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Person to Contact:

Phone Number

Refer Reply to:
CC:DOM:CORP:1 -PLR-111095-98
Date:
April 2, 1999

Re:

Legend

Distributing =

Controlled (aka Sub 1) =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 8 LLC =

Sub 9 =

Sub 10 =

Sub 2-A =

Sub 2-B =

Sub 2-C =

Sub 2-D =

Sub 3-A =

Sub 3-B =

Sub 3-C =

Sub 4-A =

Sub 4-B =

Sub 4-C =

Sub 4-D =

Sub 5-A =

Sub 5-B =

Sub 5-C =

Sub 6-A =

Sub 6-B =

Sub 6-C =

Sub 6-D =

Sub 6-E =

Sub 6-F =

Sub 7-A =

Sub 8-A =

Sub 9-A =

Sub 2-A1 =

Sub 2-A2 =

Sub 2-A3 =

Sub 2-A4 =

Sub 2-A5 =

Sub 2-B1 =

Sub 2-B2 =

Sub 2-B2a =

Sub 3-A1 =

Sub 3-B1 =

Sub 3-B1 LLC =

Sub 3-C1 =

Sub 3-C2 =

Sub 4-A1 =

Sub 4-A1 LLC =

Sub 4-B1 =

Sub 4-B2 =

Sub 4-D1 =

Sub 4-D2 =

Sub 4-D3 =

LP 5-A1 =

Corp 5-B1 =

Sub 6-B1 =

Sub 3-B1a =

Sub 3-B1a LLC =

Sub 4-B1a =

Sub 4-B2a =

Sub 4-D1a =

Sub 4-D1b =

Sub 4-B2a1 =

Sub 4-D1a1 =

Sub 4-D1b1 =

Sub 4-D1b1A =

Shareholder A =

Shareholder B =

Shareholder C =

Shareholder D =

Shareholder E =

Shareholder F =

Business B =

Business C =

Activity D =

Company A =

Company B =

State R =

State S =

Dear :

This letter is in reply to a letter dated May 12, 1998, in which you requested rulings as to the federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated May 20, 1998, September 28, 1998, November 24, 1998, December 22, 1998, January 20, 1999, February 3, 1999, March 11, 1999 and April 1, 1999. The information submitted for consideration is summarized below.

Distributing is an accrual basis State R corporation. Distributing and certain of its subsidiaries file a consolidated return on a calendar year basis. Distributing's stock is publicly traded.

Shareholder A owns directly approximately 18 percent of Distributing's common stock. Shareholder A is also the general partner of a limited partnership that owns less than 5 percent of Distributing's common stock. Additionally, Shareholder A owns approximately 0.2 percent shares of Distributing's common stock under Distributing's Section 401(k) Plan. Certain members of Shareholder A's family and certain trusts for such members also own shares of Distributing stock. In addition, Shareholder A owns shares of Class A Common Stock of Sub 2-A (described below) and shares of Class A Common Stock of Sub 6 (described below), each of which are publicly held corporations. Shareholder A is the CEO and the Chairman of the Board of Distributing. Shareholder B owns approximately 6 percent of Distributing's common stock. Shareholder B has no representation on Distributing's board of directors or its subsidiaries' boards of directors, and is not related to Shareholder A. To the best of Distributing's knowledge, no other person or group owns 5 percent or more of Distributing's stock.

Distributing, through its subsidiaries, is engaged in Business B and Business C. We have received financial information which reflects that Businesses B and C have each had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years. Distributing also owns 51 percent

of the stock of a holding company which owns stock of subsidiaries that are engaged in activity D.

Controlled (aka Sub 1) was formed in 1996. Distributing owns 100 percent of the stock of Controlled. As described more fully below, Distributing proposes to transfer all of its Business C operations to Controlled, along with certain other assets.

Business B

Distributing owns 100 percent of the stock of Sub 2. Sub 2 is a holding company for the Business B operations which are described below.

Sub 2-A is a holding company. Sub 2 owns approximately 63 percent of each of the outstanding Common Stock and Class A Common Stock of Sub 2-A. (Such Common Stock and Class A Common Stock possess the same features except that the Common Stock entitles its holders to one-tenth of one vote per share and the Class A Common Stock entitles its holders to one vote per share and the Common Stock may be entitled to a larger dividend than the Class A Common Stock). Distributing acquired greater than 80 percent of the stock of Sub 2-A more than 5 years ago, and then transferred it to Sub 2. Within the last 5 years, Sub 2's interest in Sub 2-A was diluted to less than 80 percent as a result of the exercise of certain warrants, acquisitions, and placements of Sub 2-A's stock.

Sub 2-B is directly engaged in Business B. Sub 2 owns 91 percent of the stock of Sub 2-B. The remaining 9 percent of the stock of Sub 2-B is owned by executives of Sub 2-B. Sub 2 acquired its Sub 2-B stock more than 5 years ago.

Sub 2-C is directly engaged in Business B. Sub 2 owns 91 percent of Sub 2-C's stock, with the remaining stock owned by Sub 2-C executives. Sub 2 has held its Sub 2-C stock more than 5 years.

Sub 2 also owns 100 percent of the stock of Sub 2-D, which is inactive.

Sub 2-A formed Sub 2-A1 within the past 5 years and purchased certain Business B assets in a taxable transaction.

Sub 2-A acquired 80.1 percent of the stock of Sub 2-A2 in September, 1994 in a taxable transaction, and acquired the remainder in 1996. Sub 2-A2 formed Sub 2-A4 in 1998 to acquire the Business B assets of a division of an unrelated corporation in a taxable transaction. The acquisition took place in 1998.

Sub 2-A3 is directly engaged in Business B. Sub 2-A has owned 100 percent of the stock of Sub 2-A3 for more than 5 years.

Sub 2-A5 purchased assets of Company A within the last 5 years in a taxable transaction and is engaged Business B.

Sub 2-B2 is a holding company which is 100 percent owned by Sub 2-B. Sub 2-B2 holds a 75 percent interest in Sub 2-B2a, a joint venture limited liability company engaged in Business B.

Business C

Sub 3 is a wholly-owned subsidiary of Distributing which was formed as a holding company more than 5 years ago. Distributing owns 83 percent of the stock of Sub 3-A, 83 percent of the stock of Sub 3-B, and 81 percent of the stock of Sub 3-C. Subs 3-A, 3-B, and 3-C are holding companies. Distributing acquired all of the stock of Sub 3-B in April, 1996.

The stock of Sub 3-B is owned as follows:

<u>Shareholders</u>	<u># of Shares</u>	<u>Percentage of Shares</u>	<u>Original Tax Basis</u>
Sub-3	83	83.00	\$415,000 ¹
Shareholder C	11	11.00	5,000
Shareholder D	2	2.00	10,000
Shareholder E	2	2.00	10,000
Shareholder F	2	2.00	10,000
<hr/>			
Total	100	100.00	\$500,000

Sub 3-B has offered to acquire all of the shares of Shareholders C, D, E and F. Shareholders C, D, E and F have agreed to Sub 3-B's offer and executed the appropriate documents. All of the minority shareholders have had their shares redeemed or are under a contractual obligation to do so.

Sub 3-A1 is wholly-owned by Sub 3A. Sub 3-B1 is wholly-owned by Sub 3-B. Sub 3-B acquired 43 percent of the Sub 3-B1 stock in August 1990 and the remainder in April, 1991. Sub 3-B1a is wholly-owned by Sub 3-B1. Sub 3-B1 acquired the stock of Sub 3-B1a in April, 1996. Sub 3-C1 and Sub 3-C2 are each wholly-owned by Sub 3-C. Sub 3-A1, Sub 3-B1, Sub 3-C2 and Sub 3-B1a are each directly engaged in Business C.

Sub 4 is a wholly-owned holding company subsidiary of Distributing which owns 100 percent of the stock of each of four holding companies: Sub 4-A, Sub 4-B, Sub 4-C, and Sub 4-D.

¹ This does not reflect adjustments, if any, required pursuant to the Consolidated Return Regulations

Prior to the consummation of the transactions described below, and regardless of whether such transactions occur, Sub 4-B will own 100 percent of the common stock of Sub 4-B1 and 100 percent of the common stock of Sub 4-B2. The common stock of Sub 4-B1 and Sub 4-B2 is currently owned by Sub 4. Sub 3-A1 owns non-convertible preferred stock of Sub 4-B1 and Sub 4-B2. Sub 4-B2 owns 100 percent of Sub 4-B2a. Sub 4-B1, 4-B2, and Sub 4-B2a are holding companies.

Sub 4-A owns 100 percent of the stock of Sub 4-A1, which is directly engaged in Business C. Sub 4-B1 owns 90 percent of the stock of Sub 4-B1a with the remaining 10 percent owned by Sub 3-A. Sub 4-B2a1 is wholly owned by Sub 4-B2a. Sub 4-D1, Sub 4-D2, and Sub 4-D3 are wholly-owned by Sub 4-D. Sub 4-D1, Sub 4-D2, Sub 4-D1a and Sub 4-D1b are directly engaged in Business C.

Activity D

Distributing owns 51 percent of Sub 6. Sub 6, a holding company, wholly-owns Sub 6-A, Sub 6-B, Sub 6-C, Sub 6-D, Sub 6-E, and Sub 6-F. Sub 6-B wholly-owns Sub 6-B1.

Other

Interests in other entities that are not described above are owned by Distributing and its subsidiaries. Distributing owns 100 percent of the stock of Sub 5, Sub 7, Sub 8, Sub 9 and Sub 10. Distributing has not submitted information that such subsidiaries, directly or indirectly have been engaged in the active conduct of a trade or business for each of the past five years. In addition, Distributing holds indirect interests in other subsidiaries and partnerships which are currently inactive, are insignificant operating companies, or are held as investments.

Distributing wants to continue to expand Business C by acquiring additional Business C operations and assets. Based on discussions with an investment banker, management believes that a public offering of the stock of a corporation which is involved in Business C, and not involved in Business B, would be the best way to raise the additional capital needed to expand Business C. Thus, management proposes a reorganization (described in detail below) in which all of the Business C assets and certain other assets would be contributed to a controlled corporation ("Controlled") and the Controlled stock would be distributed to the Distributing shareholders. Controlled would issue additional common shares of its stock in a public offering within 12 months of the distribution. It is currently anticipated that the total equity offering would occur in phases, for a total offering of approximately \$50 million, with the first phase totaling \$15 million.

For the reasons discussed above, the following series of transactions have been proposed:

- (i) Sub 3 will transfer all of its assets (subject to liabilities) to Sub 4 in constructive exchange for shares of Sub 4 common stock. Immediately thereafter, Sub 3 will liquidate.
- (ii) Immediately prior to Step (iii) (described below), pursuant to a plan of liquidation, Sub 3-B will be completely liquidated into Sub 4 through a statutory merger. It is anticipated that Sub 3-B will redeem the 17 percent minority interest of its stock.
- (iii) Sub 3-B1 will be completely liquidated into Sub 4 through a statutory merger. Immediately thereafter, Sub 3-B1a will be completely liquidated into Sub 4 through a statutory merger.
- (iv) Sub 4 will contribute the former assets of Sub 3-B1 and Sub 3-B1a to a newly formed single member limited liability company ("Sub 3-B1 LLC"). Immediately thereafter, Sub 3-B1 LLC will contribute the former assets of Sub 3-B1a to a newly formed single member limited liability company ("Sub 3-B1a LLC"). Neither Sub 3-B1 LLC nor Sub 3-B1a LLC will elect to be treated as a corporation for federal tax purposes. See § 301.7701-3(b)(1) (ii) of the Income Tax Regulations.
- (v) Sub 4-A will be completely liquidated into Sub 4 through a statutory merger.
- (vi) Sub 4-A1 will be completely liquidated into Sub 4 through a statutory merger. For state regulatory purposes, it will be necessary to transfer the Sub 4-A1 assets to a newly formed State S single member limited liability company ("Sub 4-A1 LLC"). Sub 4-A1 LLC will not elect to be treated as a corporation for federal tax purposes. See § 301.7701-3(b)(1)(ii).
- (vii) Sub 2 will be merged with and into Distributing.
- (viii-A) Distributing, then the direct owner of Sub 2-A stock, will contribute one million shares of Sub 2-A stock to Sub 4 which may be sold to raise funds for Business C.
- (viii-B) Distributing will contribute its ownership interests in Sub 5, Sub 6, Sub 7, Sub 8, Sub 9, and Sub 10 (collectively, the "Target Companies") to Sub 4 in constructive exchange for additional Sub 4 stock.
- (ix) Distributing will contribute the remaining Sub 2-A stock to Sub 2-C in exchange for additional Sub 2-C common stock. It is possible that some or all of the Sub 2-A operations may be disposed of prior to or after Step (xiii), below.

- (x) Distributing will contribute its Sub 8 stock to Sub 4.
- (xi) Sub 4 will form a new single member LLC ("Sub 8 LLC") and will contribute the Sub 8 stock to Sub 8 LLC. Immediately thereafter, Sub 8 will liquidate. Sub 8 LLC will not elect to be treated as a corporation for federal tax purposes. See § 301.7701-3(b)(1)(ii).
- (xii) Distributing will contribute the Sub 4 stock to Controlled in constructive exchange for additional Controlled stock.
- (xiii) Distributing will distribute its Controlled stock to its shareholders on a pro rata basis.

Step (i):

The following representations have been made with respect to Step (i), above:

- (a) Sub 4 will acquire at least 90 percent of the fair market value of net assets and at least 70 percent of the fair market value of the gross assets held by Sub 3 immediately prior to the transaction. For purposes of this representation, amounts paid by Sub 3 to dissenters, amounts paid by Sub 3 to shareholders who receive cash or other property, amounts used by Sub 3 to pay reorganization expenses, and all redemptions and distributions (except for regular, normal dividends) made by Sub 3 immediately preceding the transfer will be included as assets of Sub 3 held immediately prior to the transaction.
- (b) After Step (i), Distributing, the former shareholder of Sub 3, will be in control of Sub 4 within the meaning of § 368(c)(2) of the Internal Revenue Code.
- (c) Sub 4 has no plan or intention to sell or otherwise dispose of any of the assets of Sub 3 acquired in the transaction, except for dispositions made in the ordinary course of business.
- (d) The liabilities of Sub 3 assumed by Sub 4 plus the liabilities, if any, to which the transferred assets are subject were incurred by Sub 3 in the ordinary course of its businesses, and are associated with the assets to be transferred.
- (e) Following the transaction, Sub 4 will continue the historic business of Sub 3 or use a significant portion of Sub 3's historic business assets in a business.
- (f) At the time of the transaction, Sub 4 will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Sub 4 that, if exercised or converted,

would affect the Sub 3's shareholders acquisition or retention of control of Sub 4, as defined in § 368(c), except as described herein.

- (g) Sub 4, Sub 3, and Distributing will each pay their respective expenses, if any, incurred in connection with the transaction.
- (h) There is no intercorporate indebtedness existing between Sub 3 and Sub 4 that was issued, acquired, or will be settled at a discount.
- (i) No two parties to the transaction are investment companies as defined in §§ 368(a)(2)(F)(iii) and (iv).
- (j) The fair market value of the assets of Sub 3 transferred to Sub 4 will equal or exceed the sum of the liabilities assumed by Sub 4 plus the amount of liabilities, if any, to which the transferred assets are subject.
- (k) The total adjusted basis of the assets of Sub 3 transferred to Sub 4 will equal or exceed the sum of the liabilities to be assumed by Sub 4, plus the amount of liabilities, if any, to which the transferred assets are subject.
- (l) Sub 3 is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).
- (m) There will be no payment of cash in lieu of fractional shares of Sub 4's stock and there will be no dissenters to the transaction.
- (n) There are no shareholder-employees of Sub 3.

Step (ii)

The following representations have been made with respect to Step (ii), above:

- (a) Prior to the liquidation of Sub 3-B, there is no plan or intention for Sub 4 to sell or otherwise dispose of any stock of Sub 3-B, or for Sub 3-B to issue additional shares of stock.
- (b) Sub 4, on the date of adoption of the plan of liquidation, and at all times until the final liquidating distribution is completed, will be the owner of at least 80 percent of the single outstanding class of Sub 3-B stock.

- (c) No shares of Sub 3-B stock will have been redeemed, except as noted in Step (ii), above, during the three years preceding the adoption of the plan of complete liquidation of Sub 3-B.
- (d) No action was taken by either Sub 4 or Sub 3-B prior to the formal shareholder adoption of the plan that could be interpreted as indicating a prior informal adoption of a plan of liquidation for Sub 3-B.
- (e) All distributions from Sub 3-B to Sub 4 pursuant to the plan of complete liquidation will be made within a single taxable year of Sub 3-B because the liquidation will be accomplished by means of a statutory merger.
- (f) As soon as the first liquidating distribution has been made, Sub 3-B will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and transferring its remaining assets to Sub 4 because the liquidation will be accomplished by means of a statutory merger.
- (g) All of the stock of Sub 3-B will be canceled in exchange for its assets pursuant to the plan of liquidation and Sub 3-B will cease to exist as a result of its merger into Sub 4.
- (h) Sub 3-B will retain no assets following the final liquidating distribution.
- (i) Sub 3-B will not have acquired assets in any non-taxable transaction at any time, except for acquisitions occurring more than three years prior to the date of adoption of the plan of liquidation.
- (j) No assets of Sub 3-B have been or will be disposed of by either Sub 3-B or Sub 4 except for dispositions in the ordinary course of business and dispositions occurring more than three years prior to the adoption of a plan of liquidation.
- (k) The liquidation of Sub 3-B 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 3-B if persons holding, directly or indirectly, more than 20 percent in value of Sub 3-B 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 rules of § 318(a) as modified by § 304(c)(3).
- (l) Prior to adoption of the liquidation plan, no assets of Sub 3-B will have been distributed in kind, transferred, or sold to Sub 4 except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years prior to adoption of the liquidation plan.

- (m) Sub 3-B will report all earned income represented by assets that will be distributed to Sub 4 such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
- (n) The fair market value of the assets of Sub 3-B will exceed its liabilities both at the date of the adoption of the plan of complete liquidation and immediately prior to the time the first liquidating distribution is made.
- (o) The intercompany debt, if any, existing between Sub 3-B and Sub 4 arose in the ordinary course of business, and will be extinguished at the time of the liquidation.
- (p) Sub 4 is not an organization that is exempt from Federal income tax under § 501, or any other provision of the Code.
- (q) There is no plan or intention to liquidate Sub 4.
- (r) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with or in any way related to the proposed liquidation of Sub 3-B have been fully disclosed in this ruling request.

Step (iii)

The following representations have been made with respect to the liquidation of Sub 3-B1 described in Step (iii), above:

- (a) Prior to the liquidation of Sub 3-B1, there is no plan or intention for Sub 4 to sell or otherwise dispose of any stock of Sub 3-B1, or for Sub 3-B1 to issue additional shares of stock.
- (b) Sub 4, on the date of adoption of the plan of liquidation, and at all times until the final liquidating distribution is completed, will be the owner of at least 80 percent of the single outstanding class of Sub 3-B1 stock.
- (c) No shares of Sub 3-B1 stock will have been redeemed during the three years preceding the adoption of the plan of complete liquidation of Sub 3-B1.
- (d) No action was taken by either Sub 4 or Sub 3-B1 prior to the formal shareholder adoption of the plan that could be interpreted as indicating a prior informal adoption of a plan of liquidation for Sub 3-B1.
- (e) All distributions from Sub 3-B1 to Sub 4 pursuant to the plan of complete liquidation will be made within a single taxable year of Sub 3-B1 because the liquidation will be accomplished by means of a statutory merger.

- (f) As soon as the first liquidating distribution has been made, Sub 3-B1 will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and transferring its remaining assets to Sub 4 because the liquidation will be accomplished by means of a statutory merger.
- (g) All of the stock of Sub 3-B1 will be canceled in exchange for its assets pursuant to the plan of liquidation and Sub 3-B1 will cease to exist as a result of its merger into Sub 4.
- (h) Sub 3-B1 will retain no assets following the final liquidating distribution.
- (i) Sub 3-B1 will not have acquired assets in any non-taxable transaction at any time, except for acquisitions occurring more than three years prior to the date of adoption of the plan of liquidation.
- (j) No assets of Sub 3-B1 have been or will be disposed of by either Sub 3-B1 or Sub 4 except for dispositions in the ordinary course of business and dispositions occurring more than three years prior to the adoption of a plan of liquidation.
- (k) The liquidation of Sub 3-B1 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 3-B1 if persons holding, directly or indirectly, more than 20 percent in value of Sub 3-B1 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 rules of § 318(a) as modified by § 304(c)(3).
- (l) Prior to adoption of the liquidation plan, no assets of Sub 3-B1 will have been distributed in kind, transferred, or sold to Sub 4 except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years prior to adoption of the liquidation plan.
- (m) Sub 3-B1 will report all earned income represented by assets that will be distributed to Sub 4 such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
- (n) The fair market value of the assets of Sub 3-B1 will exceed its liabilities both at the date of the adoption of the plan of complete liquidation and immediately prior to the time the first liquidating distribution is made.
- (o) The intercompany debt, if any, existing between Sub 3-B1 and Sub 4 arose in connection with the acquisition of Sub 3-B1 by Sub 3-B or in the ordinary course of business, and will be extinguished at the time of the liquidation.

- (p) Sub 4 is not an organization that is exempt from Federal income tax under § 501, or any other provision of the Code.
- (q) There is no plan or intention to liquidate Sub 4.
- (r) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with or in any way related to the proposed liquidation of Sub 3-B1 have been fully disclosed in this ruling request.

The following additional representations have been made with respect to the liquidation of Sub 3-B1a described in Step (iii), above:

- (a) Prior to the liquidation of Sub 3-B1a, there is no plan or intention for Sub 4 to sell or otherwise dispose of any stock of Sub 3-B1a, or for Sub 3-B1a to issue additional shares of stock.
- (b) Sub 4, on the date of adoption of the plan of liquidation, and at all times until the final liquidating distribution is completed, will be the owner of at least 80 percent of the single outstanding class of Sub 3-B1a stock.
- (c) No shares of Sub 3-B1a stock will have been redeemed during the three years preceding the adoption of the plan of complete liquidation of Sub 3-B1a.
- (d) No action was taken by either Sub 4 or Sub 3-B1a prior to the formal shareholder adoption of the plan that could be interpreted as indicating a prior informal adoption of a plan of liquidation for Sub 3-B1a.
- (e) All distributions from Sub 3-B1a to Sub 4 pursuant to the plan of complete liquidation will be made within a single taxable year of Sub 3-B1a because the liquidation will be accomplished by means of a statutory merger.
- (f) As soon as the first liquidating distribution has been made, Sub 3-B1a will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and transferring its remaining assets to Sub 4 because the liquidation will be accomplished by means of a statutory merger.
- (g) All of the stock of Sub 3-B1a will be canceled in exchange for its assets pursuant to the plan of liquidation and Sub 3-B1a will cease to exist as a result of its merger into Sub 4.
- (h) Sub 3-B1a will retain no assets following the final liquidating distribution.

- (i) Sub 3-B1a will not have acquired assets in any non-taxable transaction at any time, except for acquisitions occurring more than three years prior to the date of adoption of the plan of liquidation.
- (j) No assets of Sub 3-B1a have been or will be disposed of by either Sub 3-B1a or Sub 4 except for dispositions in the ordinary course of business and dispositions occurring more than three years prior to the adoption of a plan of liquidation.
- (k) The liquidation of Sub 3-B1a 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 3-B1a if persons holding, directly or indirectly, more than 20 percent in value of Sub 3-B1a 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 rules of § 318(a) as modified by § 304(c)(3).
- (l) Prior to adoption of the liquidation plan, no assets of Sub 3-B1a will have been distributed in kind, transferred, or sold to Sub 4 except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years prior to adoption of the liquidation plan.
- (m) Sub 3-B1a will report all earned income represented by assets that will be distributed to Sub 4 such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
- (n) The fair market value of the assets of Sub 3-B1a will exceed its liabilities both at the date of the adoption of the plan of complete liquidation and immediately prior to the time the first liquidating distribution is made.
- (o) The intercompany debt, if any, existing between Sub 3-B1a and Sub 4 arose in connection with the acquisition of Sub 3-B1a's assets by Sub 3-B1a or in the ordinary course of business, and will be extinguished at the time of the liquidation.
- (p) Sub 4 is not an organization that is exempt from Federal income tax under § 501, or any other provision of the Code.
- (q) There is no plan or intention to liquidate Sub 4.
- (r) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with or in any way related to the proposed liquidation of Sub 3-B1a have been fully disclosed in this ruling request.

Step (v)

The following representations have been made with respect to Step (v), above:

- (a) Prior to the liquidation of Sub 4-A, there is no plan or intention for Sub 4 to sell or otherwise dispose of any stock of Sub 4-A, or for Sub 4-A to issue additional shares of stock.
- (b) Sub 4, on the date of adoption of the plan of liquidation, and at all times until the final liquidating distribution is completed, will be the owner of at least 80 percent of the single outstanding class of Sub 4-A stock.
- (c) No shares of Sub 4-A stock will have been redeemed during the three years preceding the adoption of the plan of complete liquidation of Sub 4-A.
- (d) No action was taken by either Sub 4 or Sub 4-A prior to the formal shareholder adoption of the plan that could be interpreted as indicating a prior informal adoption of a plan of liquidation for Sub 4-A.
- (e) All distributions from Sub 4-A to Sub 4 pursuant to the plan of complete liquidation will be made within a single taxable year of Sub 4-A because the liquidation will be accomplished by means of a statutory merger.
- (f) As soon as the first liquidating distribution has been made, Sub 4-A will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and transferring its remaining assets to Sub 4 because the liquidation will be accomplished by means of a statutory merger.
- (g) All of the stock of Sub 4-A will be canceled in exchange for its assets pursuant to the plan of liquidation and Sub 4-A will cease to exist as a result of its merger into Sub 4.
- (h) Sub 4-A will retain no assets following the final liquidating distribution.
- (i) Sub 4-A will not have acquired assets in any non-taxable transaction at any time, except for acquisitions occurring more than three years prior to the date of adoption of the plan of liquidation.
- (j) No assets of Sub 4-A have been disposed of by either Sub 4-A or Sub 4 except for dispositions in the ordinary course of business and dispositions occurring more than three years prior to the adoption of a plan of liquidation.

- (k) The liquidation of Sub 4-A 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 4-A if persons holding, directly or indirectly, more than 20 percent in value of Sub 4-A 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 rules of § 318(a) as modified by § 304(c)(3).
- (l) Prior to adoption of the liquidation plan, no assets of Sub 4-A will have been distributed in kind, transferred, or sold to Sub 4 except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years prior to adoption of the liquidation plan.
- (m) Sub 4-A will report all earned income represented by assets that will be distributed to Sub 4 such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
- (n) The fair market value of the assets of Sub 4-A will exceed its liabilities both at the date of the adoption of the plan of complete liquidation and immediately prior to the time the first liquidating distribution is made.
- (o) The intercompany debt, if any, existing between Sub 4-A and Sub 4 arose in the ordinary course of business, and will be extinguished at the time of the liquidation.
- (p) Sub 4 is not an organization that is exempt from Federal income tax under § 501, or any other provision of the Code.
- (q) There is no plan or intention to liquidate Sub 4.
- (r) All other transactions undertaken contemporaneously with, in anticipation, in conjunction with or in any way related to the proposed liquidation of Sub 4-A have been fully disclosed in this ruling request.

Step vi

The following representations have been made with respect to Step (vi) above:

- (a) Prior to the liquidation of Sub 4-A1, there is no plan or intention for Sub 4 to sell or otherwise dispose of any stock of Sub 4-A1, or for Sub 4-A1 to issue additional shares of stock.
- (b) Sub 4, on the date of adoption of the plan of liquidation, and at all times until the final liquidating distribution is completed, will be the owner of at least 80 percent of the single outstanding class of Sub 4-A1 stock.

- (c) No shares of Sub 4-A1 stock will have been redeemed during the three years preceding the adoption of the plan of complete liquidation of Sub 4-A1.
- (d) No action was taken by either Sub 4 or Sub 4-A1 prior to the formal shareholder adoption of the plan that could be interpreted as indicating a prior informal adoption of a plan of liquidation for Sub 4-A1.
- (e) All distributions from Sub 4-A1 to Sub 4 pursuant to the plan of complete liquidation will be made within a single taxable year of Sub 4-A1 because the liquidation will be accomplished by means of a statutory merger.
- (f) As soon as the first liquidating distribution has been made, Sub 4-A1 will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and transferring its remaining assets to Sub 4 because the liquidation will be accomplished by means of a statutory merger.
- (g) All of the stock of Sub 4-A1 will be canceled in exchange for its assets pursuant to the plan of liquidation and Sub 4-A1 will cease to exist as a result of its merger into Sub 4.
- (h) Sub 4-A1 will retain no assets following the final liquidating distribution.
- (i) Sub 4-A1 will not have acquired assets in any non-taxable transaction at any time, except for acquisitions occurring more than three years prior to the date of adoption of the plan of liquidation.
- (j) No assets of Sub 4-A1 have been disposed of by either Sub 4-A1 or Sub 4, except in the ordinary course of business.
- (k) The liquidation of Sub 4-A1 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 4-A1 if persons holding, directly or indirectly, more than 20 percent in value of Sub 4-A1 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 rules of § 318(a) as modified by § 304(c)(3).
- (l) Prior to adoption of the liquidation plan, no assets of Sub 4-A1 will have been distributed in kind, transferred, or sold to Sub 4 except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years prior to adoption of the liquidation plan.
- (m) Sub 4-A1 will report all earned income represented by assets that will be distributed to Sub 4 such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

- (n) The fair market value of the assets of Sub 4-A1 will exceed its liabilities both at the date of the adoption of the plan of complete liquidation and immediately prior to the time the first liquidating distribution is made.
- (o) The intercompany debt, if any, existing between Sub 4-A1 and Sub 4 arose in the ordinary course of business, and will be extinguished at the time of the liquidation.
- (p) Sub 4 is not an organization that is exempt from Federal income tax under § 501, or any other provision of the Code.
- (q) There is no plan or intention to liquidate Sub 4.
- (r) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with or in any way related to the proposed liquidation of Sub 4-A1 have been fully disclosed in this ruling request.

Step (viii-B) and Step (xii)

The following representations have been made with respect to Steps (viii-B) and (xii) above:

From Distributing to Controlled

- (a) No stock or securities will be issued for services rendered to or for the benefit of Controlled in connection with the proposed transaction, and (ii) No stock or securities will be issued for indebtedness of Controlled that is not evidenced by a security or for interest on indebtedness of Controlled which accrued on or after the beginning of the holding period of Distributing for the debt.
- (b) The transfer is not the result of the solicitation by a promoter, broker, or investment house.
- (c) Distributing will not retain any rights in the property transferred to Controlled.
- (d) The adjusted basis and the fair market value of the assets to be transferred by Distributing to Controlled will, in each instance, be equal to or exceed the sum of the liabilities to be assumed by Controlled plus any liabilities to which the transferred assets are subject. See § 357(c).

- (e) There is no indebtedness between Controlled and Distributing and there will be no indebtedness created in favor of Distributing as a result of the transaction.
- (f) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined. See § 1.351-1(a)(1).
- (g) All exchanges will occur on approximately the same date.
- (h) There is no plan or intention on the part of Controlled to redeem or otherwise reacquire any stock or indebtedness to be issued in the proposed transaction.
- (i) Taking into account any issuance of additional shares of Controlled stock; any issuance of stock for services; the exercise of any Controlled stock rights, warrants, or subscriptions; a public offering of Controlled stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of Controlled to be received in the exchange, Distributing will be in “control” of Controlled within the meaning of § 368(c) except as described in Step (xiii), above.
- (j) Controlled will remain in existence and retain and use the property transferred to it in its trade or business, except as described in Step (viii) and Step (xii) above.
- (k) There is no plan or intention by Controlled to dispose of the transferred property other than in the normal course of business operations, including strategic dispositions, and except as described in Steps (viii) and (xii), above.
- (l) Each of the parties to the transaction will pay its or his/her own expenses, if any, incurred in connection with the proposed transaction.
- (m) Controlled will not be an investment company within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii).
- (n) Distributing is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the stock constructively received in the exchange will not be used to satisfy the indebtedness of such debtor.
- (o) Controlled will not be a “personal service corporation” within the meaning of § 269A.

- (p) Distributing is not receiving securities pursuant to this transfer.
- (q) The liabilities of Distributing to be assumed by Controlled, if any, were incurred in the ordinary course of business and are associated with the assets to be transferred.

From Controlled to Sub 4

- (aa) No stock or securities will be issued for services rendered to or for the benefit of Sub 4 in connection with the proposed transaction, and (ii) No stock or securities will be issued for indebtedness of Sub 4 that is not evidenced by a security or for interest on indebtedness of Sub 4 which accrued on or after the beginning of the holding period of Controlled for the debt. See § 351(d).
- (bb) The transfer is not the result of the solicitation by a promoter, broker, or investment house.
- (cc) Controlled will not retain any rights in the property transferred to Sub 4.
- (dd) The adjusted basis and the fair market value of the assets to be transferred by Controlled to Sub 4 will, in each instance, be equal to or exceed the sum of the liabilities to be assumed by Sub 4 plus any liabilities to which the transferred assets are subject. See § 357(c).
- (ee) There is no indebtedness between Sub 4 and Controlled and there will be no indebtedness created in favor of Controlled as a result of the transaction.
- (ff) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined. See § 1.351-1(a)(1).
- (gg) All exchanges will occur on approximately the same date.
- (hh) There is no plan or intention on the part of Sub 4 to redeem or otherwise reacquire any stock or indebtedness to be issued in the proposed transaction.
- (ii) Taking into account any issuance of additional shares of Sub 4 stock; any issuance of stock for services; the exercise of any Sub 4 stock rights, warrants, or subscriptions; a public offering of Sub 4 stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of Sub 4

be received in the exchange, Controlled will be in “control” of Sub 4 within the meaning of § 368(c).

- (jj) Sub 4 will remain in existence and retain and use the property transferred to it in its trade or business, except as provided in (ll) below.
- (kk) There is no plan or intention by Sub 4 to dispose of the transferred property other than in the normal course of business operations including strategic dispositions, and except as described in Step (viii), above.
- (ll) Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the proposed transaction.
- (mm) Sub 4 will not be an investment company within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii).
- (nn) Controlled is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the stock constructively received in the exchange will not be used to satisfy the indebtedness of such debtor.
- (oo) Sub 4 will not be a “personal service corporation” within the meaning of § 269A.
- (pp) Controlled is not receiving securities pursuant to this transfer.
- (qq) The liabilities of Controlled to be assumed by Sub 4 were incurred in the ordinary course of business and are associated with the assets to be transferred.

Step (x) and Step (xi)

The following representations have been made with respect to Step (x) and Step (xi), above:

- (a) Except as described in Step (xii), there is no plan or intention by Distributing to sell, exchange or otherwise dispose of any of the shares of Sub 4 stock constructively received in the transaction.
- (b) Sub 4 will acquire at least 90 percent of the fair market value of net assets and at least 70 percent of the fair market value of the gross assets held by Sub 8 immediately prior to the transaction. For purposes of this representation, amounts paid by Sub 8 to dissenters, amounts paid by Sub 8 to shareholders who receive cash or other property, amounts used by Sub 8 to pay reorganization expenses, and all redemptions and

distributions (except for regular, normal dividends) made by Sub 8 immediately preceding the transfer will be included as assets of Sub 8 held immediately prior to the transaction.

- (c) After the transaction, immediately prior to Step (xi), Distributing will be in control of Sub 4 within the meaning of § 368(c).
- (d) Sub 4 has no plan or intention to reacquire any of its stock constructively issued in the transaction.
- (e) Sub 4 has no plan or intention to sell or otherwise dispose of any of the assets of Sub 8 acquired in the transaction, except for dispositions made in the ordinary course of business including strategic dispositions.
- (f) The liabilities, of Sub 8 assumed by Sub 4 plus the liabilities, if any, to which the transferred assets are subject were incurred by Sub 8 in the ordinary course of its businesses, and were associated with the assets transferred.
- (g) Following the transaction, Sub 4 will continue the historic business of Sub 8 or use a significant portion of Sub 8's historic business assets in a business, except as provided in (f) above.
- (h) At the time of the transaction, Sub 4 will not have outstanding any warrants options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Sub 4 that, if exercised or converted, would affect Sub 8's shareholders acquisition or retention of control of Sub 4, as defined in § 368(c).
- (i) Sub 4, Sub 8, and Distributing will each pay their respective expenses, if any, incurred in connection with the transaction.
- (j) There is no intercorporate indebtedness existing between Sub 8 and Sub 4 that was issued, acquired, or will be settled at a discount.
- (k) No two parties to any of the acquisitive transactions are investment companies as defined in §§ 368(a)(2)(F)(iii) and (iv).
- (l) The fair market value of the assets of Sub 8 transferred to Sub 4 will equal or exceed the sum of the liabilities assumed by Sub 4 plus the amount of liabilities, if any, to which the transferred assets are subject.
- (m) The total adjusted basis of the assets of Sub 8 transferred to Sub 4 will equal or exceed the sum of the liabilities to be assumed by Sub 4, plus the amount of liabilities, if any, to which the transferred assets are subject.

- (n) Sub 8 is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).
- (o) There will be no payment of cash in lieu of fractional shares of Sub 4's stock and there will be no dissenters to the transaction.
- (p) There are no shareholder-employees of Sub 8.

Step (xii) and Step (xiii)

The following representations have been made with respect to Step (xii) and Step (xiii), above:

- (a) Distributing, Controlled, and their respective shareholders will each pay their own expenses, if any, in connection with the transaction.
- (b) No part of Controlled stock distributed by Distributing is being received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (c) The five years of financial information submitted on behalf of Distributing and its subsidiaries are representative of each corporation's present operations, and, with regard to each corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) Following the transaction, Distributing (through Sub 1-C and Sub 1-B) and Controlled (through Sub 4) will each continue the active conduct of their respective businesses, independently and with their own separate employees, except for certain management employees who after a transition period to last no longer than three years, will relinquish their respective positions with either Distributing or Controlled. However, Shareholder A will continue to serve as the Chairman of the Board for the company in which he ceases to be Chief Executive Officer.
- (e) The distribution of the stock of Controlled is carried out for the following corporate business purpose: to do a public offering of Controlled stock in order to raise additional capital to be used to acquire additional Business C operations and assets. The distribution of the stock of Controlled is motivated, in whole or in part, by the above stated business purpose.
- (f) There is no plan or intention by the shareholders of Distributing who own 5 percent or more of Distributing's stock, and management knows of no plan or intention by Distributing's other shareholders to sell, exchange or otherwise dispose of any of their stock in Distributing or Controlled subsequent to the transaction, except for gifts to charities, foundations, and family members. In addition, shareholder B may dispose of such

stock on behalf of the entities it advises in the normal course of its business operations based on decisions as to existing market conditions, the need to conform to investment policies and guidelines, and the needs of the business and the shareholders of each such entity.

- (g) There is no plan or intention by either Distributing or Controlled, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction, other than through stock purchases meeting the requirements of § 4.05(1)(b) of Rev. Proc. 96-30.
- (h) There is no plan or intention to liquidate either Distributing or Controlled, to merge either corporation with any other corporation, or to sell, exchange, or otherwise dispose of the assets of either corporation subsequent to the transaction, except in the ordinary course of business including strategic acquisitions, and except as otherwise described herein.
- (i) The total adjusted basis and the fair market value of the assets to be transferred by Distributing to Controlled will equal or exceed the sum of the liabilities to be assumed by Controlled plus any liabilities to which the transferred assets are subject.
- (j) The liabilities to be assumed in the transaction and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets to be transferred.
- (k) There is no investment credit property being transferred between Distributing and Controlled.
- (l) The intercorporate debt existing between Distributing and its subsidiaries and Controlled arose in the ordinary course of business and will be satisfied prior to the distribution of the Controlled stock. No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the distribution of the Controlled stock.
- (m) Immediately before the distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations. Further, Distributing's excess loss account with respect to the Controlled stock, if any, will be included in income immediately before the distribution.
- (n) Payments made in connection with all continuing transactions, 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.
- (o) No two parties to the transaction are investment companies as defined in §§ 368(a)(2)(F)(iii) and (iv).

- (p) Immediately after the distribution, at least 90 percent of the fair market value of the gross assets of each of Distributing and Controlled will consist of stock and securities of controlled corporations that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).
- (q) No Section 38 property will be transferred to Controlled by Distributing.
- (r) For purposes of § 355(d), less than 50 percent of the total combined voting power and less than 50 percent of the total combined value of the stock of Distributing after the transaction was acquired by any person (as defined in §§ 355(d)(7) and (8)) by purchase after October 9, 1990.
- (s) For purposes of § 355(d), less than 50 percent of the total combined value of the stock of Controlled will be received by any person (as defined in §§ 355(d)(7) and (8)) by purchase or as a distribution attributable to stock of Distributing that was acquired by purchase after October 9, 1990.
- (t) Immediately after the distribution, (i) the gross assets of the active businesses of Sub 2-C, will have a fair market value of more than five percent of the total fair market value of Sub 2-C's respective gross assets, and (ii) the gross assets of Sub 4's trade or business will have a fair market value of more than five percent of the total fair market value of Sub 4's gross assets.
- (u) The distribution is not part of a plan (or a series of related transaction) pursuant to which one or more persons will acquire directly or indirectly stock possessing 50 percent or more of the total combined voting power of all classes of Distributing or Controlled stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing or Controlled stock within the meaning of § 355(e), including among other things all subsequent issuances of stock and securities pursuant to the proposed public offerings and any issuance of stock under compensatory stock option plans.
- (v) The proposed equity offering of Controlled stock will occur no later than 12 months after the date of the distribution.

Based solely on the information submitted and the representations set forth above, it is held as follows:

- (1) The acquisition by Sub 4 of substantially all of the assets of Sub 3 in constructive exchange solely for Sub 4 stock and the assumption by Sub 4 of Sub 3's liabilities, followed by the constructive distribution of the Sub 4 stock to Distributing in constructive exchange for its stock in Sub 3 in complete liquidation of Sub 3, will constitute a reorganization within the meaning of § 368(a)(1)(D). For purposes of this ruling, "substantially all" means at least 70 percent of the fair market value of the gross assets and

at least 90 percent of the fair market value of the net assets of Sub 3. Sub 4 and Sub 3 will each be "a party to a reorganization" within the meaning of § 368(b).

- (2) No gain or loss will be recognized by Sub 3 upon the transfer of substantially all of its assets to Sub 4 in constructive exchange for Sub 4 stock and the assumption by Sub 4 of the liabilities of Sub 3 (§§ 361(a) and 357(a)).
- (3) No gain or loss will be recognized by Sub 3 on the constructive distribution to Distributing of the Sub 4 stock in pursuance of the plan of reorganization (§ 361(c)).
- (4) No gain or loss will be recognized by Sub 4 upon receipt of Sub 3's assets and liabilities in constructive exchange for Sub 4 stock (§ 1032(a)).
- (5) The basis of each asset of Sub 3 in the hands of Sub 4 will be the same as the basis of that asset in the hands of Sub 3 immediately before the proposed transaction (§ 362(b)).
- (6) The holding period of Sub 3's assets in the hands of Sub 4 will include the period during which that asset was held by Sub 3 (§ 1223(2)).
- (7) No gain or loss will be recognized by Distributing upon the constructive receipt of Sub 4 stock in constructive exchange for Sub 3's stock in the transaction (§ 354(a)(1)).
- (8) Pursuant to § 381(a) and § 1.381(a)-1, Sub 4 will succeed to and take into account the items of Sub 3 described in § 381(c). These items will be taken into account by Sub 4 subject to the conditions and limitations specified in §§ 381, 382, 383, and 384 and the Income Tax Regulations thereunder.
- (9) The distribution by Sub 3-B of its assets to Sub 4 and the assumption of liabilities by Sub 4 by way of statutory merger, as described above, will qualify as a complete liquidation of Sub 3-B pursuant to § 332 (§ 332(a) and § 1.332-2).
- (10) No gain or loss will be recognized by Sub 4 on its receipt of property distributed by Sub 3-B pursuant to the plan of liquidation (§ 332(a)).
- (11) No gain or loss will be recognized by Sub 3-B on the distribution of its assets to or the assumption of liabilities by Sub 4 in complete liquidation (§ 337(a)).

- (12) The basis of the assets of Sub 3-B in the hands of Sub 4 will be the same as the basis of those assets in the hands of Sub 3-B immediately prior to its liquidation (§ 334(b)).
- (13) The holding period of the assets of Sub 3-B in the hands of Sub 4 will include the period during which such assets were held by Sub 3-B (§ 1223(2)).
- (14) Sub 4 will take into account the items of Sub 3-B described in § 381(c), including the earnings and profits of Sub 3-B as of the date of the liquidation.
- (15) The distribution by Sub 3-B1 of its assets to Sub 4 and the assumption of liabilities by Sub 4 by way of statutory merger, as described above, will qualify as a complete liquidation of Sub 3-B1 pursuant to § 332 (§ 332(a), § 1.332-2).
- (16) No gain or loss will be recognized by Sub 4 on its receipt of property distributed by Sub 3-B1 pursuant to the plan of liquidation (§ 332(a)).
- (17) No gain or loss will be recognized by Sub 3-B1 on the distribution of its assets to or the assumption of liabilities by Sub 4 in complete liquidation (§ 337(a)).
- (18) The basis of the assets of Sub 3-B1 in the hands of Sub 4 will be the same as the basis of those assets in the hands of Sub 3-B1 immediately prior to its liquidation (§ 334(b)).
- (19) The holding period of the assets of Sub 3-B1 in the hands of Sub 4 will include the period during which such assets were held by Sub 3-B1 (§ 1223(2)).
- (20) Sub 4 will take into account the items of Sub 3-B1 described in § 381(c), including the earnings and profits of Sub 3-B1 as of the date of the liquidation.
- (21) The distribution by Sub 3-B1a of its assets to Sub 4 and the assumption of liabilities by Sub 4 by way of statutory merger, as described above, will qualify as a complete liquidation of Sub 3-B1a pursuant to § 332 (§ 332(a), and § 1.332-2).
- (22) No gain or loss will be recognized by Sub 4 on its receipt of property distributed by Sub 3-B1a pursuant to the plan of liquidation (§ 332(a)).

- (23) No gain or loss will be recognized by Sub 3-B1a on the distribution of its assets to or the assumption of liabilities by Sub 4 in complete liquidation (§ 337(a)).
- (24) The basis of the assets of Sub 3-B1a in the hands of Sub 4 will be the same as the basis of those assets in the hands of Sub 3-B1a immediately prior to its liquidation (§ 334(b)).
- (25) The holding period of the assets of Sub 3-B1a in the hands of Sub 4 will include the period during which such assets were held by Sub 3-B1a (§ 1223(2)).
- (26) Sub 4 will take into account the items of Sub 3-B1a described in § 381(c), including the earnings and profits of Sub 3-B1a as of the date of the liquidation.
- (27) The distribution by Sub 4-A of its assets to Sub 4 and the assumption of liabilities by Sub 4 by way of statutory merger, as described above, will qualify as a complete liquidation of Sub 4-A pursuant to § 332 (§ 332(a) and § 1.332-2).
- (28) No gain or loss will be recognized by Sub 4 on its receipt of property distributed by Sub 4-A pursuant to the plan of liquidation (§ 332(a)).
- (29) No gain or loss will be recognized by Sub 4A on the distribution of its assets to or the assumption of liabilities by Sub 4 in complete liquidation (§ 337(a)).
- (30) The basis of the assets of Sub 4-A in the hands of Sub 4 will be the same as the basis of those assets in the hands of Sub 4-A immediately prior to its liquidation (§ 334(b)).
- (31) The holding period of the assets of Sub 4-A in the hands of Sub 4 will include the period during which such assets were held by Sub 4-A (§ 1223(2)).
- (32) Sub 4 will take into account the items of Sub 4-A described in § 381(c), including the earnings and profits of Sub 4-A as of the date of the liquidation.
- (33) The distribution by Sub 4-A1 of its assets to Sub 4 and the assumption of liabilities by Sub 4 by way of statutory merger, as described above, will qualify as a complete liquidation of Sub 4-A1 pursuant to § 332 (§ 332(a) and § 1.332-2).

- (34) No gain or loss will be recognized by Sub 4 on its receipt of property distributed by Sub 4-A1 pursuant to the plan of liquidation (§ 332(a)).
- (35) No gain or loss will be recognized by Sub 4-A1 on the distribution of its assets to or the assumption of liabilities by Sub 4 in complete liquidation (§ 337(a)).
- (36) The basis of the assets of Sub 4-A1 in the hands of Sub 4 will be the same as the basis of those assets in the hands of Sub 4-A1 immediately prior to its liquidation (§ 334(b)).
- (37) The holding period of the assets of Sub 4-A1 in the hands of Sub 4 will include the period during which such assets were held by Sub 4-A1 (§ 1223(2)).
- (38) Sub 4 will take into account the items of Sub 4-A1 described in § 381(c), including the earnings and profits of Sub 4-A1 as of the date of the liquidation.
- (39) For federal income tax purposes, the transactions described in steps (viii-B) and (xii) above will be recharacterized and treated as if the assets and the stock of Sub 4 were transferred to Controlled, followed by the retransfer of the assets described in step (viii-B) to Sub 4.
- (40) No gain or loss will be recognized by Distributing on the deemed transfer of assets to Controlled in constructive exchange for shares of Controlled stock (§ 351(a)).
- (41) No gain or loss will be recognized to Controlled on the constructive issuance of its stock in exchange for the assets deemed transferred by Distributing (§ 1032(a)).
- (42) The basis of the Controlled stock to be received constructively in the exchange by Distributing will be the same as the assets exchanged therefor (§ 358(a)(1)).
- (43) The basis of the assets to be received by Controlled will be the same as the basis of such assets in the hands of Distributing immediately prior to the transfer (§ 362(a)).
- (44) The holding period for the Controlled stock to be received constructively in the exchange by Distributing will include the period during which Distributing held the assets deemed transferred by Distributing (§ 1223(1)).

- (45) The holding period of the assets to be received in the exchange by Controlled will include the period such assets were held by Distributing (§ 1223(2)).
- (46) No gain or loss will be recognized by Controlled on the deemed transfer of the assets to Sub 4 in constructive exchange for shares of Sub 4 stock (§ 351(a) and Rev. Rul. 77-449, 1977-2 CB 110).
- (47) No gain or loss will be recognized to Sub 4 on the constructive issuance of its stock in exchange for the assets deemed transferred (§ 1032(a)).
- (48) The basis of the Sub 4 stock to be received constructively in the exchange by Controlled will be the same as the assets exchanged therefor (§ 358(a)(1)).
- (49) The basis of the assets to be received by Sub 4 will be the same as the basis of such assets in the hands of Controlled immediately prior to the transfer (§ 362(a)).
- (50) The holding period for the Sub 4 stock to be received constructively in the exchange by Controlled will include the period during which Controlled held the assets deemed transferred (§ 1223(1)).
- (51) The holding period of the assets to be received in the exchange by Sub 4 will include the period such assets were held by Controlled (§ 1223(2)).
- (52) LLC's acquisition of the assets and liabilities of Sub 8 described in Steps (x) and (xi), above, will be treated as (i) a transfer by Sub 8 of substantially all its assets to Sub 4 in exchange for stock of Sub 4 and the assumption by Sub 4 of the liabilities, if any, of Sub 8, followed by (ii) the distribution by Sub 8 of its Sub 4 stock to Distributing in exchange for all of Distributing's Sub 8 stock.
- (53) The acquisition by Sub 4 of substantially all of the assets of Sub 8 in constructive exchange solely for Sub 4 stock and the assumption by Sub 4 of Sub 8's liabilities, followed by the constructive distribution of the Sub 4 stock to Distributing in constructive exchange for its stock in Sub 8, will each constitute a reorganization within the meaning of § 368(a)(1)(D). For purposes of this ruling, "substantially all" means at least 70 percent of the fair market value of the gross assets and at least 90 percent of the fair market value of the net assets of Sub 8. Sub 4 and Sub 8 will each be "a party to a reorganization" within the meaning of § 368(b).

- (54) No gain or loss will be recognized by Sub 8 upon the transfer of substantially all of its assets to Sub 4 in constructive exchange for Sub 4 stock and the assumption by Sub 4 of the liabilities of Sub 8 (§§ 361(a) and 357(a)).
- (55) No gain or loss will be recognized by Sub 8 on the constructive distribution to Distributing of the Sub 4 stock in pursuance of the plan of reorganization (§ 361(c)).
- (56) No gain or loss will be recognized by Sub 4 upon receipt of Sub 8's assets and liabilities in constructive exchange for Sub 4 stock (§ 1032(a)).
- (57) The basis of each asset of Sub 8 in the hands of Sub 4 will be the same as the basis of that asset in the hands of Sub 8 immediately before the proposed transaction (§ 362(b)).
- (58) The holding period of Sub 8's assets in the hands of Sub 4 will include the period during which that asset was held by Sub 8 (§ 1223(2)).
- (59) No gain or loss will be recognized by Distributing upon the receipt of Sub 4 stock in exchange for Sub 8's stock in complete liquidation of Sub 8 (§ 354(a)(1)).
- (60) The basis of the Sub 4 stock received by Distributing will be the same as the basis of Sub 8's stock surrendered therefor (§ 358(a)(1)).
- (61) The holding period of the Sub 4 stock received by Distributing will include the holding period of Sub 8's stock surrendered therefor (§ 1223(1)).
- (62) Pursuant to § 381(a) and § 1.381(a)-1, Sub 4 will succeed to and take into account the items of Sub 8 described in § 381(c). These items will be taken into account by Sub 4 subject to the conditions and limitations specified in §§ 381, 382, 383, and 384 and the Regulations thereunder.
- (63) The transfer by Sub 8 to Sub 4 of substantially all its assets in exchange for common stock of Sub 4 and the assumption by Sub 4 of the liabilities of Sub 8 will not constitute a disposition by Distributing of the Sub 8 stock within the meaning of § 1.1502-19(c), and Distributing will not recognize income from any excess loss account which may exist on the date of the reorganization with respect to the Sub 8 stock.
- (64) Any excess loss account with respect to the stock of Sub 8 shall be applied to reduce the basis (or increase the excess loss account) in the Sub 4 stock held by Distributing prior to the reorganization pursuant to § 1.1502-19(b)(2)(i). Because no Sub 4 shares will actually be issued in the

reorganization, Distributing's excess loss account attributable to each share of the Sub 8 stock surrendered will be deemed to ratably reduce the basis (or increase the excess loss account) in each share of the Sub 4 stock actually held by Distributing.

- (65) The transfer of assets by Distributing to Controlled in exchange for Controlled stock and the assumption by Controlled of liabilities, followed by the distribution by Distributing of the Controlled stock to Distributing's shareholders, will constitute 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).
- (66) No gain or loss will be recognized by Distributing upon the transfer of assets, subject to liabilities, to Controlled in exchange for Controlled stock and the assumption by Controlled of liabilities (§§ 361(a) and 357(a)).
- (67) No gain or loss will be recognized by Controlled upon receipt of the assets described above in exchange for Controlled stock (§ 1032(a)).
- (68) The basis of each asset received by Controlled will be the same as the basis of that asset in the hands of Distributing immediately before its transfer (§ 362(b)).
- (69) The holding period of each Distributing asset received by Controlled will include the period during which that asset was held by Distributing (§ 1223(2)).
- (70) No gain or loss will be recognized by Distributing upon the distribution to the Distributing shareholders of the Controlled stock (§ 361(c)).
- (71) No gain or loss will be recognized to (and no amount will be included in the income of) Distributing's shareholders upon the receipt of Controlled common stock pursuant to the distribution (§ 355(a)(1)).
- (72) The basis of the Controlled stock and the Distributing stock in the hands of Distributing's shareholders after the distribution will be the same as the aggregate basis of their Distributing stock held immediately before the distribution, allocated in proportion to the fair market value of each in accordance with § 1.358-2(a). (§§ 358(a)(1) and (b)).
- (73) As provided in § 312(h), proper allocation of earnings and profits between Distributing and Controlled will be made (§ 1.312-10(a)).

- (74) The holding period of the Controlled stock received by Distributing's shareholders will include the holding period of Distributing's stock with respect to which the distribution was made, provided that such stock is held as a capital asset on the date of the distribution (§ 1223(1)).

We express no opinion about the tax treatment of the transactions under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions that are not specifically covered by the above rulings. Particularly, we express no opinion about the tax treatment of the merger of Sub 2 with and into Distributing and Distributing's contribution of Sub 2-A stock to Sub 4. In addition, the taxpayer has not requested an opinion, and no opinion is expressed as whether any plan of liquidation should be considered adopted at the time it is formally adopted subsequent to the issuance of this letter ruling, or should be considered to have been informally adopted at an earlier time.

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

A copy of this letter should be attached to the federal income tax returns of the taxpayers involved for the taxable year in which the transactions covered by this ruling letter are consummated.

A copy of this letter has been sent to the taxpayer.

Sincerely yours,
Assistant Chief Counsel (Corporate)

By _____

Howard W. Staiman
Assistant Branch Chief, Branch 1