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Dear _____ :

This letter responds to your authorized representative's letter dated June 6, 2006, requesting rulings as to the Federal income tax consequences of a proposed transaction. The information submitted in that letter and subsequent correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations that were submitted on behalf of the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material 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. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding the validity of, any subchapter S election or any election for status as a "qualified subchapter S subsidiary" (a "QSub") within the meaning of § 1361(b)(3) of the Internal Revenue Code.

SUMMARY OF FACTS

Oldco is a StateA corporation that uses the accrual method of accounting and a calendar year. Oldco elected S corporation status in Year1. Prior to Year1, Oldco was a C corporation. Oldco is engaged in BusinessA directly and/or through subsidiaries. Three of the Oldco subsidiaries, Subs1, 2, and 3, are each treated as a QSub. Oldco has outstanding p shares of common stock and no other stock. All the stock in Oldco is held by ShareholderA.

Management of Oldco has determined that separating Oldco assets between two corporations that are recognized as two separate entities under the laws of StateA will enable Oldco to protect certain of its assets ("Protected Assets") from potential liabilities. However, Oldco desires to have these two state law entities treated as a single entity for Federal income tax purposes.

Newco is a new corporation being formed by ShareholderA under the laws of StateA. Newco will have outstanding solely common stock. Prior to the Contribution (described below), Newco will have no assets [or possibly a minimal amount of assets as described in representation (b), below] and will not have engaged in any activities.

Oldco plans to undertake a three step transaction to achieve its business objectives. Steps (II) and (III) will follow Step (I); however, it has not yet been determined which of Steps (II) and (III) will occur first. The steps are as follows:

- Step (I) ShareholderA will transfer all the outstanding stock in Oldco to Newco (“the Contribution”) in exchange for all the outstanding stock in Newco. Thus, Oldco will be a wholly owned subsidiary of Newco and Newco will be wholly owned by ShareholderA.
- Step (II) Oldco will transfer the Protected Assets to Newco.
- Step (III) Newco will elect (the “QSub Election”) to have Oldco treated as a QSub.

REPRESENTATIONS

Oldco and Newco have made the following representations in connection with the proposed transaction:

- (a) At the first possible opportunity, Newco will elect to treat Oldco as a QSub. There will be no delay between the Contribution and the QSub Election and the election will be made in a manner such that it is effective as of the date of the Contribution (see section 1.1361-3(a)(4) of the Income Tax Regulations).
- (b) Immediately prior to the Transaction, Newco will be engaged in no activity and will hold no assets (except Newco may hold a minimal amount of assets if the assets are required: (i) for the purpose of paying Newco’s incidental expenses; and/or in order to maintain Newco’s status as a corporation in accord with StateA law).
- (c) Immediately following the Transaction, Newco together with its QSub, Oldco, will hold all the assets held by Oldco immediately prior to the Transaction, except as further described in this representation (c). The only change in assets occurring from the Transaction will be as a result of Oldco and/or Newco incurring filing, accounting, legal fees, and/or other expenses incident to the Transaction including the cost of obtaining governmental approvals for the Transaction. The total of all these Transaction costs will be less than one percent (1%) of the fair market value of the net assets of Oldco immediately prior to the Transaction.
- (d) All liabilities to which the Oldco assets are subject at the time of the Transaction, and all liabilities of Oldco that are properly treated as being assumed by Newco in the Transaction (see § 357(d)), are liabilities that

were incurred in the ordinary course of business and are associated with the assets held by Oldco at the time of the Transaction.

- (e) At the time of the Transaction, neither Oldco nor Newco will have outstanding any debt or convertible securities, warrants or options, or any other type of right or instrument, where such right or instrument constitutes an equity interest in Oldco or Newco, or where pursuant to such right or instrument any person could acquire an equity interest in Oldco or Newco.
- (f) There is no plan or intention for either Oldco or Newco to issue any stock in conjunction with or subsequent to the Transaction, except for the stock in Newco being issued to ShareholderA as described in Step (l).
- (g) ShareholderA will receive solely Newco common stock in the Transaction.
- (h) The exchange ratio of Oldco stock for Newco stock will be one-for-one. Thus, following the Transaction, ShareholderA will hold the same number of shares of stock in Newco that he previously held in Oldco.
- (i) The Newco shares received by ShareholderA will be identical in all respects to the Oldco stock for which they are exchanged.
- (j) ShareholderA will pay his own, and the corporations will pay their own, expenses incurred in connection with the Transaction.
- (k) Oldco is an S corporation (within the meaning of § 1361(a)) and there is no plan or intention to revoke or otherwise terminate the S corporation election of either Oldco or Newco.
- (l) There is no plan or intent to terminate the QSub Election for Oldco. It is the intent of Oldco, Newco, and ShareholderA that, following the Transaction, Oldco will at no time be treated as a separate corporation but, rather, it is intended that, at all times, Oldco will be treated as a part of Newco for Federal income tax purposes.
- (m) Oldco is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

RULINGS

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

- (1) Provided that Newco is a corporation that meets the requirements to be a small business corporation under § 1361(b)(1), Newco will be eligible to be treated as an S corporation within the meaning of § 1361.
- (2) As soon as Newco acquires all the stock of Oldco in the Contribution, Oldco will be eligible to be a QSub.
- (3) Provided that the QSub election is made so that Oldco becomes a QSub of Newco as of the date of the transaction, then, for Federal income tax purposes: (A) Newco and its subsidiary, Oldco, will be treated as a single entity that is an S corporation; and (B) the change in the form and identity of the corporation (from Oldco into Newco) in the Transaction will be treated as an asset acquisition in which there is a transfer by Oldco of all its assets to Newco in exchange for Newco stock and the assumption by Newco of Oldco liabilities followed by a distribution of the Newco stock by Oldco to its shareholder. (See § 1361(b)(3)(A) providing that a corporation that is a QSub is not treated as a separate corporation but, rather, all the assets, liabilities, and items of income, deduction and credit of a QSub will be treated as those of the S corporation.)
- (4) The Contribution followed by the QSub Election is a reorganization within the meaning of § 368(a)(1)(F). Oldco and Newco will each be a "party to a reorganization" within the meaning of § 368(b).
- (5) No gain or loss will be recognized by Oldco upon the transfer of assets to Newco in exchange for Newco stock and Newco's assumption of liabilities (§§ 361(a) and 357(a)).
- (6) No gain or loss will be recognized by Newco on the receipt of Oldco assets in exchange for Newco stock (§ 1032(a)).
- (7) The basis of each asset received by Newco will be the same as the basis of such asset in the hands of Oldco immediately prior to the Transaction (§ 362(b)).
- (8) The holding period for each of the assets received by Newco will include the period during which such asset was held by Oldco (§ 1223(2)).
- (9) No gain or loss will be recognized by Oldco upon the distribution to ShareholderA of the Newco stock (§ 361(c)(1)).
- (10) No gain or loss will be recognized by ShareholderA upon receipt of Newco stock in exchange for his Oldco stock (§ 354(a)(1)).

- (11) ShareholderA's basis in the Newco stock received will be equal to the basis of the Oldco stock surrendered in exchange therefor (§ 358(a)(1)).
- (12) ShareholderA's holding period for the Newco stock received will include the period during which ShareholderA held the Oldco stock exchanged therefor, provided that the Oldco stock is held as a capital asset in the hands of ShareholderA on the date of the exchange (§ 1223(1)).
- (13) The Transaction does not result in a closing of the tax year (§ 381(b) of the Code and § 1.381(b)-1(a)(2) of the Income Tax Regulations).
- (14) As provided by § 381(a), Newco will succeed to and take into account, as of the date the Transaction is consummated, all the items of Oldco described in § 381(c), including any Oldco earnings and profits or any deficit therein.
- (15) To the extent that the assets of Oldco are presently subject to the built-in gain provisions of § 1374, they will continue to be subject to the built-in gain provisions of § 1374 in the hands of Newco on the same basis as they were subject to such provisions in the hands of Oldco.
- (16) Oldco's "accumulated adjustments account" (as defined in § 1368(e)(1)) immediately prior to the Transaction will be acquired by Newco (§ 1.1368-2(d)(2)).
- (17) The Transaction (which constitutes an "F" reorganization as provided by ruling (4) above) will not result in a termination of Oldco's "S" election (within the meaning of § 1362). Rather, Oldco's S election will remain in effect for Newco.
- (18) The Transaction will not result in any change in the QSub status of Subs1, 2, and 3. Provided these Oldco subsidiaries were QSubs prior to the Transaction, they will remain QSubs when they become subsidiaries of Newco, without any QSub election being made by Newco.

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any matter or item discussed or referenced in this letter. Moreover, no opinion is expressed about the tax treatment of the Transaction under other provisions of the Code or regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the Transaction not specifically covered by the above rulings. In particular, no opinion is expressed regarding the validity of any subchapter S election or QSub election.

PROCEDURAL STATEMENTS

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

It is important that a copy of this letter be attached to the Federal income tax return of each taxpayer involved for the taxable year in which the transactions covered by this letter are consummated. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching to the return a statement that provides the date and control number (PLR-130291-06) of this ruling letter.

Pursuant to the power of attorney on file in this matter, a copy of this letter is being sent to your authorized representative.

Sincerely

Marlene Oppenheim
Marlene Oppenheim
Senior Counsel, Branch 5
Office of Associate Chief Counsel
(Corporate)

cc: