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PLR-112185-12

Date:

August 03, 2012

Legend

Distributing 2 =

Distributing 1 =

Controlled =

Sponsors =

Trusts =

Sub 1 =

Sub 2 =

Sub 3 =

DRE 1 =

DRE 2 =

DRE 3 =

DRE 4 =

DRE 5 =

Pship 1 =

FSub 1 =

FSub 2 =

FSub 3 =

FSub 4 =

FSub 5 =

PLR-112185-12

3

FSub 6 =

FSub 7 =

FSub 8 =

FSub 9 =

FSub 10 =

FSub 11 =

FSub 12 =

FSub 13 =

FSub 14 =

FSub 15 =

FSub 16 =

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4

FDRE 1 =

FDRE 2 =

FDRE 3 =

FDRE 4 =

FDRE 5 =

FDRE 6 =

FDRE 7 =

FDRE 8 =

FDRE 9 =

FDRE 10 =

FDRE 11 =

FPship 1 =

Business A =

Business B =

State A =

State B =

State C =

Country A =

Country B =

Country C =

Country D =

Country E =

Country F =

Country G =

Country H =

Country I =

Country J =

Country K =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Brand Name A =

Brand Name B =

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Dear :

This letter responds to your representative's letter dated March 19, 2012 in which you requested rulings regarding certain Federal income tax consequences of a series of proposed transactions (the "Proposed Transactions"). The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon 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 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, whether either of the distributions described 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 the earnings and profits of a distributing corporation or a controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code, as amended (the “Code”) and § 1.355-2(d)), or (iii) is 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 a distributing corporation or a controlled corporation (see § 355(e) and § 1.355-7).

Summary of Facts

Distributing 2, a State A corporation, is the common parent of an affiliated group of domestic corporations that files a consolidated U.S. Federal income tax return (the “Distributing 2 Group”). The one class of Distributing 2 stock is owned a-percent by Pship 1, a partnership for U.S. Federal tax purposes, and b-percent by Trusts and members of Distributing 1 management. Pship 1, which is controlled by the Sponsors, acquired its shares of Distributing 2 stock from the public on Date 1 and Date 2 in a taxable stock purchase. Distributing 2 is a holding company and has no assets other than all of the outstanding Distributing 1 stock.

Prior to the Proposed Transactions, Distributing 1, a State B corporation, owned all the stock of Sub 1, a State B corporation; all of the interests in DRE 1, a State B limited liability company disregarded as separate from Distributing 1 for Federal tax purposes under Treas. Reg. § 301.7701-3 (a “disregarded entity”); all of the interests in DRE 2, a State C disregarded entity; and a c-percent interest in Sub 2, a State A corporation. The remaining interests in Sub 2 were owned within the Distributing 2 Group, including d-percent by DRE 1. Distributing 1 also owned indirectly all of the interests in DRE 3, a State B disregarded entity and sole owner of Sub 3, a State A corporation.

Sub 2 wholly owned FSub 1, a Country A corporation. FSub 1 wholly owned FSub 2, a Country A corporation, and FDRE 1, a Country A disregarded entity.

FSub 2 wholly owned the following disregarded entities: FDRE 2, FDRE 3, FDRE 4, FDRE 5, and various other disregarded entities.

FDRE 2 wholly owned FSub 3, a Country B corporation; FSub 4, a Country C corporation; FSub 5, a Country D corporation; FSub 6, a Country E corporation; FSub 7, a Country F corporation; and FSub 8, a Country G corporation.

FSub 6 wholly owned FSub 9, a Country E corporation and sole owner of FSub 10, a Country H corporation. FSub 8 wholly owned FSub 11, a Country G corporation.

FDRE 3 and FDRE 4 together wholly owned FPship 1, a Country H partnership treated as a corporation for U.S. Federal tax purposes.

FDRE 1 wholly owned FSub 12, a Country A corporation. FSub 12 wholly owned FSub 13, a Country I corporation. FSub 13 has a note receivable from FSub 2 for €e (the “FSub 13 Receivable”).

DRE 1 wholly owned the following disregarded entities: DRE 4, FDRE 6, FDRE 7, FDRE 8, FDRE 9, FDRE 10, and FDRE 11. DRE 1 also owned f-percent of FSub 14, a Country J corporation. The remaining g-percent was owned by DRE 4. FDRE 11 wholly owned FSub 15, a Country K corporation. DRE 4 owned an h-percent interest in DRE 5, a State C limited liability company, and DRE 2 owned the remaining i-percent interest.

Distributing 2 and the members of its separate affiliated group (or “SAG”) as defined in § 355(b)(3)(B) (the “Distributing 2 SAG”) are engaged in Business A and Business B. The Distributing 2 SAG conducts Business A through Distributing 1, Sub 1, Sub 3, DRE 3, FSub 2, FPship 1, and other entities owned directly or indirectly by these corporations and disregarded entities. Distributing 1 and the members of its SAG (the “Distributing 1 SAG”) conduct Business B through DRE 1, DRE 4, and FDRE 2. FDRE 2 owns the following entities that conduct Business B outside the United States: FSub 3, FSub 4, FSub 5, FSub 6, FSub 7, FSub 9, FSub 10, and FSub 11.

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

Business A has operated under Brand Name A. Business B has traditionally operated using Brand Name A in combination with Brand Name B. Following the Proposed Transactions, which will have the effect of separating Business B from Business A, Business B plans to use Brand Name B for certain purposes but to continue using Brand Name A in combination with Brand Name B for various commercial applications. Accordingly, Distributing 1 intends to grant the Controlled SAG a non-exclusive, worldwide, fully paid-up license to use Brand Name A in combination with Brand Name B in connection with Business B (the “Brand Name License”).

The Proposed Transactions

For what are represented to be valid business purposes, Distributing proposes the following steps which been partially consummated:

- (i) On Date 3, DRE 1 transferred its entire d-percent interest in Sub 2 to Distributing 1.
- (ii) On Date 4, FDRE 2 formed FSub 16, a Country A holding company with an initial capital contribution of €j and elected to treat FSub 16 as a disregarded entity.
- (iii) On Date 5, the following steps occurred in the order indicated:
 - (a) FDRE 2 sold FSub 16 to DRE 1 for €j.
 - (b) Distributing 1 contributed \$k to the capital of DRE 1 in the form of two Distributing 1 notes, one for \$l (“Note 1”) and one for \$m (“Note 2”). DRE 1 then contributed the two notes to FSub 16.
 - (c) FSub 8 sold FSub 11 to FSub 16 in exchange for Note 1.
 - (d) FSub 3 and FSub 4 elected to be treated as disregarded entities.
 - (e) FDRE 2 sold FSub 3, FSub 4, FSub 5, FSub 6 and subsidiaries, and FSub 7 to FSub 16 in exchange for Note 2.
 - (f) DRE 1 contributed FDRE 6, FDRE 8, FDRE 9, and FDRE 10 (the “Business B Foreign DREs”) to FSub 16. The following steps were taken to transfer Note 2 to FDRE 1, Distributing 1’s principal foreign holding company: (i) FDRE 2 distributed Note 2 to FSub 2; (ii) FSub 2 transferred Note 2 to FSub 13 in partial satisfaction of the FSub 13 Receivable; (iii) FSub 13 distributed Note 2 to FSub 12; and (iv) FSub 12 distributed Note 2 to FDRE 1.
- (iv) On Date 6, DRE 4 transferred its interest in DRE 5 to DRE 2.
- (v) FSub 2 will sell certain assets of FDRE 5 to FDRE 11 in exchange for a note in the amount of \$n-o (“Note 3”).
- (vi) DRE 1 will contribute FDRE 11 to FSub 16.
- (vii) FSub 16 will elect to be treated as a regarded corporation for U.S. Federal tax purposes.
- (viii) The Business B Foreign DREs will elect to be treated as regarded corporations for U.S. Federal tax purposes (together steps (i) through (viii) comprise the “Pre-Tailoring Steps”).
- (ix) Distributing 1 will form Controlled.

- (x) DRE 1 will borrow \$p from an unrelated third party (the “New Borrowing”) and distribute the proceeds to Distributing 1. Distributing 1 will use the proceeds to pay down existing Distributing 1 debt or for other corporate purposes.
- (xi) Distributing 1 will contribute DRE 1 and the Brand Name License to Controlled in exchange for all of the Controlled stock and, as a result of the contribution, the assumption by Controlled of liabilities related to Business B (including the New Borrowing) (the “Contribution”).
- (xii) Distributing 1 will distribute the Controlled stock to Distributing 2 (the “Internal Distribution”).
- (xiii) Distributing 2 will distribute the Controlled stock to the Distributing 2 shareholders, pro rata (the “External Distribution”).

In connection with the Proposed Transactions, the Distributing 2 Group and Controlled will enter into a variety of agreements (collectively, the “Continuing Agreements”) involving transitional services (the “Transition Services Agreements”), contract manufacturing services (the “Manufacturing Agreements,” and together with the Transition Services Agreements, the “Transitional Agreements”), tax matters (the “Tax Matters Agreement”), and other matters.

Representations

The Contribution and Internal Distribution

Distributing 2 makes the following representations for the Contribution and Internal Distribution:

- (a) Any indebtedness owed by Controlled (or any entity controlled directly or indirectly by Controlled) to Distributing 1 (or any entity controlled directly or indirectly by Distributing 1) after the Internal Distribution will not constitute stock or securities.
- (b) No part of the consideration distributed by Distributing 1 in the Internal Distribution will be received by Distributing 2 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.
- (c) Distributing 1 and Controlled each will treat all members of its SAG (as defined in section 355(b)(3)(B)) as one corporation in determining whether the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.

- (d) The five years of financial information submitted for Business A conducted by the Distributing 1 SAG and for Business B to be conducted by the Controlled SAG following the Contribution is representative of the present operations of each business, and there have been no substantial operational changes in either business since the date of the last financial statements submitted.
- (e) Neither Business A conducted by the Distributing 1 SAG nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Internal Distribution, the Distributing 1 SAG will have been the principal owner of the goodwill and significant assets of Business A, and the Distributing 1 SAG will continue to be the principal owner following the Internal Distribution.
- (f) Neither Business B conducted by the Controlled SAG (following the Contribution) nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Internal Distribution, Distributing 1 and its subsidiaries (all members of the Distributing 1 SAG) will have been the principal owners of the goodwill and significant assets of Business B. Following the Internal Distribution, Controlled and its subsidiaries (all members of the Controlled SAG following the Contribution) will be the principal owners.
- (g) Apart from transitional and administrative support services that may be provided under the Transition Services Agreements and contract manufacturing services that may be provided under the Manufacturing Agreements, the Distributing 1 SAG will continue the active conduct of Business A, independently and with its separate employees, following the Internal Distribution.
- (h) Apart from transitional and administrative support services that may be provided under the Transition Services Agreements and contract manufacturing services that may be provided under the Manufacturing Agreements, the Controlled SAG will continue the active conduct of Business B, independently and with its separate employees, following the Internal Distribution.

- (i) The Internal Distribution will be carried out to facilitate the External Distribution. The Internal Distribution is motivated in whole or substantial part by this corporate business purpose.
- (j) The Internal Distribution will not be used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled or both.
- (k) For purposes of section 355(d), immediately after the Internal Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 1 stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Internal Distribution.
- (l) For purposes of section 355(d), immediately after the Internal Distribution, no person (determined after applying section 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 (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Internal Distribution or (ii) attributable to distributions on Distributing 1 stock or securities that were acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Internal Distribution.
- (m) The total adjusted basis of the assets transferred to Controlled in the Contribution will equal or exceed the sum of (i) the total liabilities assumed (as determined under section 357(d)) by Controlled and (ii) the total amount of any money and the fair market value of any other property (within the meaning of section 361(b)) received by Distributing 1 from Controlled and transferred to Distributing 1's creditors in connection with the reorganization.
- (n) Any liabilities assumed (as determined under section 357(d)) by Controlled in the Contribution will have been incurred in the ordinary course of business and will be associated with the assets transferred.
- (o) 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 section 357(d)) by Controlled in connection with the

Contribution, (ii) the amount of any liabilities owed to Controlled by Distributing 1 that are discharged or 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 section 361(a) without the recognition of gain) received by Distributing 1 in connection with the Contribution. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.

- (p) The aggregate fair market value of the assets Distributing 1 transfers to Controlled in the Contribution will equal or exceed the aggregate adjusted basis of those assets.
- (q) Distributing 1 will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the Contribution and Internal Distribution.
- (r) Apart from debt arising in connection with the Continuing Agreements, and intercompany loans or other obligations that have arisen, or will arise, in the ordinary course of business, no intercorporate debt will exist between Controlled (or any entity controlled directly or indirectly by Controlled) and Distributing 1 (or any entity controlled directly or indirectly by Distributing 1) at the time of, or after, the Internal Distribution.
- (s) Immediately before the Internal Distribution, 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 -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 in T.D. 8597). Further, any excess loss account that Distributing 1 has in the Controlled stock or the stock of any direct or indirect subsidiary of Controlled will be included in income immediately before the Internal Distribution to the extent required by regulations (see § 1.1502-19). At the time of the Internal Distribution, Distributing 1 will not have an excess loss account in the stock of Controlled or the stock of any direct or indirect subsidiary of Controlled.
- (t) Apart from payments for certain services that may be rendered under the Transitional Agreements, payments made in connection with all continuing transactions between Controlled (or any entity controlled directly or indirectly by Controlled) and Distributing 1 (or any entity controlled directly or indirectly by Distributing 1) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (u) No two parties to the Internal Distribution are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).

- (v) The Internal Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 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 section 355(d)(4)) in Distributing 1 or Controlled (including any predecessor or successor of either corporation).
- (w) Immediately after the transaction (as defined in section 355(g)(4)), (i) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3)) in Distributing 1 or Controlled, (ii) if any person holds a 50-percent or greater interest (within the meaning of section 355(g)(3)) in any disqualified investment corporation (within the meaning of section 355(g)(2)), such person will have held such interest in such corporation (either directly or through attribution) immediately before the Internal Distribution, or (iii) neither Distributing 1 nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)).

The External Distribution

Distributing 2 makes the following representations for the External Distribution:

- (x) Any indebtedness owed by Controlled (or any entity controlled directly or indirectly by Controlled) to Distributing 2 (or any entity controlled directly or indirectly by Distributing 2) after the External Distribution will not constitute stock or securities.
- (y) No part of the consideration distributed by Distributing 2 in the External Distribution will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.
- (z) Distributing 2 and Controlled each will treat all members of its SAG (as defined in section 355(b)(3)(B)) as one corporation in determining whether the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.
- (aa) The five years of financial information submitted for Business A conducted by the Distributing 2 SAG (through Distributing 1) and for Business B conducted by the Controlled SAG is representative of the present operations of each business, and there have been no substantial operational changes in either business since the date of the last financial statements submitted.
- (bb) Neither Business A conducted by the Distributing 2 SAG (through Distributing 1) nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the

External Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the External Distribution, the Distributing 2 SAG will have been the principal owner of the goodwill and significant assets of Business A and will continue to be the principal owner following the External Distribution.

- (cc) Neither Business B conducted by the Controlled SAG nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the External Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Internal Distribution, Distributing 1 and its subsidiaries (all members of the Distributing 1 SAG and the Distributing 2 SAG) will have been the principal owners of the goodwill and significant assets of Business B. Following the External Distribution, Controlled and its subsidiaries (all members of the Controlled SAG) will be the principal owners.
- (dd) Apart from transitional and administrative support services that may be provided under the Transition Services Agreements and contract manufacturing services that may be provided under the Manufacturing Agreements, the Distributing 2 SAG (through Distributing 1 and its subsidiaries, all members of the Distributing 2 SAG) will continue the active conduct of Business A, independently and with its separate employees, following the External Distribution.
- (ee) Apart from transitional and administrative support services that may be provided under the Transition Services Agreements and contract manufacturing services that may be provided under the Manufacturing Agreements, the Controlled SAG will continue the active conduct of Business B, independently and with its separate employees, following the External Distribution.
- (ff) The External Distribution will be carried out (i) to establish a distinct Controlled stock that may be used as a more attractive acquisition “currency” in future transactions by Business B, enabling Controlled to execute its acquisition strategy more effectively; (ii) to provide Controlled with a key employee equity compensation program that is linked solely to the performance of Business B, allowing Controlled to more effectively attract and retain talent in Business B; and (iii) to provide Controlled with an independent financial structure, enhancing its ability to raise the capital needed to take advantage of significant growth opportunities in Business B. The External Distribution is motivated in whole or substantial part by the corporate business purposes.

- (gg) The External Distribution will not be used principally as a device for the distribution of the earnings and profits of Distributing 2 or Controlled or both.
- (hh) For purposes of section 355(d), immediately after the External Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 2 stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the External Distribution.
- (ii) For purposes of section 355(d), immediately after the External Distribution, no person (determined after applying section 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 (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the External Distribution or (ii) attributable to distributions on Distributing 2 stock or securities that were acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the External Distribution.
- (jj) Distributing 2 will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the External Distribution.
- (kk) Apart from debt arising in connection with the Continuing Agreements and intercompany loans or other obligations that have arisen, or will arise, in the ordinary course of business, no intercorporate debt will exist between Controlled (or any entity controlled directly or indirectly by Controlled) and Distributing 2 (or any entity controlled directly or indirectly by Distributing 2) at the time of, or after, the External Distribution.
- (ll) Immediately before the External Distribution, 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 -14 as in effect before the publication of T.D. 8597, *supra*, and as currently in effect; § 1.1502-13 as published in T.D. 8597). Further, any excess loss account that Distributing 2 has in the Controlled stock or the stock of any direct or indirect subsidiary of Controlled will be included in income immediately before the External Distribution to the extent required by

regulations (see §1.1502-19). At the time of the External Distribution, Distributing 2 will not have an excess loss account in the stock of Controlled or the stock of any direct or indirect subsidiary of Controlled.

- (mm) Apart from payments for certain services that may be rendered under the Transitional Agreements, payments made in connection with all continuing transactions between Controlled (or any entity controlled directly or indirectly by Controlled) and Distributing 2 (or any entity controlled directly or indirectly by Distributing 2) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (nn) No two parties to the External Distribution are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (oo) The External Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 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 section 355(d)(4)) in Distributing 2 or Controlled (including any predecessor or successor of either corporation).
- (pp) Immediately after the transaction (as defined in section 355(g)(4)), no person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3)) in Distributing 2 or Controlled.
- (qq) No foreign shareholder will own any Distributing 2 stock before or after the External Distribution.
- (rr) Neither Distributing 2 nor Controlled will have been a U.S. real property holding corporation (as defined in section 897(c)(2)) at any time during the five-year period preceding the External Distribution, and neither will be a U.S. real property holding corporation immediately after the External Distribution.

Rulings

The Contribution and Internal Distribution

- (1) The Contribution, followed by the Internal Distribution, will be a reorganization under section 368(a)(1)(D). Distributing 1 and Controlled each will be "a party to a reorganization" within the meaning of section 368(b).
- (2) No gain or loss will be recognized by Distributing 1 on the Contribution (§§ 361(a) and 357(a)).

- (3) No gain or loss will be recognized by Controlled on the Contribution (§ 1032(a)).
- (4) The basis of each asset received by Controlled in the Contribution will equal the basis of that asset in the hands of Distributing 1 immediately before the Contribution (§ 362(b)).
- (5) The holding period of each asset received by Controlled in the Contribution will include the period during which Distributing 1 held that asset (§ 1223(2)).
- (6) No gain or loss will be recognized by Distributing 1 on the Internal Distribution (§ 361(c)(1)).
- (7) Provided that Controlled is a member of the Distributing 1 SAG within the meaning of § 1.355-2(g)(3) after the issuance of stock by Controlled to Distributing 1 in exchange for the Brand Name License, (1) no gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing 2 upon its receipt of Controlled stock (§ 355(a)(1))), and (2) section 355(a)(3)(B) will not treat as “other property” any part of the Controlled stock issued by Controlled in exchange for the Brand Name License.
- (8) The basis of the Distributing 1 Stock and Controlled stock in the hands of Distributing 2 immediately after the Internal Distribution will equal the basis of the Distributing 1 stock held by Distributing 2 immediately before the Internal Distribution, allocated in proportion to the fair market value of Distributing 1 and Controlled in accordance with § 358(a)(1) and 1.358-2(a) (§ 358(b) and (c)).
- (9) The holding period of the Controlled stock received by Distributing 2 in the Internal Distribution will include the holding period of the Distributing 1 stock on which the Internal Distribution is made, provided the Distributing 1 stock is held by Distributing 2 as a capital asset on the date of the Internal Distribution (§ 1223(1)).
- (10) Earnings and profits, if any, will be allocated between Distributing 1 and Controlled in accordance with section 312(h) and Treas. Reg. §§1.312-10(a) and 1.1502-33(f)(2).
- (11) Any payments between Distributing 1 and Controlled that are made following the Internal Distribution pursuant to the Tax Matters Agreement regarding obligations that (i) have arisen or will arise for a taxable period ending on or before the Internal Distribution or for a taxable period beginning before but ending after the Internal Distribution and (ii) will not

have become fixed and ascertainable until after the Internal Distribution, will be treated as occurring immediately before the Internal Distribution (*cf. Arrowsmith v. Commissioner*, 344 U.S. 6, 73 S. Ct. 71, 97 L. Ed. 6, 1952-2 C.B. 136, 1952-2 C.B. 136 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.)

The External Distribution

- (12) No gain or loss will be recognized by Distributing 2 on the External Distribution (§ 355(c)).
- (13) No gain or loss will be recognized by (and no amount will be included in the income of) any shareholder of Distributing 2 on the External Distribution (§ 355(a)(1)).
- (14) Immediately following the External Distribution, the basis that each Distributing 2 shareholder had in a share of Distributing 2 stock before the External Distribution will be allocated between the share of Distributing 2 stock with respect to which the External Distribution is made and the share of Controlled stock received with respect to the share of Distributing 2 stock in proportion to the fair market value of each in accordance with § 358(a)(1) and 1.358-2(a) (§ 358(b), and (c)). If a Distributing 2 shareholder that purchased or acquired shares of Distributing 2 stock on different dates or at different prices is not able to identify which particular share of Controlled stock is received with respect to a particular share of Distributing 2 stock, the shareholder may designate which share of Controlled stock is received with respect to a particular share of Distributing 2 stock, provided the terms of the designation are consistent with the terms of the External Distribution.
- (15) The holding period of the Controlled stock received by each shareholder of Distributing 2 in the External Distribution will include the holding period of the Distributing 2 stock on which the External Distribution is made, provided the Distributing 2 stock is held by the shareholder as a capital asset on the date of the External Distribution (§ 1223(1)).
- (16) Earnings and profits, if any, will be allocated between Distributing 2 and Controlled in accordance with § 312(h) and §§1.312-10(b) and 1.1502-33(e)(3).
- (17) Following the External Distribution, Controlled will not be a successor of Distributing 2 for purposes of § 1504(a)(3). Therefore, Controlled and its direct and indirect subsidiaries that are “includible corporations” under § 1504(b) and satisfy the ownership requirements of § 1504(a)(2) will be members of an affiliated group of corporations entitled to file a consolidated U.S. Federal income tax return with Controlled as the common parent.

- (18) Any payments between Distributing 2 and Controlled that are made following the External Distribution pursuant to the Tax Matters Agreement regarding obligations that (i) have arisen or will arise for a taxable period ending on or before the External Distribution or for a taxable period beginning before but ending after the External Distribution and (ii) will not have become fixed and ascertainable until after the External Distribution, will be treated as occurring immediately before the External Distribution (*cf. Arrowsmith v. Commissioner, supra*; Rev. Rul. 83-73, *supra*).

Caveats

No opinion is expressed about the Federal income tax treatment of the Proposed Transactions under other provisions of the Code or regulations or the Federal income 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 either Distribution satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b);
- (ii) Whether either Distribution is used principally as a device for the distribution of the earnings and profits of Distributing 2, Distributing 1, or Controlled or some combination of these corporations;
- (iii) Whether either Distribution and an acquisition or acquisitions are part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii); and
- (iv) The Federal income tax treatment of payments for certain services that may be rendered at other than fair market value under the Transitional Agreements.
- (v) The Federal income tax consequences of the Pre-Tailoring Steps.

Procedural Matters

This ruling 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 the Federal income tax return of each party involved in the Proposed Transactions for the taxable year in which the Proposed Transactions are completed. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their returns 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 representatives.

Sincerely,

Mark J. Weiss
Reviewing Attorney (Branch 6)
Office of Associate Chief Counsel
(Corporate)

cc: