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CC:CORP:4
PLR-143744-08
Date:

April 14, 2009

LEGEND

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Business A =

Business B =

MergeCo =

Corporation X =

Transaction 1 =

Transaction 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

a =

b =

c =

Credit Assistance =

Individual A =

Individual B =

Dear :

This letter responds to your October 8, 2008 request for rulings on certain federal income tax consequences of a partially completed and proposed transaction. The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on the 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. Moreover, this office has not reviewed any information and no determination has been made regarding whether the Distribution (defined below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) is used principally as a device for the distribution of earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code (the "Code") and § 1.355-2(d)), or (iii) is part of a plan (or series or related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

Summary of Facts

Distributing is a publicly traded company that is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Distributing is engaged in Business A and Business B. Immediately before the Proposed Transaction (defined below), Distributing wholly owned Sub1 and Sub 2. Sub 1 was initially formed as a limited liability company that was disregarded for federal income tax purposes. Prior to the Proposed Transaction, Sub 1 elected to be taxed as a corporation for federal income tax purposes. Sub 2 was engaged in Business A.

Sub 1 wholly owned Sub 3, Sub 4, Sub 5, Sub 6, and Sub 8. Sub 5 owned Sub 7. Prior and unrelated to the Proposed Transaction, certain subsidiaries in the Distributing group engaged in certain restructurings. Specifically, Sub 3 engaged in Transaction 1 and Transaction 2, and Sub 5 merged into Sub 6 and Sub 7 elected to become a disregarded entity for federal income tax purposes. Sub 6 is engaged in Business B.

The taxpayer has submitted financial information indicating that Business A and Business B each has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

In order to allow Distributing's management to focus solely on the performance and profitability of Business A, and for other business considerations, Distributing proposes to separate Business A from Business B.

Proposed Transaction

In order to accomplish its stated objectives, Distributing has proposed and partially completed the following series of steps (collectively, the "Proposed Transaction").

(i) On Date 1, Sub 1 caused Sub 3 to convert into a single member limited liability company, treated as a disregarded entity for federal income tax purposes (the "Conversion"). Simultaneous with the Conversion, an intercompany obligation (the "Intercompany Obligation") between Sub 3 and Distributing was partially satisfied and extinguished. Sub 3 announced that it was terminating its business operations

(ii) Sub 1 formed Sub 9 and, on Date 1, made a capital contribution of \$a. Prior to Step (vi), Sub 8 will transfer its Business B related assets to Sub 9, in exchange for an assumption of related liabilities.

(iii) On Date 2, Sub 1 caused Sub 6 to convert into a single member limited liability company treated as a disregarded entity for federal income tax purposes (the "Liquidation").

- (iv) Sub 6 will distribute an inter-company receivable from Distributing to Sub 1.
- (v) Sub 1 will sell its interest in Sub 4, Sub 6, and Sub 9 to Distributing in exchange for cash or a Distributing note for an amount equal to the fair market value of the transferred interests (the "Intragroup Sale").
- (vi) On Date 3, Distributing formed Controlled as a limited liability company which will elect to be treated as an association taxable as a corporation. Prior to Step (vii), Distributing will capitalize Controlled by contributing cash, all of the membership units in Sub 6, and shares of Sub 4 and Sub 9 (the "Contribution"). Distributing and Controlled will enter into a Tax Separation Agreement and a Credit Assistance Agreement at the time of the Contribution.
- (vii) Distributing will cause Controlled to convert its one outstanding membership unit to a number of LLC membership units equal to the number of Distributing shares outstanding on Date 4 (the "Recapitalization").
- (viii) Distributing will distribute the membership interests of Controlled to its common shareholders of record as of the close of business on Date 4 in a pro rata distribution (the "Distribution").
- (ix) Immediately following the Distribution, and in anticipation of a merger with MergeCo, Controlled will make a taxable distribution to its unit holders of record as of Date 4, an amount at least equal to its allocated earnings and profits ("E&P"), with the taxable distribution being composed of cash and Controlled membership interests. The Controlled unit holders will have the ability to elect to receive either cash or Controlled membership interests. The election period will run from Date 5 to Date 6.
- (x) Controlled will merge into MergeCo, with MergeCo surviving the merger (the "Merger"). Controlled unit holders will receive b percent (an amount in excess of 50%) of the total surviving corporation's outstanding shares as a result of the Merger. The combined entity will continue to operate as a REIT and be renamed Corporation X.

Representations

Distributing makes the following representations regarding the Conversion:

- (a) As of Date 1, Sub 3's balance sheet reflected total liabilities significantly in excess of the fair market value of its assets.
- (b) At the time of the Conversion, Sub 3 was insolvent and its stock was worthless, within the meaning of § 165(g)(1).

(c) On the date of the Conversion, Sub 1 directly owned more than 80 percent of the voting power and value of Sub 3, within the meaning of § 1504(a)(2).

(d) Taking into account the gross receipts that carried over to Sub 3, pursuant to § 381 as a result of Transaction 1 and Transaction 2, more than 90 percent of the aggregate of Sub 3's gross receipts for all taxable years has been from sources other than royalties, rents (except rents derived from rental of properties to employees of the corporation in the ordinary course of its operating business), dividends, interest (except interest received on deferred purchase price of operating assets sold), annuities, and gains from sales or exchanges of stocks and securities.

(e) Taking into account the tax effects of the Proposed Transaction, Sub 1's net positive adjustment, as defined in § 1.1502-36(c)(3), in the Sub 3 shares was zero.

Distributing makes the following representations regarding the Liquidation:

(f) On the date of the adoption of the plan of liquidation and at all times until the Liquidation was completed, Sub 1 was the owner of at least 80 percent of the single outstanding class of Sub 6 stock.

(g) No shares of Sub 6 stock were redeemed during the three years preceding the adoption of the plan of liquidation.

(h) All distributions from Sub 6 to Sub 1 pursuant to the Liquidation were made within a single taxable year of Sub 6.

(i) For federal income tax purposes, upon the Liquidation, Sub 6 was deemed to cease to be a going concern and its activities were deemed to be limited to winding up its affairs, paying its debts, and distributing its remaining assets to Sub 1.

(j) Sub 6 was deemed to retain no assets for federal income tax purposes following its Liquidation.

(k) Except for the transfers by Sub 5 and Sub 7, Sub 6 did not acquire assets in any nontaxable transaction at any time, except for acquisitions in the ordinary course of business, and acquisitions occurring more than three years prior to the adoption of the plan of liquidation.

(l) No assets of Sub 6 have been disposed of by either Sub 6 or Sub 1, except for dispositions in the ordinary course of business and pursuant to the Proposed Transaction, transfers within the controlled group, and dispositions occurring more than three years prior to the adoption of the plan of liquidation.

(m) Except for transfers pursuant to the Proposed Transaction, the Liquidation of Sub 6 will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation ("Recipient") of any of the businesses or assets of Sub 6, if persons holding, directly or indirectly, more than 20 percent in value of the Sub 6 stock also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient. For purposes of this representation, ownership will be determined by application of the constructive ownership rule of § 318(a) as modified by § 304(c)(3).

(n) Prior to the adoption of the plan of liquidation, no Sub 6 assets were distributed in kind, transferred or sold to Sub 1, except for (i) transactions occurring in the ordinary course of business, and (ii) transactions occurring more than three years before adoption of the plan of complete liquidation of Sub 6.

(o) Sub 6 will report all earned income represented by assets that will be deemed to be distributed to Sub 1, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

(p) The fair market value of Sub 6's assets exceeded its liabilities immediately prior to the adoption of the plan of liquidation.

(q) On the Liquidation date, other than obligations arising in the ordinary course of business, there was no intercorporate debt existing between Sub 1 and Sub 6, and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years before the date of adoption of the liquidation plan.

(r) Sub 1 is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.

(s) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the Liquidation of Sub 6 have been fully disclosed.

(t) The merger of Sub 5 into Sub 6 was a reorganization pursuant to § 368(a)(1)(D) and Sub 5's attributes carried over to Sub 6, pursuant to § 381.

(u) For federal income tax purposes, the conversion of Sub 7 to a disregarded entity was a reorganization pursuant to § 368(a)(1) and Sub 7's attributes carried over to Sub 6 pursuant to § 381.

Distributing makes the following representations regarding the Recapitalization:

(v) The fair market value of the Controlled membership units held by Distributing immediately following the Recapitalization will be equal to the fair market value of the Controlled membership units held by Distributing immediately before the Recapitalization.

(w) The Recapitalization is a single, isolated transaction and it is not part of a plan to periodically increase the proportionate interest of any shareholder in the assets or earnings and profits of Controlled.

(x) Controlled is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

(y) None of the outstanding Controlled membership interests is § 306 stock.

(z) Controlled and its exchanging member will each pay their own expenses, if any, incurred in connection with the exchange.

Distributing makes the following representations regarding the Contribution and the Distribution:

(aa) The indebtedness owed by Controlled to Distributing after the Distribution, if any, will not constitute stock or securities.

(bb) With the possible exception of the issuance of stock or shares pursuant to adjustments to Distributing's existing compensatory options, or deferred share arrangements, no part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of the corporation.

(cc) The five years of financial information submitted on behalf of Business B is representative of Business B's present operation, and, with regard to Business B, there have been no substantial operational changes since the date the last financial statements were submitted.

(dd) The five years of financial information submitted on behalf of Business A is representative of Business A's present operations, and, with regard to Business A, there have been no substantial operational changes since the date the last financial statements were submitted.

(ee) Following the Distribution, Distributing and Controlled, or members of their respective separate affiliated group (as defined in § 355(b)(3) ("DSAG" or "CSAG")), each will continue the active conduct of their respective business,

independently and with its separate employees or employees of the other members of its DSAG or CSAG, respectively.

(ff) Except for transfers pursuant to the Proposed Transaction, neither Business A nor Business B was acquired during the five year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.

(gg) The Distribution is being undertaken for corporate business purposes that include: (i) resolving concerns regarding allocation of scarce resources; (ii) allowing Distributing's management to focus solely on the performance and profitability of Business A; and (iii) allowing Controlled's management to focus solely on the performance and profitability of Business B. The Distribution is motivated, in whole or substantial part, by these corporate business purposes.

(hh) The Distribution will not be used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(ii) The total fair market value of the assets transferred to Controlled in the Contribution will exceed the sum of (i) the amount of any liabilities assumed (as determined under § 357(d)) by Controlled in the Contribution, (ii) the amount of any liabilities owed by Distributing to Controlled that are extinguished in connection with the Contribution, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing in connection with the Contribution. The fair market value of the assets of Controlled will exceed the amount of liabilities immediately after the Distribution.

(jj) The total adjusted bases and fair market value of the assets transferred to Controlled by Distributing in the Contribution will equal or exceed the sum of the liabilities assumed (as determined under § 357(d)) by Controlled.

(kk) The liabilities assumed (as determined under § 357(d)), by Controlled in the Contribution, if any, were incurred in the ordinary course of business and are associated with the assets being transferred.

(ll) Following the Distribution, it is anticipated that Distributing and Controlled will share a number of administrative services for a transitional period not to exceed 6 months. Payments made in connection with all continuing transactions after the Distribution, if any, between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length at terms consistent with past practices for intercompany charges.

(mm) Other than (i) trade account indebtedness created in the ordinary course of business through continuing transactions at terms comparable to those which could be obtained in an arm's length transaction at terms consistent with past practices for intercompany charges, (ii) any liabilities that may arise from the Tax Separation Agreement, (iii) any liabilities that may arise from the Credit Assistance, and (iv) payables created for all transitional services negotiated at arm's length at terms consistent with past practices for intercompany charges, no intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.

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

(oo) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying the aggregation rules of § 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 Distribution.

(pp) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold membership interests possessing 50 percent or more of the total combined voting power of all classes of Controlled membership interests entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled membership interests that was either (i) 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 Distribution, or (ii) attributable to distributions on any stock of Distributing 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 Distribution.

(qq) The Distribution 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).

(rr) Immediately before the Distribution, items of intercompany income, gain, loss, deduction, and credit, if any, 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, 1995-32 I.R.B. 6, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing's excess loss account

with respect to the membership units of Controlled or the stock any of its subsidiaries, if any, will be included in income immediately before the Distribution under § 1.1502-19.

(ss) Distributing, Controlled, and the shareholders of Distributing will each pay their own expenses, if any, incurred in connection with the Distribution.

(tt) Immediately following the Distribution, neither Distributing nor Controlled (i) will be a disqualified investment corporation, within the meaning of § 355(g)(2), and (ii) no shareholder will hold a 50 percent or greater interest in any disqualified investment corporation, as defined by § 355(g)(2), who has not held such an interest in such corporation prior to the Distribution.

(uu) Following the Distribution, Individual A and Individual B will each be a member of the Board of Directors of both Distributing and Controlled.

The following representations have been made regarding the Merger:

(vv) The fair market value of the MergeCo stock and cash in lieu of fractional shares, if any, received by each Controlled unit holder will be approximately equal to the fair market value of the Controlled units surrendered in the exchange.

(ww) At least 40 percent of the proprietary interest in Controlled will be exchanged for MergeCo common stock and continuity of shareholder interest will be preserved (within the meaning of § 1.368-1(e)).

(xx) MergeCo has no plan or intention to reacquire any of its stock issued in the Merger.

(yy) MergeCo has no plan or intention to sell or otherwise dispose of any of the assets of Controlled acquired in the Merger, except for dispositions made in the ordinary course of business or transfers described in § 368(a)(2)(C) or § 1.368-2(k).

(zz) The liabilities of Controlled assumed by MergeCo and the liabilities to which the transferred assets of Controlled were subject, were incurred by Controlled in the ordinary course of its business.

(aaa) Following the Merger, MergeCo will continue Business B, or use a significant portion of such historic business assets in an active trade or business.

(bbb) MergeCo, Controlled, and Controlled's unit holders will pay their respective expenses, if any, incurred in connection with the Merger.

(ccc) Except as described herein, there is no intercorporate indebtedness existing between Controlled and MergeCo that was issued, acquired, or will be settled at a discount.

(ddd) No two parties to the Merger are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(eee) Controlled is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

(fff) The fair market value of the assets of Controlled transferred to MergeCo will equal or exceed the sum of the liabilities assumed by MergeCo, plus the amount of liabilities, if any, to which the transferred assets are subject.

(ggg) The fair market value of MergeCo's assets will exceed the amount of the liabilities of MergeCo immediately after the transaction.

(hhh) The payment of cash in lieu of fractional shares, if any, of MergeCo stock will be solely for the purpose of avoiding the expense and inconvenience to MergeCo of issuing fractional shares and will not represent separately bargained-for consideration.

RULINGS

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

The Conversion:

- (1) The Conversion results in a taxable asset exchange, pursuant to § 1001. Gain or loss on the taxable asset exchange is taken into account immediately before the Conversion.
- (2) The amount of the Intercompany Obligation not satisfied will result in cancellation of indebtedness income to the debtor member and an ordinary bad debt deduction to the creditor member (§ 1.1502-13(g)).
- (3) Upon the Conversion, Sub 1 is entitled to a loss deduction for the worthless stock of Sub 3 (§ 165(g)(3) and § 1.1502-80(c)).
- (4) Taking into account the tax effects of the Proposed Transaction, the basis of the Sub 3 shares held by Sub 1 (i) will not be redetermined pursuant to § 1.1502-36(b), and (ii) will not be reduced pursuant to § 1.1502-36(c), and any remaining tax attributes of Sub 3 will be eliminated pursuant to § 1.1502-36(d)(7).

- (5) In determining the character of Sub 1's deduction for its worthless stock in Sub 3, for purposes of computing the "more than 90 percent gross receipts" test under § 165(g)(3)(B), Sub 3 will include in its gross receipts all dividends received from lower-tier subsidiary members of its consolidated group, including any gross receipts of all dividends attributable to Transaction 1 and Transaction 2, and such dividends will be treated as "gross receipts from passive sources" to the extent they are attributable to the respective distributing member's "gross receipts from passive sources." § 1.1502-13(a), (b), and (c). Pursuant to § 1.1502-13, only dividends that are attributable to "gross receipts from passive sources" as defined herein, are counted as dividends for purposes of computing the "more than 90 gross receipts" test under § 165(g)(3).
- (6) In determining the character of Sub 1's deduction for its worthless stock in Sub 3, for purposes of computing the "more than 90 percent gross receipts test" under § 165(g)(3)(B), Sub 3 will take into account the historic gross receipts resulting from Transaction 1 and Transaction 2 (§ 381).
- (7) As provided by § 1.1502-80(h), § 362(e)(2) will not apply to the deemed transfer of the stock Sub 3 to Sub 1 on the election to treat Sub 1 as a corporation for federal income tax purposes. Further, any § 362(e)(2)(C) election made with respect to the transfer will have no effect.
- (8) The Conversion resulted in Sub 3 ceasing to be a member of the Distributing group under § 1.1502-1(b) and no other member of the group is a successor of Sub 3, as defined in § 1.1502-1(f)(4).

The Liquidation:

- (9) No gain or loss was recognized by Sub 1 on the Liquidation (§ 332(a)).
- (10) No gain or loss was recognized by Sub 6 on the Liquidation (§ 337(a)).
- (11) The basis of each asset received by Sub 1 in the Liquidation will equal the basis of that asset in the hands of Sub 6 immediately before the Liquidation (§ 334(b)).
- (12) Sub 1's holding period in each asset received from Sub 6 in the Liquidation will include the period during which that asset was held by Sub 6 (§ 1223(a)).

- (13) Sub 1 will succeed to and take into account the items of Sub 6 described in § 381(c) subject to the conditions and limitations specified in §§381, 382, 383, and 384 and the regulations thereunder (§ 381(a) and §1.381(a)-1)).
- (14) Sub 6 will succeed to and take into account the earnings and profits, or the deficit in the earnings and profits of Sub 6 as of the date of the Liquidation (§ 381(c)(2)(A)).

The Recapitalization:

- (15) The Recapitalization will qualify as a reorganization within the meaning of § 368(a)(1)(E) and Controlled will be “a party to a reorganization” within the meaning of § 368(b).
- (16) Distributing will not recognize any gain or loss on the Recapitalization (§ 354(a)).
- (17) Controlled will not recognize any gain or loss on the Recapitalization (§ 1032(a)).
- (18) Distributing’s basis in the Controlled membership units received in the Recapitalization will be equal to the basis of the membership unit in the hands of Distributing prior to the Recapitalization (§ 358(a)).
- (19) Distributing’s holding period of the Controlled membership units received in the Recapitalization will include the period during which Distributing held the membership units prior to the Recapitalization (§1223(a)).

The Intragroup Sale:

- (20) The Intragroup Sale will be treated as a taxable sale transaction (§ 1001).
- (21) Any gain or loss deferred under § 1.1502-13 on the Intragroup Sale will be taken into account upon the Distribution (§ 1.1502-13).

The Contribution and Distribution:

- (22) The Contribution, followed by the Distribution will be a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled will each be “a party to a reorganization” within the meaning of § 368(b).

- (23) The basis of each asset received by Controlled will equal the basis of that asset in the hands of Distributing immediately before the Contribution (§ 362(b)).
- (24) No gain or loss will be recognized by Distributing on the Contribution (§ 361(a)).
- (25) No gain or loss will be recognized by Controlled on the Contribution (§ 1032(a)).
- (26) The holding period of each asset received by Controlled in the Contribution will include the period during which Distributing held such asset (§ 1223(2)).
- (27) No gain or loss will be recognized by Distributing upon the Distribution (§ 361(c)).
- (28) No gain or loss will be recognized by (and no amount will be included in the income of) the Distributing shareholders upon their receipt of the Controlled membership units pursuant to the Distribution (§ 355(a)).
- (29) The aggregate basis of the Distributing common shares and the Controlled membership units in the hands of the Distributing shareholders, including a fractional share interest, if any, will be the same as the basis in the Distributing common shares held by the shareholders immediately prior to the Distribution, allocated in proportion to the fair market values of the Distributing common shares and the Controlled membership units (§ 1.358-2(a)(2)).
- (30) The holding period of the Controlled membership units received by the Distributing shareholders, including a fractional membership unit interest, if any, will, in each instance, include the holding period of the Distributing common shares with respect to which the Distribution of the Controlled membership units is made, provided that the Distributing common shares are held as a capital asset on the date of the Distribution (§ 1223(1)).
- (31) The payment of cash in lieu of any fractional membership units of Controlled, if any, will be treated for federal income tax purposes as if the fractional membership units were distributed as part of the Distribution and then sold by the Distributing shareholders. The cash payments will be treated as having been received in exchange for the fractional membership units of Controlled deemed sold. Any gain or loss will be treated as capital gain or loss, provided that such fractional Controlled

membership units are held as capital assets on the date of the Distribution.

- (32) Earnings and profits will be allocated between Distributing and Controlled in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33(e)(3).

The Merger:

- (33) Provided that the Merger qualifies as a statutory merger under applicable law, the merger of Controlled into MergeCo will qualify as a reorganization within the meaning of § 368(a)(1)(A). Controlled and MergeCo will each be "a party to a reorganization" under § 368(b).
- (34) The Controlled unit holders will not recognize any gain or loss on the receipt of MergeCo shares in the Merger (§ 354(a)).
- (35) The Controlled unit holders' basis in the MergeCo shares (including fractional units thereof) will be equal to the basis of the Controlled membership units (or allocable portions thereof) that are exchanged in the Merger (§ 358(a)).
- (36) A Controlled unit holder who receives cash in lieu of a fractional share will recognize gain or loss measured by the difference between the basis allocated to the fractional share transferred and the amount of cash received (§ 1001). Any gain or loss will be treated as capital gain or loss, provided such fractional share will be held as a capital asset on the date of the Merger (§§ 1221 and 1222).
- (37) Controlled will not recognize any gain or loss as a result of the Merger (§ 361(a)).
- (38) MergeCo's basis in each asset received in the Merger will equal the basis of the asset in the hands of Controlled prior to the Merger (§ 362(b)).
- (39) MergeCo will not recognize gain or loss on the receipt of Controlled assets in exchange for the MergeCo stock (§ 1032(a)).
- (40) MergeCo's holding period in each asset received in the Merger will include the period during which Controlled held that asset (§ 1223).
- (41) As a result of the Merger, Controlled 's tax year will end (§ 381(b)(1)).
- (42) Pursuant to § 381(a) and § 1.381(a)-1, MergeCo will succeed to and take into account those attributes of Controlled described in § 381(c), subject

to the conditions and limitations specified in §§ 381, 382, 383, and 384 and the regulations thereunder (§ 381).

- (43) To the extent that Controlled has any net unrealized built-in gain in its assets, as defined in § 1374, at the time of the Merger, MergeCo will be subject to the provisions of § 1374 with respect to any net built-in gains (§ 1.337(d)-7).

Caveats

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or 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. In particular, no opinion is expressed regarding:

- (i) Whether the Distribution described above satisfies the business purpose requirement of § 1.355-2(b);
- (ii) Whether the Distribution described above is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see §§ 355(a)(1)(B) and 1.355-2(d));
- (iii) Whether the Distribution described above and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii);
- (iv) The federal income tax consequences of step (ii) of the Proposed Transaction; and
- (v) The federal income tax consequences of the taxable distribution described in step (ix) of the Proposed Transaction.

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 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 the letter ruling.

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

Sincerely,

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