



DRE 2 =

DRE 3 =

LP 1 =

LP 2 =

LP 3 =

Corporation 1 =

Corporation 2 =

Corporation 3 =

Business Y =

Business Z =

Date A =

Date B =

Date C =

Date D =

Date E =

Date F =

a =

b =

c =

d =

e =

f =  
g =  
h =  
i =  
i =  
k =  
l =  
m =  
n =  
o =  
p =

Dear :

This letter responds to your February 2, 2007 request for rulings on certain federal income tax consequences of a series of proposed transactions. The information submitted 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 taxpayers and accompanied by penalty of perjury statements executed by the appropriate parties. 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.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether Internal Distribution 1, Internal Distribution 2 and the Share Exchange (all defined below): (i) satisfy the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) are being used principally as a device for the distribution of the earnings and profits of the distributing and the controlled corporations discussed below (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)), or (iii) are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in any of the distributing or the controlled corporations (see § 355(e) and § 1.355-7).

### **Summary of Facts**

Distributing is a publicly traded holding company and the common parent of an affiliated group of corporations that file a consolidated federal income tax return

(collectively, the "Distributing Group"). Distributing has a single class of stock outstanding (the "Distributing Stock"). Distributing also has \$c in certain term loans outstanding (the "Tranche A Debt") in addition to other debt.

LP 1, LP 2, and LP 3 (each a limited partnership and collectively, the "LPs"), in the aggregate, own indirectly through DRE 1, DRE 2, and DRE 3 (collectively, the "DREs"), a percent of the Distributing Stock. DRE 1, DRE 2, and DRE 3 are each classified as an entity disregarded as separate from its single owner for federal income tax purposes. Certain individuals associated with the advisor to the LPs (collectively, the "Individuals") own b percent of the Distributing Stock. The DREs and the Individuals, together, are referred to hereafter as the "Shareholders."

Distributing wholly owns Sub 1, Sub 1 wholly owns Sub 2, and Sub 2 wholly owns Company. Company directly engages in Business Y and Sub 2 directly engages in Business Z. Company and Sub 2 have each engaged in its respective business for each of the past five years.

Controlled is a corporation that was newly formed by Distributing to hold all of the assets of Business Y following the Separation (as defined below). Controlled has a single class of stock outstanding (the "Controlled Stock").

Management of Distributing has determined to separate Business Y from Business Z (the "Separation") in order to allow the management of each business to focus on its respective business. In furtherance of the Separation, Distributing and the DREs, on Date A, entered into a Share Exchange Agreement pursuant to which Distributing agreed to distribute all of the Controlled Stock to the Shareholders in exchange for approximately d percent (close to 100 percent) of the Distributing Stock held by the Shareholders (the "Share Exchange").

LP 1, LP 2, and LP 3 acquired the majority of their shares of Distributing Stock on Date B in exchange for the contribution of (i) all of the stock of Corporation 1, Corporation 2, and Corporation 3, respectively (collectively, the "Corporations") and (ii) in the case of LP 1 and LP 2, certain Class C Units in LLC 1 (the stock in the Corporations and the contributed Class C Units, collectively, the "Contributed Interests") to the then newly-formed Distributing (the "Distributing Contribution") in connection with an initial public offering of the Distributing Stock (the "IPO"). The LPs had acquired the Contributed Interests (i) principally on Date C and Date D (dates more than five years prior to the execution date of the Share Exchange Agreement) and (ii) to a lesser extent, on Date E. LP 1 and LP 2 acquired the remainder of their shares of Distributing Stock as a contribution from certain partners of LP 1 and LP 2 immediately after the Distributing Contribution.

The LPs had acquired their stock in the Corporations in connection with the initial capitalization of LLC 1 and LLC 2, the operating partnerships that acquired the

Distributing business. That acquisition occurred on Date C and Date D (dates more than five years prior to the execution date of the Share Exchange Agreement). On Date F, LP 1 and LP 2 engaged in transactions that the taxpayers believe are properly characterized as contributions by LP 1 and LP 2 of approximately \$e and \$f in cash to Corporation 1 and Corporation 2, respectively (the "Cash Contributions"). Since that time, the LPs have not transferred any other property to the Corporations.

On Date E, LP 1 and LP 2 acquired certain partnership interests in LLC 1 (the "Class C Units") in exchange for cash. LLC 1 contributed the cash to LLC 3, a newly formed limited liability company classified as a corporation for federal income tax purposes, and LLC 3 used the cash to purchase the stock of an unrelated target corporation. Under the operating agreement of LLC 1, the Class C Units were allocated all of the profits and losses from the LLC 3 investment and none of the profits and losses from the LLC 2 investment.

In the Distributing Contribution, the LPs contributed the stock of the Corporations and the Class C Units to Distributing in exchange for Distributing Stock. Approximately g percent of the Distributing Stock received by LP 1 and LP 2, and all of the Distributing Stock received by LP 3 in the Distributing Contribution, was attributable to the stock of the Corporations contributed by the LPs.

The LPs sold approximately h percent of their Distributing Stock pursuant to the exercise of the underwriters' overallotment option in the IPO (the "Overallotment Sales").

### **The Proposed Transactions**

In order to accomplish the Separation, the following series of transactions have been proposed (collectively, the "Proposed Transactions"):

- (i) Sub 2 will distribute all of the Company stock to Sub 1 ("Internal Distribution 1").
- (ii) Sub 1 will distribute all of the Company stock to Distributing ("Internal Distribution 2").
- (iii) Distributing will contribute all of the stock of Company and Business Y assets to Controlled in exchange for additional Controlled Stock, \$i in cash (the "Special Dividend"), and debt securities to be issued by Controlled (the "Controlled Securities") that will have a term of not less than j years and will be callable no earlier than k years after their issuance (the "Contribution").
- (iv) The Shareholders will exchange an aggregate of l shares of Distributing Stock (including approximately d percent of the shares of Distributing Stock held by each of the DREs) in exchange for Controlled Stock in the Share Exchange. All of the

Controlled Stock held by Distributing will be distributed to the Shareholders in the Share Exchange.

(v) Distributing expects to transfer (such transfer, the "Debt Exchange") all of the Controlled Securities received by it in the Contribution to one or more investment banks (collectively, the "Creditor") in exchange for existing Tranche A Debt or other existing debt of Distributing (the "Distributing Debt") that the Creditor, acting as principal for its own account, will have acquired at least m days prior to the consummation of the Debt Exchange. Distributing expects to consummate the Debt Exchange pursuant to an exchange agreement entered into by Distributing and the Creditor no sooner than n days after the Creditor acquires the Distributing Debt in the marketplace and at least o days prior to the closing of the Debt Exchange, pursuant to which the parties will agree to exchange the Controlled Securities for an amount of Distributing Debt with a fair market value to be determined as of the date the exchange is consummated. Solely in order to comply with covenants under Distributing's senior note indentures, Distributing may be required to sell the retired Distributing Debt back to the Creditor immediately after the Debt Exchange and then use the cash proceeds from that sale to immediately repurchase such Distributing Debt from the Creditor. Any such purchase and sale will be accomplished by means of accounting entries between Distributing and the Creditor.

(vi) As soon as practicable after the Contribution, but in no event later than p months after the Contribution, Distributing will use the Special Dividend to repay existing indebtedness that was not incurred in connection with the transaction and/or will distribute the proceeds to Distributing's shareholders, in each case in pursuance of the plan of reorganization that includes the Contribution.

(vii) In connection with the Proposed Transactions, Distributing, Controlled and Company will enter into certain continuing transactions between the companies, including certain transitional agreements and a tax sharing agreement (collectively, the "Ancillary Agreements").

## **Representations**

The taxpayers have made the following representations regarding the Proposed Transactions:

### Internal Distribution 1

- (a) Any indebtedness owed by Company to Sub 2 after Internal Distribution 1 will not constitute stock or securities.
- (b) No part of the consideration to be distributed by Sub 2 with respect to the Sub 2 stock will be received by Sub 1 as a creditor, employee, or in any capacity other than that of a shareholder of Sub 2.

- (c) The five years of financial information submitted on behalf of the business directly conducted by Company is representative of the present business operations of Company, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) The five years of financial information submitted on behalf of the business directly conducted by Sub 2 is representative of the present business operations of Sub 2, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) Following Internal Distribution 1, Sub 2 and Company will continue the active conduct of their respective businesses, independently and with their own employees.
- (f) Internal Distribution 1 is being carried out to facilitate the Share Exchange. Internal Distribution 1 is motivated, in whole or substantial part, by this corporate business purpose.
- (g) Internal Distribution 1 is not used principally as a device for the distribution of the earnings and profits of Sub 2 or Company or both.
- (h) No indebtedness between Sub 2 (and its subsidiaries) and Company (and its subsidiaries) has been or will be cancelled in connection with Internal Distribution 1 other than the settlement of open intercompany account balances attributable to the normal business operations of Distributing and its subsidiaries prior to the Share Exchange.
- (i) No intercorporate debt will exist between Sub 2 (and its subsidiaries) and Company (and its subsidiaries) at the time of, or subsequent to, Internal Distribution 1, except for payables arising under the transitional agreements or in the ordinary course of business.
- (j) Payments made in connection with any continuing transactions between Sub 2 (and its subsidiaries) and Company (and its subsidiaries) following Internal Distribution 1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (k) Neither Sub 2 nor Company is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).
- (l) For purposes of § 355(d), immediately after Internal 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 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 Internal Distribution 1.

- (m) For purposes of § 355(d), immediately after Internal Distribution 1, assuming that the "Section 355(d) Assumptions" set forth below apply, 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 stock of Company entitled to vote, or 50 percent or more of the total value of shares of all classes of stock of Company, that was either (1) 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 Internal Distribution 1 or (2) attributable to distributions on stock of Sub 2 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 Internal Distribution 1.
- (n) Internal Distribution 1 is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50 percent or greater interest (within the meaning of § 355(d)(4)) in Sub 2 or Company (including any predecessor or successor of any such corporation).
- (o) Neither Sub 2 nor Company will be a disqualified investment corporation within the meaning of § 355(g)(2).
- (p) At the time of Internal Distribution 1, no member of the Distributing Group will have an excess loss account in the Company stock or in the stock of any Company subsidiary. At the time of the Share Exchange, no member of the Distributing Group will have an excess loss account in Controlled or in the stock of any Controlled subsidiary (including Company).
- (q) The allocation of basis under § 358 that will occur in connection with Internal Distribution 1 will not result in Company stock having a higher basis than it had immediately before Internal Distribution 1.

#### Internal Distribution 2

- (r) Any indebtedness owed by Company to Sub 1 after Internal Distribution 2 will not constitute stock or securities.
- (s) No part of the consideration to be distributed by Sub 1 with respect to the Sub 1 stock will be received by Distributing as a creditor, employee, or in any capacity other than that of a shareholder of Sub 1.



- (t) The five years of financial information submitted on behalf of the business directly conducted by Company is representative of the present business operations of Company, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (u) The five years of financial information submitted on behalf of the business directly conducted by Sub 2, a member of the separate affiliated group (as defined in § 355(b)(3)(B)) of Sub 1 (hereafter, the "Sub 1 SAG"), is representative of the present business operations of Sub 2, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (v) Following Internal Distribution 2, the Sub 1 SAG and Company will continue the active conduct of their respective businesses, independently and with their own employees.
- (w) Internal Distribution 2 is being carried out to facilitate the Share Exchange. Internal Distribution 2 is motivated, in whole or substantial part, by this corporate business purpose.
- (x) Internal Distribution 2 is not used principally as a device for the distribution of the earnings and profits of Sub 1 or Company or both.
- (y) No indebtedness between Sub 1 (and its subsidiaries) and Company (and its subsidiaries) has been or will be cancelled in connection with Internal Distribution 2 other than the settlement of open intercompany account balances attributable to the normal business operations of Distributing and its subsidiaries prior to the Share Exchange.
- (z) No intercorporate debt will exist between Sub 1 (and its subsidiaries) and Company (and its subsidiaries) at the time of, or subsequent to, Internal Distribution 2, except for payables arising under the transitional agreements or in the ordinary course of business.
- (aa) Payments made in connection with any continuing transactions between Sub 1 (and its subsidiaries) and Company (and its subsidiaries) following Internal Distribution 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (bb) Neither Sub 1 nor Company is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).
- (cc) For purposes of § 355(d), immediately after Internal 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 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Sub 1 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 Internal Distribution 2.

- (dd) For purposes of § 355(d), assuming that the Section 355(d) Assumptions set forth below apply, immediately after Internal 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 stock of Company entitled to vote, or 50 percent or more of the total value of shares of all classes of stock of Company, that was either (1) 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 Internal Distribution 2 or (2) attributable to distributions on stock of Sub 1 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 Internal Distribution 2.
- (ee) Internal Distribution 2 is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50 percent or greater interest (within the meaning of § 355(d)(4)) in Sub 1 or Company (including any predecessor or successor of any such corporation).
- (ff) Neither Sub 1 nor Company will be a disqualified investment corporation within the meaning of § 355(g)(2).
- (gg) At the time of Internal Distribution 2, no member of the Distributing Group will have an excess loss account in the Company stock or in the stock of any Company subsidiary. At the time of the Share Exchange, no member of the Distributing Group will have an excess loss account in Controlled or in the stock of any Controlled subsidiary (including Company).
- (hh) The allocation of basis under § 358 that will occur in connection with Internal Distribution 2 will not result in Company stock having a higher basis than it had immediately before Internal Distribution 2.

#### The Contribution and the Share Exchange

- (ii) Other than the Controlled Securities to be held by Distributing prior to their distribution to Creditor, any indebtedness owed by Controlled to Distributing after the Share Exchange will not constitute stock or securities.

- (jj) The fair market value of the Controlled Stock received by each Shareholder in the Share Exchange will be approximately equal to the fair market value of the Distributing Stock surrendered in exchange therefor.
- (kk) No part of the consideration to be distributed by Distributing with respect to the Distributing Stock will be received by any shareholder of Distributing as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (ll) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing in the Contribution each equals or exceeds the sum of (i) the total liabilities assumed (as determined under § 357(d)) by Controlled and (ii) the total amount of money and other property (within the meaning of § 361(b)) received by Distributing and transferred by it to its creditors and shareholders in connection with the plan of reorganization. The liabilities assumed (as determined under § 357(d)) in the proposed transaction were incurred in the ordinary course of business and are associated with the assets being transferred.
- (mm) The total adjusted basis and the fair market value of the assets transferred by Distributing to Controlled in the Contribution will equal or exceed the sum of: (a) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled in the Contribution, (b) the amount of any liabilities owed to Controlled by Distributing (if any) that are discharged or extinguished in the Contribution, and (c) the amount of any cash and the fair market value of any property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing from Controlled in the Contribution. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.
- (nn) The five years of financial information submitted on behalf of the business directly conducted by Sub 2, a member of the separate affiliated group of Distributing (the "Distributing SAG"), is representative of the present business operations of Sub 2, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (oo) The five years of financial information submitted on behalf of the business directly conducted by Company, a member of the separate affiliated group of Controlled (the "Controlled SAG"), is representative of the present business operations of Company, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

- (pp) Following the Share Exchange, the Distributing SAG and the Controlled SAG will continue the active conduct of their respective business, independently and with their own employees.
- (qq) The Share Exchange is being carried out to allow the management of Business Y and Business Z to focus on its own respective business. The Share Exchange is motivated, in whole or substantial part, by this corporate business purpose.
- (rr) The Share Exchange is not being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (ss) No indebtedness between Distributing (and its subsidiaries) and Controlled (and its subsidiaries) has been or will be cancelled in connection with the Share Exchange other than the settlement of open intercompany account balances attributable to the normal business operations of Distributing and its subsidiaries prior to the Share Exchange.
- (tt) No intercorporate debt will exist between Distributing (and its subsidiaries) and Controlled (and its subsidiaries) at the time of, or subsequent to, the Share Exchange, except for the Controlled Securities to be issued to Distributing and expected to be distributed to Distributing's creditors in the Debt Exchange and payables arising under the transitional agreements or otherwise in the ordinary course of business.
- (uu) No property will be transferred by Distributing to Controlled for which an investment credit allowed under § 47 will be claimed.
- (vv) Immediately before the Share Exchange, 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, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing's excess loss account, if any, with respect to its Controlled Stock will be included in income immediately before the Share Exchange to the extent required by applicable regulations (see § 1.1502-19).
- (ww) Payments made in connection with any continuing transactions between Distributing (and its subsidiaries) and Controlled (and its subsidiaries) following the Share Exchange will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (xx) Neither Distributing nor Controlled is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).

- (yy) For purposes of § 355(d), immediately after the Share Exchange, 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 the Share Exchange.
- (zz) For purposes of § 355(d), assuming that the Section 355(d) Assumptions set forth below apply, immediately after the Share Exchange, 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 (1) 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 the Share Exchange or (2) 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 the Share Exchange.
- (aaa) The Share Exchange is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50 percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (bbb) Neither Distributing nor Controlled will be a disqualified investment corporation within the meaning of § 355(g)(2).
- (ccc) The Controlled Securities issued to Distributing will qualify as securities within the meaning of § 361(a).
- (ddd) Distributing will transfer the Special Dividend received from Controlled to its creditors and/or its shareholders pursuant to the plan of reorganization within p months after the Share Exchange.

#### The Section 355(d) Assumptions

The taxpayers made the following assumptions for purposes of the foregoing § 355(d) representations:

- (eee) For purposes of § 355(d), in connection with the Cash Contributions, each of LP 1 and LP 2 is deemed to have acquired a portion of each share of its stock in the respective Corporation in an amount equal to the ratio that (i)

the amount of the applicable Cash Contribution bears to (ii) the aggregate fair market value of the stock of the applicable Corporation immediately after the Cash Contribution. This portion of the stock of each Corporation will be deemed, for purposes of § 355(d), to have been purchased by the applicable LP on Date F. The remainder of each share of the stock of each Corporation retained its original purchase date and other characteristics for purposes of § 355(d).

- (fff) For purposes of § 355(d), each share of Distributing Stock received by an LP in the Distributing Contribution has a split holding period (and therefore a split date of original purchase for purposes of § 355(d)), determined by reference to the holding period and date of original purchase of the various items of property contributed by the LP to Distributing in the Distributing Contribution. If a portion of a share of Distributing Stock was received by an LP in the Distributing Contribution in exchange for an item of contributed property that was acquired by purchase more than five years before the execution of the Share Exchange Agreement, then that portion of the share of Distributing Stock is not to be treated as "stock in the distributing corporation acquired by purchase during the five-year period" for purposes of § 1.355-6(b)(2).
- (ggg) For purposes of § 355(d) and in applying assumption (fff) above, the portion of a share of Distributing Stock received by an LP in the Distributing Contribution that is deemed to have been received for a particular item of contributed property is equal to the ratio that (i) the net fair market value of that item of contributed property bears to (ii) the net fair market value of all of the property contributed by the LP to Distributing in the Distributing Contribution. For purposes of determining the net fair market value of the items of property contributed by LP 1 and LP 2, the amount of any liabilities to which the Class C Units were subject at the time of the Distributing Contribution, as determined under the rules of Subchapter K, will be allocated among, and will be deemed to reduce the fair market value of, those items of contributed property in proportion to their relative fair market values at the time of the Distributing Contribution, determined without regard to such liabilities.
- (hhh) To the extent that a Shareholder sold shares of Distributing Stock in the Overallotment Sale having different original purchase dates or other characteristics that are relevant for purposes of § 355(d), the shares sold in the Overallotment Sale by such Shareholder will be determined in accordance with the rules of § 1.1012-1(c)(1).
- (iii) If (i) a Shareholder surrenders less than all of its shares of Distributing Stock in the Share Exchange and (ii) the Shareholder holds shares of Distributing

Stock having different original purchase dates or other characteristics that are relevant for purposes of § 355(d), then the shares of Distributing Stock surrendered by the Shareholder in the Share Exchange will be identified in accordance with the rules of § 1.1012-1(c)(2) and (3), or, if such identification is not made, will be determined in accordance with the rules of § 1.1012-1(c)(1).

- (jjj) During any period in which an LP simply holds Distributing Stock (or a predecessor asset) and does not sell, distribute, or transfer that Distributing Stock (or other asset), mere changes in the value of the Distributing Stock (or other asset) and in the other assets of the LP do not cause any purchase of the Distributing Stock (or other asset), even if, under the governing documents of the LP, those changes in value affect the moment-to-moment sharing percentages of the partners of the LP.

### **Rulings**

Based solely on the information submitted and the representations made, we rule as follows regarding the Proposed Transactions:

#### Internal Distribution 1

- (1) No gain or loss will be recognized by Sub 2 on the distribution of Company stock to Sub 1 in Internal Distribution 1 (§ 355(c)).
- (2) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Sub 1 on the receipt of Company stock in Internal Distribution 1 (§ 355(a)).
- (3) The aggregate basis of the Sub 2 and the Company stock held by Sub 1 after Internal Distribution 1 will be the same as the basis of the Sub 2 stock held by Sub 1 immediately prior to Internal Distribution 1, allocated in proportion to the fair market values of the Sub 2 and Company stock in accordance with § 1.358-2(a)(2) (§ 358(a), (b), and (c)).
- (4) The holding period of the Company stock received by Sub 1 will include the holding period of the Sub 2 stock with respect to which Internal Distribution 1 is made, provided that the Sub 2 stock is held as a capital asset on the date of Internal Distribution 1 (§ 1223(1)).
- (5) Earnings and profits will be allocated between Sub 2 and Company in accordance with § 312(h) and §§ 1.312-10(b) and 1.1502-33.

#### Internal Distribution 2

- (6) No gain or loss will be recognized by Sub 1 on its distribution of Company stock to Distributing in Internal Distribution 2 (§ 355(c)).
- (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 Company stock in Internal Distribution 2 (§ 355(a)).
- (8) The aggregate basis of the Sub 1 and Company stock held by Distributing after Internal Distribution 2 will be the same as the basis of the Sub 1 stock held by Distributing immediately before Internal Distribution 2, allocated in proportion to the fair market values of the Sub 1 and Company stock in accordance with § 1.358-2(a)(2) (§ 358(a), (b), (c)).
- (9) The holding period of the Company stock will include the holding period of the Sub 1 stock with respect to which Internal Distribution 2 is made, provided that the Sub 1 stock is held as a capital asset on the date of Internal Distribution 2 (§ 1223(1)).
- (10) Earnings and profits will be allocated between Sub 1 and Company in accordance with § 312(h) and §§ 1.312-10(b) and 1.1502-33.

#### The Contribution and the Share Exchange

- (11) The Contribution, together with the Share Exchange, will be a reorganization under § 368(a)(1)(D). Distributing and Controlled will each be a "party to a reorganization" under § 368(b).
- (12) Provided that Distributing distributes out all of the proceeds of the Special Dividend, as described in step (vi) above, no gain or loss will be recognized by Distributing as a result of the Contribution (§§ 361(a), 361(b) and 357(a)).
- (13) No gain or loss will be recognized by Controlled in the Contribution (§ 1032(a)).
- (14) Controlled's basis in each asset received from Distributing in the Contribution will equal the basis of that asset in the hands of Distributing immediately before its transfer (§ 362(b)).
- (15) Controlled's holding period in each asset received from Distributing in the Contribution will include the period during which Distributing held the asset (§ 1223(2)).
- (16) No gain or loss will be recognized by Distributing in the Share Exchange (§ 361(c)).



- (17) Provided that all of the Controlled Securities are transferred to Creditor in the Debt Exchange, as described in step (v) above, then under the intercompany transaction regulations, Distributing will not recognize any income, gain, loss, or deduction with respect to the Controlled Securities and the Debt Exchange other than any: (i) amount of income, gain, loss, or deduction that offsets Controlled's corresponding amount of income, gain, loss or deduction upon the deemed satisfaction of the Controlled Securities, (ii) deductions attributable to the fact that the Distributing Debt may be redeemed at a premium, (iii) income attributable to the fact that the Distributing Debt may be redeemed at a discount, (iv) interest expense accrued with respect to the Distributing Debt, and (v) income, gain, deductions or loss realized on the transfer of the Controlled Securities in the Debt Exchange attributable to appreciation or depreciation in the Controlled Securities after the time they are acquired and prior to their disposition by Distributing.
- (18) Gain (but not loss) will be recognized by the Shareholders upon their receipt of Controlled stock and cash (if any) from Distributing in the Share Exchange, as described in step (vi) above, in an amount not in excess of the cash (if any) received (§ 356(a)(1)). The cash (if any) will be treated as a distribution of property to which § 301 applies by reason of § 356(b). Any cash received by a shareholder of Distributing (other than the Shareholders), as described in step (vi) above, will also be treated as a distribution of property to which § 301 applies.
- (19) Each Shareholder's basis in the Controlled Stock received in the Share Exchange will be equal to the basis of the shares of Distributing Stock exchanged therefor, decreased by the amount of cash (if any) received by the Shareholder in the transaction and increased by the amount (if any) which was treated as a dividend (§§ 358(a)(1)(A) and (B)).
- (20) Each Shareholder's holding period in the Controlled Stock received in the Share Exchange will include the holding period of the Distributing Stock exchanged therefor, provided that the Distributing Stock is held as a capital asset on the date of the Share Exchange (§ 1223(1)).
- (21) Distributing and Controlled will allocate their earnings and profits (if any) in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33(e)(3).

#### Caveats

No opinion is expressed about the tax treatment of the Proposed Transactions under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether Internal Distribution 1, Internal Distribution 2, and the Share

Exchange satisfy the business purpose requirement of § 1.355-2(b); (ii) whether the Proposed Transactions are being used principally as a device for the distribution of earnings and profits of any of the distributing or controlled corporations (see § 355(a)(1)(B) and § 1.355-2(d)); and (iii) whether Internal Distribution 1, Internal Distribution 2, or the Share Exchange are acquisitions that are part of a plan (or series of related transactions) under § 355(e)(2)(A). Additionally, no opinion is expressed regarding the federal income tax consequences of any transactions under the Ancillary Agreements.

#### Procedural Statements

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

A copy of this ruling letter must be attached to any federal income tax return to which it is relevant. 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 ruling letter.

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

Sincerely,

*Richard K. Passales*

Richard K. Passales  
Senior Counsel, Branch 4  
Office of Associate Chief Counsel  
(Corporate)