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Legend

Parent =

Sub1 =

Sub2 =

Sub3 =

Sub4 =

Sub5 =

FSub1 =

FSub2 =

FSub3 =

FSub4 =

FSub5 =

DRE =

Business A =

Business B =

a =

b =

c =

d =

e =

f =

g =

h =

Date 1 =

Date 2 =

Country A =

Country A Law =

Region B Law =

Sub5 Equity =
Awards

Parent Equity =
Awards

Continuing =
Arrangements

Dear _____ :

This letter responds to your authorized representatives' letter dated May 24, 2023, as supplemented by subsequent information and documentation, requesting rulings on certain federal tax consequences of a series of transactions (the "Proposed Transaction," as defined below). The material information submitted in that letter and subsequent correspondence is summarized below.

This letter is issued pursuant to Rev. Proc. 2017-52, 2017-41 I.R.B. 283, as amplified and modified by Rev. Proc. 2018-53, 2018-43 I.R.B. 667, regarding one or more "Covered Transactions" under sections 355 and 368 of the Internal Revenue Code (the "Code"); section 6.03(2) of Rev. Proc. 2023-1, 2023-1 I.R.B. 1, regarding one or more significant issues under section 368 of the Code; and Rev. Proc. 2022-10, 2022-6 I.R.B. 473. This Office expresses no opinion as to any issue not specifically addressed by the rulings 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.

This Office has made no determination regarding whether any of the Distributions (defined below): (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) and Treas. Reg. § 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 the distributing corporation or the controlled corporation, or any predecessor or successor of the distributing corporation or the controlled corporation, within the meaning of Treas. Reg. § 1.355-8 (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

Facts

Parent is a publicly traded domestic corporation and the parent of an affiliated group of corporations that file a consolidated return for U.S. federal income tax purposes (the “Parent Group”). Parent is directly and indirectly engaged in the conduct of Business A and Business B.

Parent wholly owns Sub1, which in turn wholly owns Sub2. Sub2 wholly owns Sub3, Sub4, and Sub5. Each of Parent, Sub1, Sub2, Sub3, Sub4, and Sub5 is a domestic corporation that has a single class of common stock outstanding.

Sub4 owns a% of FSub1; Sub2 owns the remaining b% of FSub1. FSub1 owns all the interests in DRE. DRE wholly owns FSub2. FSub2 wholly owns FSub3, which in turn owns c% of FSub4; Sub3 owns the remaining d% of FSub4. Each of FSub1, FSub2, FSub3, and FSub4 is classified as a corporation for U.S. federal income tax purposes that has a single class of common stock outstanding. DRE is a foreign eligible entity that is disregarded as separate from its owner for U.S. federal income tax purposes.

For purposes of satisfying the active trade or business requirement of section 355(b) with respect to the Distributions (defined below), Parent, Sub1, and Sub2 will rely on Business A conducted by members of their respective “separate affiliated group” as defined in section 355(b)(3)(B), and Sub5 will rely on Business B conducted by members of its separate affiliated group.

Financial information has been submitted in accordance with Rev. Proc. 2017-52 indicating that each of Business A and Business B has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Sub2 has multiple tranches of non-contingent third-party debt outstanding (“Sub2 Debt”). Prior to the Proposed Transaction, Sub2 may refinance (or may have refinanced) one or more of the third-party debt instruments with one or more newly issued third-party debt instruments (any newly issued third-party debt instruments that refinance one or more of the outstanding third-party debt instruments comprising the Sub2 Debt or that refinance any Refinancing Debt through one or a series of refinancings, the “Refinancing Debt”).

Additionally, FSub4 holds an intercompany receivable from FSub3 (the “FSub3 Note”) and Sub3 holds a note receivable from Sub2 (the “Sub2 Note”).

Proposed Transaction

For what are represented to be valid business reasons, Parent proposes to engage in the following steps to separate Business A from Business B, some of which have been completed (collectively, the “Proposed Transaction”):

Pre-Separation Restructuring Steps

- (1) On Date 1, Sub2 formed Sub5 with minimum capital. Sub5’s authorized capital stock consists of common stock and preferred stock. No shares of preferred stock are or will be outstanding at the time of the Proposed Transaction.
- (2) On Date 2, Sub5 formed FSub5, a Country A corporation under Region B Law. The authorized capital of FSub5 consists of voting common stock and nonvoting redeemable preferred stock. No shares of either class of stock were issued as part of this step.
- (3) Sub3 will issue a note payable (the “Sub3 Note”) to Sub2 and distribute to Sub2 the Sub2 Note (the “Sub2 Note Distribution”) in extinguishment of the Sub2 Note.
- (4) Sub2 will contribute all of the shares it owns in Sub3 and any other assets and liabilities related to Business B to Sub5 in exchange for all the common stock of Sub5 (the “Sub5 Contribution”).

Country A Separation Steps

- (5) Sub5 will subscribe for voting common shares of FSub5 for a nominal amount.
- (6) FSub4 will make a pro rata distribution to its shareholders consisting of (a) the FSub3 Note and cash (if required) to FSub3, thereby extinguishing the FSub3 Note, and (b) cash to Sub3.
- (7) FSub3 will reorganize its capital by filing articles of amendment to amend its articles of incorporation under Country A Law to create and authorize the issuance of a new class of nonvoting redeemable preferred stock (having a value equal to the fair market value of the FSub4 shares held by FSub3); redesignate the existing class of common stock as “Class A Common Shares”; and create a new class of common stock (the “Class B Common Shares”) with terms and conditions identical to the existing class of common stock, except that each of the Class B Common Shares will entitle the holder to e vote(s) per share (rather than f vote(s) per share). FSub2 will exchange all of its redesignated Class A Common Shares in FSub3, exchanging each share for f share(s) of Class B Common Shares and f share(s) of nonvoting redeemable preferred stock. The Class A Common Shares will then be cancelled.

- (8) In pursuance of a separation of the Country A portions of Business A and Business B, the following steps will be undertaken:
- a. FSub2 will transfer its nonvoting redeemable preferred shares and Class B Common Shares in FSub3 to DRE (the “First FSub3 Distribution”);
 - b. DRE will transfer the nonvoting redeemable preferred shares and Class B Common Shares in FSub3 to FSub1;
 - c. FSub1 will transfer the nonvoting redeemable preferred shares and Class B Common Shares in FSub3 to Sub2 and Sub4 in proportion to their respective ownership interest in FSub1 (the “Second FSub3 Distribution”); and
 - d. Sub4 will transfer the nonvoting redeemable preferred shares and Class B Common Shares in FSub3 to Sub2 (the “Third FSub3 Distribution”).
- (9) As part of a three-party share exchange, Sub2, Sub5, and FSub5 will undertake the following steps:
- a. FSub5 will pay for the nonvoting redeemable preferred shares in FSub3 held by Sub2 by issuing additional shares of common stock to Sub5.
 - b. Sub5 will pay for the newly issued shares of common stock in FSub5 by issuing additional shares of common stock to Sub2; and
 - c. Sub2 will pay for the newly issued shares in FSub5 by transferring the nonvoting redeemable preferred shares in FSub3 to FSub5.
- (10) FSub3 will transfer the shares it owns in FSub4, and to the extent necessary, an amount of cash or near-cash property (together, the “FSub3 Property”) to FSub5 in exchange for shares of nonvoting redeemable preferred stock in FSub5 having a value equal to the fair market value of the FSub3 Property transferred by FSub3 to FSub5.
- (11) FSub5 will redeem the shares of nonvoting redeemable preferred stock held by FSub3 in exchange for a note (“Note 1”).
- (12) FSub3 will redeem the shares of nonvoting redeemable preferred stock held by FSub5 in exchange for a note (“Note 2”).
- (13) Note 1 and Note 2 will be offset.

Domestic Separation Steps

- (14) Sub5 will issue a new term loan to one or more third-party lenders (the “Sub5 Term Loan” and the “Sub5 Borrowing”). Sub5 will lend the proceeds of the Sub5 Borrowing to Sub3 under substantially similar terms to the Sub5 Term Loan. Sub3 will repay the Sub3 Note held by Sub2 using the proceeds of the Sub5 Term Loan (the “Sub3 Note Repayment”). Sub2 will use the proceeds of the Sub3 Note to repay Sub2 Debt as soon as practicable, which may be before or after the Third Distribution (defined below). Neither Sub2 nor Sub3 will segregate or otherwise trace the use of the proceeds.
- (15) Sub2 will distribute all the stock of Sub5 that it holds (at least 80.1%) to Sub1 (other than any stock of Sub5 to be contributed by Sub2 in the DAF Contribution (defined below)) (the “First Distribution”).

No later than g days following the Third Distribution, Parent, Sub1, or Sub2 may contribute an immaterial portion of its Sub5 stock (approximately an amount equal to \$h) to its donor-advised fund, an account owned for federal income tax purposes by a third-party public charity (the “DAF Contribution”). While the DAF Contribution is irrevocable, Parent can advise the charity on grants to be made to qualified charitable organizations using assets of the fund and may place certain restrictions on the ability of the fund to dispose of Sub5 stock, with such restrictions falling off over time.

- (16) Sub1 will distribute all the stock of Sub5 that it holds to Parent (other than any stock of Sub5 to be contributed by Sub1 in the DAF Contribution) (the “Second Distribution”).
- (17) Parent will distribute all the stock of Sub5 that it holds pro rata to its shareholders (other than any stock of Sub5 to be contributed by Parent in the DAF Contribution) (the “Third Distribution”).

Shareholders of Parent that otherwise would be entitled to receive fractional shares of Sub5 stock in the Third Distribution will receive cash in lieu thereof. A distribution agent will aggregate fractional shares into whole shares, sell the whole shares in the open market at prevailing market prices, and distribute the proceeds to shareholders of Parent otherwise entitled to such interests.

In connection with the Proposed Transaction, Parent, Sub5, and their respective subsidiaries expect to enter into certain Continuing Arrangements.

Sub5 will issue Sub5 Equity Awards pursuant to the conversion of Parent Equity Awards at the time of the Third Distribution. Furthermore, Sub5 may issue Sub5 Equity Awards pursuant to a new equity-based award program at or after the time of the Third Distribution. Following the Proposed Transaction, Sub5 expects to issue shares of Sub5

common stock to Sub5 employees or non-employee directors pursuant to the terms of the Sub5 Equity Awards.

As relevant to the Representations and Rulings below, the transactions described in Steps 5 through 13 above are collectively referred to as the “Country A Separation”; the transactions described in Steps 9 through 13 are collectively referred to as the “FSub3 Separation”; the First Distribution, the Second Distribution, and the Third Distribution are collectively referred to as the “Distributions”; and the Sub5 Equity Awards and the Parent Equity Awards are collectively referred to as the “Equity Awards.”

Representations

Country A Separation Steps:

With respect to the steps of the Country A Separation, Parent makes the following representations:

- a) Provided Ruling 2 is issued, the First FSub3 Distribution will qualify as a distribution to which section 355 applies.
- b) The First FSub3 Distribution will be an exchange to which Treas. Reg. §§ 1.367(b)-5(a) and 1.367(b)-5(c) apply. If FSub1’s post-distribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(2)) with respect to FSub2 or FSub3 is less than its pre-distribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(1) with respect to FSub2 or FSub3, FSub1’s basis in such stock immediately after the First FSub3 Distribution must be reduced by the amount of the difference. However, FSub1’s basis in such stock must not be reduced below zero, and to the extent the foregoing reduction would reduce its basis below zero, FSub1 must instead include such amount in income as a deemed dividend from such corporation. If FSub1 reduces the basis in the stock of FSub2 or FSub3 (or has an inclusion with respect to such stock), FSub1 must increase its basis in the stock of the other corporation to the extent provided in Treas. Reg. § 1.367(b)-5(c)(4).
- c) Provided Ruling 2 is issued, the Second FSub3 Distribution will qualify as a distribution to which section 355 applies.
- d) The Second FSub3 Distribution will be an exchange to which Treas. Reg. §§ 1.367(b)-5(a) and 1.367(b)-5(c) apply. If Sub4’s post-distribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(2)) with respect to FSub1 or FSub3 is less than its pre-distribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(1) with respect to FSub1 or FSub3, Sub4’s basis in such stock immediately after the Second FSub3 Distribution must be reduced by the amount of the difference. However, Sub4’s basis in such stock must not be reduced below zero, and to the extent the foregoing reduction would reduce its basis below zero, Sub4 must

instead include such amount in income as a deemed dividend from such corporation. If Sub4 reduces the basis in the stock of FSub1 or FSub3 (or has an inclusion with respect to such stock), Sub4 must increase its basis in the stock of the other corporation to the extent provided in Treas. Reg. § 1.367(b)-5(c)(4).

- e) Provided Ruling 2 is issued, the Third FSub3 Distribution will qualify as a distribution to which section 355 applies.
- f) The Third FSub3 Distribution will be an existing stock distribution (as defined in Treas. Reg. § 1.1248(f)-1(b)(2)). Unless Sub2 and Sub4 elect to apply the provisions of Treas. Reg. § 1.1248(f)-2(b) in accordance with Treas. Reg. § 1.1248(f)-2(b)(1), Sub4 will include in gross income as a dividend the section 1248 amount with respect to the stock of FSub3 distributed to Sub2 (Treas. Reg. § 1.1248(f)-1(b)(2)).
- g) Provided Ruling 2 is issued, the FSub5 Contribution (defined below), followed by the FSub5 Distribution (defined below), will qualify as a reorganization to which sections 368(a)(1)(D) and 355 apply.
- h) FSub3's transfer of its shares of FSub4 stock to FSub5 in actual or constructive exchange for FSub5 stock in the FSub5 Contribution is not an exchange described in Treas. Reg. § 1.367(b)-4(b)(1)(i), 1.367(b)-4(b)(2)(i), or 1.367(b)-4(b)(3).
- i) Provided Ruling 2 is issued, the FSub5 Distribution will be an exchange to which Treas. Reg. §§ 1.367(b)-5(a) and 1.367(b)-5(c) apply. If Sub2's post-distribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(2)) with respect to FSub3 or FSub5 is less than its pre-distribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(1) with respect to FSub3 or FSub5, Sub2's basis in such stock immediately after the FSub5 Distribution must be reduced by the amount of the difference. However, Sub2's basis in such stock must not be reduced below zero, and to the extent the foregoing reduction would reduce its basis below zero, Sub2 must instead include such amount in income as a deemed dividend from such corporation. If Sub2 reduces the basis in the stock of FSub3 or FSub5 (or has an inclusion with respect to such stock), Sub2 must increase its basis in the stock of the other corporation to the extent provided in Treas. Reg. § 1.367(b)-5(c)(4).
- j) FSub1, FSub2, FSub3, FSub4, and FSub5 are, and will be, controlled foreign corporations, within the meaning of section 957(a), immediately before and after each of the First FSub3 Distribution, the Second FSub3 Distribution, the Third FSub3 Distribution, the FSub5 Contribution, and the FSub5 Distribution.
- k) At all times before and immediately after each of the First FSub3 Distribution, the Second FSub3 Distribution, the Third FSub3 Distribution, the FSub5

Contribution, and FSub5 Distribution, none of FSub1, FSub2, FSub3, FSub4, or FSub5 has been or will be a passive foreign investment company within the meaning of section 1297(a).

- l) The notice requirements of Treas. Reg. § 1.367(b)-1(c) will be satisfied for each of the First FSub3 Distribution, the Second FSub3 Distribution, the Third FSub3 Distribution, the FSub5 Contribution, and the FSub5 Distribution.
- m) Sub4 will be a section 1248 shareholder, within the meaning of Treas. Reg. § 1.367(b)-2(b), with respect to (1) FSub1 and FSub2 immediately before and after each of the First FSub3 Distribution, the Second FSub3 Distribution, and the Third FSub3 Distribution, and (2) FSub3 and FSub4 immediately before and after each of the First FSub3 Distribution and the Second FSub3 Distribution. Assuming that Ruling 2 is issued, Sub2 will be a section 1248 shareholder, within the meaning of Treas. Reg. § 1.367(b)-2(b), with respect to FSub3, FSub4, and FSub5 immediately before and after each of the FSub5 Contribution and the FSub5 Distribution. Assuming that Ruling 2 is issued, Sub5 will be a section 1248 shareholder, within the meaning of Treas. Reg. § 1.367(b)-2(b), with respect to FSub4 and FSub5 immediately after the Sub5 Contribution.
- n) Sub4 will comply with the reporting procedures established under Treas. Reg. § 1.367(b)-5(b)(3) in order to establish that Sub2 is a corporation for purposes of applying Treas. Reg. § 1.367(b)-5(b)(1)(i).

Sub5 Contribution and First Distribution:

With respect to the Sub5 Contribution and the First Distribution, except as otherwise set forth below, Parent has made all the representations in section 3 of the Appendix to Rev. Proc. 2017-52.

Parent has made the following alternative representations:

Representations 3(a), 8(b), 11(a), 15(a), 22(a), 31(a), and 41(a).

Parent has not made the following representations, which do not apply to the First Distribution:

Representations 7, 20, 24, 25, 35, and 39.

Parent has made the following modified representations:

Representation 32: No intercompany debt will exist between Sub2 and Sub5 at the time of, and subsequent to, the First Distribution, other than payables that arise from the Continuing Arrangements.

Representation 33: Except for certain payments made pursuant to the Continuing Arrangements, payments made in connection with all continuing transactions between Sub2 and Sub5 after the First Distribution will be for fair market value based on arm's length terms.

Representation 34: Other than pursuant to the Continuing Arrangements, Sub2 and Sub5 each will pay its own expenses, if any, incurred in connection with the First Distribution.

Representation 45: Except for any DAF Contribution, Sub2 will not dispose of any Sub5 stock in anticipation of the First Distribution.

Parent has not made Representation 40 (but provided the required explanation).

Additionally, Distributing has made the following representation:

- a) At the time of the First Distribution, Sub2 will not have an excess loss account within the meaning of Treas. Reg. § 1.1502-19(a)(2) in the stock of Sub5 or the stock of any direct or indirect subsidiary of Sub5.

Second Distribution:

With respect to the Second Distribution, except as otherwise set forth below, Parent has made all the representations in section 3 of the Appendix to Rev. Proc. 2017-52.

Parent has made the following alternative representations:

Representations 3(a), 8(a), 11(a), 15(a), 22(a), 31(a), and 41(a).

Parent has not made the following representations, which do not apply to the Second Distribution:

Representations 7, 18, 19, 20, 24, 25, 35, and 39.

Parent has made the following modified representations:

Representation 32: No intercompany debt will exist between Sub1 and Sub5 at the time of, and subsequent to, the Second Distribution, other than payables that arise from the Continuing Arrangements.

Representation 33: Except for certain payments made pursuant to the Continuing Arrangements, payments made in connection with all continuing transactions between Sub1 and Sub5 after the Second Distribution will be for fair market value based on arm's length terms.

Representation 34: Other than pursuant to the Continuing Arrangements, Sub1 and Sub5 each will pay its own expenses, if any, incurred in connection with the Second Distribution.

Representation 45: Except for any DAF Contribution, Sub1 will not dispose of any Sub5 stock in anticipation of the Second Distribution.

Parent has not made Representation 40 (but provided the required explanation).

Third Distribution:

With respect to the Third Distribution, except as otherwise set forth below, Parent has made all the representations in section 3 of the Appendix to Rev. Proc. 2017-52.

Parent has made the following alternative representations:

Representations 3(a), 8(a), 11(a), 15(a), 22(a), 31(a), and 41(a).

Parent has not made the following representations, which do not apply to the Third Distribution:

Representations 7, 18, 19, 20, 24, 25, 39, and 40.

Parent has made the following modified representations:

Representation 32: No intercompany debt will exist between Parent and Sub5 at the time of, and subsequent to, the Third Distribution, other than payables that arise from the Continuing Arrangements.

Representation 33: Except for certain payments made pursuant to the Continuing Arrangements, payments made in connection with all continuing transactions between Parent and Sub5 after the Third Distribution will be for fair market value based on arm's length terms.

Representation 34: Other than pursuant to the Continuing Arrangements, Parent and Sub5 each will pay its own expenses, if any, incurred in connection with the Third Distribution.

Representation 45: Except for any DAF Contribution, Parent will not dispose of any Sub5 stock in anticipation of the Third Distribution.

In addition, except as set forth below, Parent has made all of the representations in Section 3.04 of Rev. Proc. 2018-53, 2018-43 I.R.B. 667.

Distributing has not made the following representation, which does not apply to the Proposed Transaction:

Representation 6.

Distributing has made the following modified representation:

Representation 4: Sub2 incurred the Sub2 Debt that will be satisfied (or that was refinanced through one or a series of refinancings with Refinancing Debt that will be satisfied) (or Sub2 incurred debt that was refinanced with the Sub2 Debt that will be satisfied): (a) before the request for any relevant ruling was submitted and (b) no later than 60 days before the earliest of the following dates: (i) the date of the first public announcement (as defined in Treas. Reg. § 1.355-7(h)(10)) of the Divisive Reorganization or a similar transaction, (ii) the date of the entry by Sub2 into a binding agreement to engage in the Divisive Reorganization or a similar transaction, and (iii) the date of approval of the Divisive Reorganization or a similar transaction by the board of directors of Parent. Sub2 did not segregate or otherwise trace the use of the cash proceeds of such Sub2 Debt or Refinancing Debt.

Rulings

The Sub2 Note Distribution

1. The Sub2 Note Distribution will be a distribution to which section 301 applies.

The FSub3 Separation

2. For U.S. federal income tax purposes, the FSub3 Separation will be treated as if, prior to the Sub5 Contribution, (1) FSub2 distributes all of its shares of FSub3 to DRE (the "First FSub3 Distribution"); (2) DRE distributes all of its shares of FSub3 to FSub1; (3) FSub1 distributes all of its shares of FSub3 pro rata to Sub2 and Sub4 (the "Second FSub3 Distribution"); (4) Sub4 distributes all of its shares of FSub3 stock to Sub2 (the "Third FSub3 Distribution"); (5) FSub3 contributes its c% interest in FSub4 to FSub5 in exchange for all of the shares of FSub5 stock (the "FSub5 Contribution"); and (6) FSub3 distributes all of its shares of FSub5 to Sub2 (the "FSub5 Distribution"). Rev. Rul. 83-142, 1983-2 C.B. 68; Rev. Rul. 77-191, 1977-1 C.B. 94; and Rev. Rul. 57-311, 1957-2 C.B. 243.

Sub5 Contribution and First Distribution

3. For federal income tax purposes, the issuance of the Sub3 Note in Step (3) of the Proposed Transaction and the Sub3 Note Repayment in Step (14) of the Proposed Transaction will be disregarded. Furthermore, the Sub5 lending of the Sub5 Borrowing to Sub3 in Step (14) of the Proposed Transaction will be disregarded.

Instead, for federal income tax purposes, Sub3 will be treated as distributing a note payable to Sub5 pursuant to section 301 immediately after Step (17) of the Proposed Transaction.

4. The Sub5 Contribution, followed by the First Distribution will be a reorganization under section 368(a)(1)(D). Sub2 and Sub5 will each be a “party to a reorganization” within the meaning of section 368(b).
5. Sub2 will recognize no gain or loss on the Sub5 Contribution. Sections 357(a) and 361(a).
6. Sub5 will recognize no gain or loss on the Sub5 Contribution. Section 1032(a).
7. The basis in each asset received by Sub5 in the Sub5 Contribution will be the same as the basis of that asset in the hands of Sub2 immediately before the Sub5 Contribution. Section 362(b).
8. The holding period in each asset received by Sub5 in the Sub5 Contribution will include the period during which Sub2 held that asset. Section 1223(2).
9. For federal income tax purposes, Sub2 will be treated as receiving Sub5 stock and an amount of cash equal to the Sub3 Note Repayment (the “Sub5 Cash”) from Sub5. Except to the extent that the amount of cash transferred to creditors of Sub2 is less than the Sub5 Cash, Sub2 will recognize no gain or loss on the distribution of Sub5 stock to Sub1 in the First Distribution. Section 361(c).
10. Sub1 will recognize no gain or loss (and no amount will be otherwise included in its income) upon receipt of the Sub5 stock in the First Distribution. Section 355(a).
11. Sub1’s holding period in the Sub5 stock received in the First Distribution will include its holding period in the Sub2 stock with respect to which the First Distribution is made, provided that such Sub2 stock is held as a capital asset on the date of the First Distribution. Section 1223(1).
12. Earnings and profits, if any, will be allocated between Sub2 and Sub5 in accordance with section 312(h), Treas. Reg. § 1.312-10(a), and Treas. Reg. § 1.1502-33(f)(2).

Second Distribution

13. Parent will recognize no gain or loss (and no amount will be otherwise included in its income) upon receipt of the Sub5 stock in the Second Distribution. Section 355(a).
14. Sub1 will recognize no gain or loss on the Second Distribution. Section 355(c)(1).

15. Parent's holding period in the Sub5 stock received in the Second Distribution will include its holding period in the Sub1 stock with respect to which the Second Distribution is made, provided that such Sub1 stock is held as a capital asset on the date of the Second Distribution. Section 1223(1).
16. Earnings and profits, if any, will be allocated between Sub1 and Sub5 in accordance with section 312(h), Treas. Reg. § 1.312-10(b), and Treas. Reg. § 1.1502-33(f)(2).

Third Distribution

17. Parent's shareholders will recognize no gain or loss (and no amount will be otherwise included in their income) upon receipt of the Sub5 stock in the Third Distribution. Section 355(a).
18. Parent will recognize no gain or loss on the distribution of the Sub5 stock in the Third Distribution. Section 355(c)(1).
19. The aggregate basis of the Parent stock and the Sub5 stock in the hands of each Parent shareholder immediately after the Third Distribution (including any fractional share interest in Sub5 stock to which a shareholder may be entitled) will equal the shareholder's aggregate basis in the Parent stock immediately before the Third Distribution, allocated between the Parent stock and the Sub5 stock in proportion to the fair market value of each immediately following the Third Distribution. Section 358(b)(2) and (c); Treas. Reg. § 1.358-2(a)(2)(iv).
20. If a holder of Parent stock that purchased or acquired shares on different dates or at different prices is not able to identify which particular share of Sub5 stock is received as a distribution with respect to a particular share of Parent stock, the holder may designate which particular share of Sub5 stock is received as a distribution with respect to a particular share of Parent stock, provided the designation is consistent with the terms of the Third Distribution. Treas. Reg. § 1.358-2(a)(2).
21. Each Parent shareholder's holding period in the Sub5 stock received in the Third Distribution (including any fractional share interest in the Sub5 stock to which a shareholder may be entitled) will include their holding period in the Parent stock with respect to which the Third Distribution is made, provided that such Parent stock is held as a capital asset on the date of the Third Distribution. Section 1223(1).
22. Earnings and profits, if any, will be allocated between Parent and Sub5 in accordance with section 312(h), Treas. Reg. § 1.312-10(b) and Treas. Reg. § 1.1502-33(e)(3).
23. The receipt by Parent's shareholders of cash in lieu of fractional shares of Sub5 stock will be treated for U.S. federal income tax purposes as if the fractional shares

had been distributed as part of the Third Distribution and then had been disposed of by such shareholders for the amount of such cash in a sale or exchange. The gain (or loss) recognized (determined using the basis allocated to the fractional shares in Ruling 19 and Ruling 20), if any, will be treated as capital gain (or loss), provided that such Parent stock was held as a capital asset by the selling shareholder (section 1001). Such gain (or loss) will be short-term or long-term capital gain (or loss) (determined using the holding period provided in Ruling 21).

24. For purposes of section 355(e), the sales (or deemed sales) of any fractional shares of Sub5 common stock in the market in connection with the Third Distribution will not be treated as acquisitions that are a part of a plan (or series of related transactions) that includes the Third Distribution.
25. Any payments made by Parent or any of its affiliates to Sub5 or any of its affiliates, or vice versa, following the Third Distribution that (i) have arisen or will arise with respect to a taxable period ending on or before the Third Distribution or for a taxable period beginning on or before and ending after the Third Distribution and (ii) will not have become fixed and ascertainable until after the Third Distribution will be treated as occurring immediately before the Third Distribution. *See Arrowsmith v. Commissioner*, 344 U.S. 6, 73 (1952); Rev. Rul. 83-72, 1983-1 C.B. 84.
26. Equity Awards currently outstanding and those issued in connection with or after any of the Distributions (and any Sub5 shares underlying or issued pursuant to any such Equity Awards) will not be taken into account (i.e., will not be included in the numerator or the denominator) for purposes of determining whether Parent, Sub1, or Sub2 distributed an amount of Sub5 stock constituting control under section 368(c) in any of the Distributions.
27. Following the Third Distribution, neither Sub5 nor any of its affiliates will be treated as a "successor" to Parent or any of its affiliates for purposes of section 1504(a)(3).

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the proposed transaction under any provision of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the proposed transaction that is not specifically covered by the above rulings.

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any 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,

Douglas C. Bates
Branch Chief, Branch 4
Office of Associate Chief Counsel (Corporate)

cc: