of OpCo stock, if any, will be treated as gain from the sale or exchange of property (section 301(c)(3)).

(3) Except as provided in ruling (2), the basis in the OpCo stock received by Partnership 1 will be the same as the basis of the property transferred to OpCo, decreased by the amount of liabilities assumed by OpCo and increased by the amount of gain or dividend, if any (section 358(a)(1) and (d)).

(4) Partnership 1's holding period of the OpCo stock received will include the holding period of the assets transferred to OpCo, provided the assets are held by Partnership 1 as capital assets or section 1231 assets on the date of the OpCo Exchange (section 1223(1)).

(5) OpCo will recognize no gain or loss on the receipt of property in exchange for OpCo stock (section 1032(a)).

(6) OpCo's basis in the stock and other assets received will equal Partnership 1's basis in the stock and other assets immediately before the OpCo Exchange, increased by any gain recognized by Partnership 1 in the section 351 exchange (section 362(a)).

(7) OpCo's holding period of each asset it receives will include the period during which Partnership 1 held the asset prior to the OpCo Exchange (section 1223(2)).

B. NewCo 2 Exchange

(8) For Federal income tax purposes, Steps (2) and (3) of the Proposed Transaction will be treated as if Partnership 1 transferred to NewCo 2 its (i) OpCo interests, (ii) Sub 1 shares, (iii) directly and indirectly held Sub 2 shares, (iv) *f* Sub 3 shares, (v) *c*% partnership interest in Partnership 2, (vi) *d*% partnership interest in Partnership 3 in exchange for (1) all of the stock of NewCo 2 and (2) NewCo 2's assumption of the Senior Debt and a portion of the Sub 1 Debt.

(9) Except as provided in ruling (10), Partnership 1 will recognize no gain or loss in connection with the NewCo 2 Exchange (sections 351(a) and 357(a)).

(10) Section 304 will not apply to NewCo 2's assumption of the Assumed Acquisition Debt (section 304(b)(3)(B)(i) and (ii)). Section 304(a) (and not section 351 and not so much of sections 357 and 358 as relates to section 351) will apply to NewCo 2's acquisition of the portion of the stock of Sub 1, Sub 2, Sub 3, and OpCo treated as received in exchange for NewCo 2's assumption of the portion of the Sub 1 Debt that is not included in the Assumed Acquisition Debt (Nonqualifying Debt") (section 304(b)(3)(A)). The acquisition by NewCo 2 of the portion of the stock of Sub 1, Sub 2, Sub 3, and OpCo treated as received in exchange for NewCo 2's assumption of the

Nonqualifying Debt will be treated as a distribution in redemption of a corresponding portion of NewCo 2 stock. Partnership 1 and NewCo 2 will be treated in the same manner as if Partnership 1 had transferred that portion of the stock of Sub 1, Sub 2, Sub 3, and OpCo to NewCo 2 in exchange for a corresponding portion of NewCo 2 stock in a transaction to which section 351(a) applies, and then NewCo 2 had redeemed the corresponding portion of NewCo 2 stock it was treated as issuing (section 304(a)(1)). The deemed distribution in redemption of NewCo 2 stock will constitute a dividend to the extent of the earnings and profits of NewCo 2 and, as the case may be, either Sub 1, Sub 2, Sub 3, or OpCo. The balance of the deemed distribution in redemption of NewCo 2 stock, if any, will reduce Partnership 1's basis in the NewCo 2 stock (section 301(c)(2)). The remaining balance of the deemed distribution in redemption of NewCo 2 stock, if any, will be treated as gain from the sale or exchange of property (section 301(c)(3)).

(11) Except as provided in ruling (10), the basis in the NewCo 2 stock received by Partnership 1 will be the same as the basis of the property transferred to NewCo 2, decreased by the amount of liabilities assumed by NewCo 2 and increased by the amount of gain or dividend, if any (section 358(a)(1) and (d)).

(12) Partnership 1's holding period of the NewCo 2 stock received will include the holding period of the assets transferred to NewCo 2, provided the assets are held by Partnership 1 as capital assets on the date of the NewCo 2 Exchange (section 1223(1)).

(13) NewCo 2 will recognize no gain or loss on the receipt of property in exchange for NewCo 2 stock (section 1032(a)).

(14) NewCo 2's basis in the stock and other assets received will equal Partnership 1's basis in the stock and other assets immediately before the NewCo 2 Exchange, increased by any gain recognized by Partnership 1 in the section 351 exchange (section 362(a)).

(15) NewCo 2's holding period of each asset it receives will include the period during which Partnership 1 held the asset prior to the NewCo 2 Exchange (section 1223(2)).

C. OpCo Contribution

(16) NewCo 2 will recognize no gain or loss in connection with the OpCo Contribution (sections 351(a) and 357(a)).

(17) The basis in the OpCo stock received by NewCo 2 will be the same as the basis of the property transferred to OpCo, decreased by the amount of liabilities assumed by OpCo (section 358(a)(1) and (d)).

(18) NewCo 2's holding period of the OpCo stock received will include the holding period of the assets transferred, provided the assets are held by NewCo 2 as capital assets on the date of the OpCo Contribution (section 1223(1)).

(19) OpCo will recognize no gain or loss on the receipt of property in exchange for OpCo stock (section 1032(a)).

(20) OpCo's basis in the stock and other assets received will equal NewCo's basis in the stock and other assets immediately before the OpCo Contribution (section 362(a)).

(21) OpCo's holding period of each asset it receives will include the period during which NewCo 2 held the asset prior to the OpCo Contribution (section 1223(2)).

CAVEATS

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or on 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. Additionally, no opinion is expressed (and none was requested) regarding (i) the federal tax classification of any of the entities involved in the Proposed Transaction and (ii) the validity of any entity classification election made with respect to any of the entities.

PROCEDURAL STATEMENTS

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

A copy of this letter must be attached to the taxpayer's federal income tax return for the taxable year in which the transaction is consummated. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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Lewis K Brickates
Chief, Branch 4
Office of Associate Chief Counsel (Corporate)