

## Internal Revenue Service

## Department of the Treasury

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Refer Reply To:

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Date:

August 25, 2003

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Acquiring =

Distributing 1 =

Distributing 2 =

Controlled 1 =

Controlled 2 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

Sub 13 =

Sub 14 =

Sub 15 =

Sub 16 =

Partnership =

Newco 1 =

Newco 2 LLC =

Newco 3 LLC =

Newco 4 LLC =

State A =

Date A =

Date B =

a =

b =

c =

d =

Segment A =

Segment B =

Segment C =

Segment D =

Division =

Consultant =

XX =

Dear :

This responds to your November 20, 2002 request for rulings on the federal income tax consequences of a partially completed transaction. The information provided in that request 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 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 Parent is a holding company and the common parent of a corporate group whose includible members join in filing a consolidated federal income tax return (the "Parent Group"). The Parent Group, a major XX provider, is organized into four primary business segments: Segment A, Segment B, Segment C, and Segment D.

Before the transaction described below: Parent wholly owned Sub 1 and Sub 2;

Sub 1 wholly owned Sub 3 and Acquiring; Sub 2 wholly owned Distributing 2, which wholly owned Sub 4; Sub 3 wholly owned Sub 5 and Distributing 1, which wholly owned Controlled 1, Controlled 2, and Subs 6 through 10; Sub 5 wholly owned Sub 11, which wholly owned Sub 12; Controlled 1 wholly owned Sub 13 and Sub 14; Acquiring owned all the stock of Sub 15 and an a (less than five) percent general partner interest in Partnership; Sub 15 owned a b (more than 50) percent limited partner interest in Partnership; and Sub 13 owned a c (more than 20) percent limited partner interest in Partnership. Acquiring was (and continues to be) the sole general partner of Partnership, and Acquiring's employees performed (and continue to perform) all of the operational and management functions of the Partnership business. Acquiring owned and operated Division. Except for Sub 4 and Sub 9, all of these entities were (and the surviving entities are and will be) domestic.

Parent has submitted financial information indicating that Sub 6, Sub 13 (through Acquiring and Partnership activities), and Controlled 2 each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the five years preceding the dates of Distribution 1 and Distribution 2 (described below).

### **Transaction**

Consultant has advised Parent's management that placing each of Parent's principal business segments beneath a separate subsidiary of Parent would help resolve management and systemic problems caused by the pre-transaction structure. Accordingly, between Date A and Date B, the Parent Group completed the following steps (i) through (vii) and, after the issuance of this letter, will take steps (viii) through (xxiii):

- (i) Distributing 1 distributed the stock of Sub 7, Sub 8, Sub 9, and Sub 10 to Sub 3 ("Subs Distribution 1").
- (ii) Sub 3 distributed the stock of Sub 7 and Sub 8 to Sub 1 ("Subs Distribution 2").
- (iii) Sub 3 converted into a limited liability company ("LLC") that is intended to be disregarded as separate from its owner for federal tax purposes under § 301.7701-3 of the Procedure and Administrative Regulations (a "disregarded entity") ("Conversion 1").
- (iv) Distributing 2 sold its stock in Sub 4 to Parent for fair market value consideration ("Sub 4 Stock Sale").
- (v) Sub 13 merged upstream into Controlled 1 under State A law ("Merger 1").
- (vi) Sub 1 formed Newco 1, a wholly owned domestic corporation.

- (vii) Sub 11 sold its Sub 12 stock to Newco 1 for fair market value in cash.
- (viii) Distributing 1 will distribute the stock of Controlled 1 to Sub 3 (as converted), which will distribute the stock to Sub 1 (together, "Distribution 1").
- (ix) Distributing 1 will form Newco 2 LLC, a wholly owned domestic LLC, as a disregarded entity and transfer the stock of Controlled 2 to Newco 2 LLC ("Contribution 1").
- (x) Distributing 1 will distribute its membership interest in Newco 2 LLC to Sub 3 (as converted), which will distribute the membership interest to Sub 1 (together, "Distribution 2").
- (xi) Sub 14 will merge upstream into Controlled 1 under State A law ("Merger 2").
- (xii) Acquiring will form Newco 3 LLC, a wholly owned domestic LLC, as a disregarded entity.
- (xiii) Controlled 1 will merge into Newco 3 LLC under State A law ("Merger 3").
- (xiv) Newco 3 LLC will distribute to Acquiring certain assets, including the c percent limited partner interest in Partnership received in Merger 3 (the interest originally held by Sub 13).
- (xv) Acquiring will transfer its c percent limited partner interest in Partnership to Sub 15.
- (xvi) Newco 1 will form Sub 16, a wholly owned domestic corporation.
- (xvii) Sub 16 will form Newco 4 LLC, a wholly owned domestic LLC, as a disregarded entity.
- (xviii) Sub 12 will merge into Newco 4 LLC under State A law ("Merger 4").
- (xix) Newco 4 LLC will distribute to Sub 16 certain receivables that were (a) distributed to Sub 12 in the liquidation of a partnership that preceded this step and (b) transferred to Newco 4 LLC in Merger 4 ("Receivables Distribution").
- (xx) Sub 16 will sell its membership interest in Newco 4 LLC to Acquiring for fair market value in cash ("Interest Sale").
- (xxi) Acquiring will contribute to Sub 15 d percent of its membership interest in each of Newco 3 LLC and Newco 4 LLC.

(xxii) Newco 3 LLC and Newco 4 LLC will merge into Partnership under State A law ("Merger 5"). In Merger 5, Acquiring will exchange its remaining membership interests in Newco 3 LLC and Newco 4 LLC for an increased (in value) general partner interest in Partnership, and Sub 15 will exchange its membership interests in Newco 3 LLC and Newco 4 LLC for an increased (in value) limited partner interest in Partnership.

(xxiii) Acquiring will distribute Division to Sub 1 ("Division Distribution").

(xxiv) Parent has implemented and will implement other transactions, including transactions involving foreign entities, that are consistent with the overall restructuring of the Parent Group, but these transactions (the "Other Transactions") have not and will not directly affect Distribution 1 or Distribution 2.

## **Representations**

### Distribution1

Parent has made the following representations regarding Distribution 1 (described above in step (viii)):

(a) Any indebtedness owed by Controlled 1 to Distributing 1 does not constitute stock or securities.

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

(c) The five years of financial information submitted on behalf of Distributing 1, Sub 6, and Sub 13 (reflecting its interest in Partnership and the activities of Acquiring) represents each corporation's present operation, and regarding each corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(d) Immediately after Distribution 1, at least 90 percent of the fair market value of the gross assets of Distributing 1 will consist of the stock of Sub 6, which is engaged in the active conduct of a trade or business as defined in § 355(b) of the Internal Revenue Code.

(e) Following Distribution 1, Controlled 1 (until Merger 3, through its interest in Partnership received from Sub 13 in Merger 1 and the activities of Acquiring) and Distributing 1 each will continue the active conduct of its business, independently and with its separate employees, except that, as members of the Parent Group, each (i) will

use a common paymaster/agent system to handle its payroll function, (ii) will be charged with labor costs for its own personnel and those of other affiliates who, directly or indirectly, provide services to the member, and (iii) will share certain administrative, executive, and other support employees (arm's length charges will be made to the appropriate member for any such shared services).

(f) Distribution 1 will be carried out as part of the overall restructuring of the Parent Group to resolve certain management, reporting, and other systemic problems that have been caused by the existing corporate structure of the Parent Group. Distribution 1 is motivated, in whole or substantial part, by this corporate business purpose.

(g) Except in the merger of Controlled 1 into Newco 3 LLC in Merger 3, there is no plan or intention by Sub 1 to sell, exchange, transfer by gift, or otherwise dispose of any of its stock in, or securities of, Controlled 1 or Distributing 1 after the transaction.

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

(i) Except for the merger of Controlled 1 into Newco 3 LLC in Merger 3, there is no plan or intention to liquidate Distributing 1 or Controlled 1, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after Distribution 1, except in the ordinary course of business.

(j) Distributing 1 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of Distribution 1.

(k) Except for trade payables, advances arising in the ordinary course of business, and notes that do not constitute securities, no intercorporate debt will exist between Distributing 1 and Controlled 1 at the time of, or after, Distribution 1.

(l) Immediately before Distribution 1, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and § 1.1502-14 of the Income Tax Regulations as in effect before the publication of T.D. 8597, 1995-1 C.B. 205, and as currently in effect; § 1.1502-13 as published by T.D. 8597).

(m) Payments made in any continuing transactions between Distributing 1 and Controlled 1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(n) Neither Distributing 1 nor Controlled 1 is an investment company as defined



in § 368(a)(2)(F)(iii) and (iv).

(o) 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 representing a 50 percent or greater interest (as defined in § 355(d)(4)) in Distributing 1 or Controlled 1.

(p) Immediately after Distribution 1, no person will hold, directly or indirectly, disqualified stock (within the meaning of § 355(d)(3)) in Distributing 1 or Controlled 1 that constitutes a 50 percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 1 or Controlled 1.

### Distribution 2

Parent has made the following representations regarding Contribution 1 and Distribution 2 (described above in steps (ix) and (x)). For these representations and the rulings that follow, the distribution of Newco 2 LLC (a disregarded entity) by Distributing 1 in Distribution 2 is treated as a distribution of the Controlled 2 stock contributed by Distributing 1 to Newco 2 LLC in Contribution 1. To wit, Contribution 1 will be disregarded for federal tax purposes.

(q) Any indebtedness owed by Controlled 2 to Distributing 1 does not constitute stock or securities.

(r) No part of the Controlled 2 stock distributed by Distributing 1 to Sub 1 will be received by Sub 1 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.

(s) The five years of financial information submitted on behalf of Distributing 1, Sub 6, and Controlled 2 represents each corporation's present operation, and regarding each corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(t) Immediately after Distribution 2, at least 90 percent of the fair market value of the gross assets of Distributing 1 will consist of the stock of Sub 6, which is engaged in the active conduct of a trade or business as defined in § 355(b).

(u) Following Distributing 2, Controlled 2 and Distributing 1 each will continue the active conduct of its business, independently and with its separate employees, except that, as members of the Parent Group, each (i) will use a common paymaster/agent system to handle its payroll function, (ii) will be charged with labor costs for its own personnel and those of other affiliates who, directly or indirectly, provide services to the member, and (iii) will share certain administrative, executive, and other support employees (arm's length charges will be made to the appropriate

member for any such shared services).

(v) Distribution 2 will be carried out as part of the overall restructuring of the Parent Group to resolve certain management, reporting, and other systemic problems that have been caused by the existing corporate structure of the Parent Group. Distribution 1 is motivated, in whole or substantial part, by this corporate business purpose.

(w) There is no plan or intention by Sub 1 to sell, exchange, transfer by gift, or otherwise dispose of any of its stock in, or securities of, Controlled 2 or Distributing 1 after the transaction.

(x) There is no plan or intention by Distributing 1 or Controlled 2, directly or through any subsidiary corporation, to purchase any of its outstanding stock after Distribution 2, other than through stock purchases meeting the requirements of section 4.05(1)(b) of Rev. Proc. 96-30.

(y) There is no plan or intention to liquidate Distributing 1 or Controlled 2, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after Distribution 2, except in the ordinary course of business.

(z) Distributing 1 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of Distribution 2.

(aa) Except for trade payables, advances arising in the ordinary course of business, and notes that do not constitute securities, no intercorporate debt will exist between Distributing 1 and Controlled 2 at the time of, or after, Distribution 2.

(bb) Immediately before Distribution 2, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, and as currently in effect; § 1.1502-13 as published by T.D. 8597).

(cc) Payments made in any continuing transactions between Distributing 1 and Controlled 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(dd) Neither Distributing 1 nor Controlled 2 is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).

(ee) 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 representing a 50 percent or greater interest (as defined in § 355(d)(4)) in Distributing 1 or Controlled 2.

(ff) Immediately after Distribution 2, no person will hold, directly or indirectly, disqualified stock (within the meaning of § 355(d)(3)) in Distributing 1 or Controlled 2 that constitutes a 50 percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 1 or Controlled 2.

### International

(gg) Sub 9 is not a foreign corporation within the meaning of § 7701(a). It is a disregarded entity for U.S. federal tax purposes.

(hh) Distributing 1 is a State A corporation and joins in filing a consolidated federal income tax return with Parent.

(ii) Distributing 2 is a State A corporation and joins in filing a consolidated federal income tax return with Parent.

(jj) Sub 4 is a foreign corporation within the meaning of § 7701(a).

(kk) Sub 4 will be a controlled foreign corporation within the meaning of § 957(a) before and immediately after the proposed transaction.

(ll) Sub 4 is not a passive foreign investment company as defined in § 1297(a).

### **Rulings**

#### Distribution 1

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

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

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

(3) The holding period of the Controlled 1 stock received by Sub 1 in Distribution 1 will equal the holding period of the Distributing 1 stock on which Distribution 1 occurs, provided that Sub 1 held the stock of Distributing 1 as a capital asset on the date of Distribution 1 (§ 1223(1)).

(4) Earnings and profits will be allocated among Controlled 1, Controlled 2, and Distributing 1 in accordance with § 312(b), § 1.312-10(b), and § 1.1502-33(f)(2).

#### Distribution 2

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

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

(6) No gain or loss will be recognized by Distributing 1 on Distribution 2 (§ 355(c)(1)).

(7) The holding period of the Controlled 2 stock received by Sub 1 in Distribution 2 will equal the holding period of the Distributing 1 stock on which Distribution 2 occurs, provided that Sub 1 held the stock of Distributing 1 as a capital asset on the date of Distribution 2 (§ 1223(1)).

(8) Earnings and profits will be allocated among Controlled 1, Controlled 2, and Distributing 1 in accordance with § 312(b), § 1.312-10(b), and § 1.1502-33(f)(2).

#### **Caveats**

No opinion is expressed on the tax treatment of the transaction under other provisions of the Code or regulations or on the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not directly covered by the above rulings. In particular, no opinion is expressed regarding:

(i) The federal tax effect of Subs Distribution 1, Subs Distribution 2, Conversion 1, Sub 4 Stock Sale, Merger 1, Merger 2, Merger 3, Merger 4, Merger 5, Receivables Distribution, Interest Sale, Division Distribution, and Other Transactions;

(ii) Whether Newco 1 LLC, Newco 2 LLC, Newco 3 LLC, and Newco 4 LLC each qualifies as a disregarded entity;

(iii) Whether Newco 3 LLC and Newco 4 LLC each would be treated as a partnership for federal tax purposes as a result of step (xxii); and

(iv) The federal income tax consequences of the restructuring transactions involving foreign entities; in particular, no opinion is expressed about the application of § 987 to Distributing 1's distribution of the stock of Sub 9 to Sub 3, and no opinion is expressed about the application of § 1248(a) to Distributing 2's sale of the stock of Sub 4 to Parent.

**Procedural Information**

This ruling letter 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 should be attached to the federal income tax return of each taxpayer involved for the taxable year in which the transaction covered by this ruling letter is completed.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to each of the taxpayer's two designated representatives.

Sincerely yours,

Associate Chief Counsel (Corporate)

By: Wayne T. Murray

Wayne T. Murray  
Special Counsel to the Associate  
Chief Counsel

cc: