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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Date:

December 22, 2004

Distributing =

Controlled =

Newco =

Parent =

Business A =

Business B =

Asset A =

Asset B =

Asset C =

Date 1 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Partnership =

FSub 1 =

FSub 2 =

FSub 3 =

FSub 4 =

FSub 5 =

FSub 6 =

FSub 7 =

FSub 8 =

FSub 9 =

FSub 10 =

FSub 11 =

FSub 12 =

FSub 13 =

FSub 14 =

State X =

a =

b =

c =

d =

e =

f =

Dear :

This letter responds to your October 26, 2004 request for rulings on certain federal income tax consequences of a series of proposed transactions. The information provided in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has made no determination regarding whether the distribution described below satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, whether the distribution described below is used principally as a device for the distribution of earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)), or whether the distribution described below 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 Distributing or Controlled (see § 355(e) and § 1.355-7T).

Summary of Facts

Parent is a publicly traded corporation and the common parent of an affiliated group of companies that files a consolidated Federal income tax return on a calendar-year basis. Parent directly conducts Business A and indirectly conducts several other businesses. Parent wholly owns Distributing. Distributing directly and indirectly conducts Business A and Business B.

Distributing wholly owns Sub 1, Sub 2, FSub 1, FSub 2, and FSub 3. FSub 2 is disregarded as separate from its owner for federal tax purposes under § 301.7701-3 of the Procedure and Administrative Regulations (a "disregarded entity"). Distributing also owns a percent of Sub 3, b percent of FSub 4, b percent of FSub 5, and c percent of FSub 6. Sub 3 wholly owns Sub 5 and owns the remaining d percent of FSub 6.

Sub 1 wholly owns FSub 7 and also owns b percent of FSub 8 and b percent of Partnership, a State X partnership.

FSub 8 wholly owns Sub 4 and FSub 9. FSub 8 also owns e percent of FSub 10, e percent of FSub 11, e percent of FSub 12, e percent of FSub 13, and b percent of FSub 14.

Each "FSub" described above is a foreign entity. Sub 1 through Sub 4, Partnership, FSub 1, FSub 2, and FSub 4 through FSub 14 are collectively referred to as the "Distributing Business A Subsidiaries."

The financial information submitted by Parent indicates that Business A conducted by Distributing and Business B conducted by Distributing each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Parent is in the first stages of a plan to reorganize its entire corporate structure so that each of its various businesses will be isolated in a separate legal entity owned by a parent corporation serving as a holding company. The restructuring will (i) more closely align Parent's legal entity and management reporting systems, (ii) streamline the process of reporting consolidated results of operations, and (iii) segregate corporate activities from operating activities. As part of the reorganization, Business A will be separated from Business B (the "Separation").

Transactions

To effect the Separation, Parent proposes the following series of transactions (the "Transactions"):

- (i) Distributing will contribute its stock in FSub 3 to newly formed Newco in exchange for all of the Newco stock (the "FSub 3 Contribution").
- (ii) Distributing will contribute its Business A assets (except for Asset A), its stock and ownership interests in the Distributing Business A Subsidiaries, and its stock in Newco to Controlled, a newly formed limited liability company that will be a disregarded entity, in exchange for the entire ownership interest in Controlled and the assumption by Controlled of related liabilities (the "First Contribution").
- (iii) Controlled will elect to change its entity classification from disregarded entity to limited liability company taxed as a corporation for federal tax purposes (the "Tax Conversion").
- (iv) Distributing will distribute the stock of Controlled to Parent (the "Distribution").
- (v) Parent will contribute its Business A assets to Controlled, and Controlled will assume related liabilities (the "Second Contribution"). Except for (i) Asset B, which will not be transferred in the Second Contribution due to state transfer taxes, and (ii) Asset

C, which will not be transferred due to significant assignment costs, the Business A assets transferred in the Second Contribution will include all of the property, plant and equipment associated with the Parent Business A operations.

(vi) Parent will assume approximately f dollars of Distributing's debt to Sub 5 (the "Sub 5 Debt") in constructive exchange for additional Distributing stock (the "Debt Distribution").

It was originally intended that Controlled merge into Parent following the Distribution to attain the benefit of certain state net operating losses, and Parent had requested a ruling that the merger would not prevent the Distribution from qualifying under § 355. Because the Service concluded that a merger would prevent such qualification, however, this step will not be taken. Despite the change in plan, and the consequent loss of state tax benefits, the First Contribution, Tax Conversion, and Distribution will rationalize the group's structure in the manner described above and will do so without the cross-ownership between business lines that would result from alternative restructurings.

Representations

Distributing makes the following representations regarding the First Contribution, Tax Conversion, and Distribution (described above in steps (ii), (iii), and (iv)):

(a) Any indebtedness owed by Controlled to Distributing after the Distribution will not constitute stock or securities.

(b) No part of the consideration distributed by Distributing will be received by Parent as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

(c) The five years of financial information submitted for Business A and Business B, each as conducted by Distributing, represents the present operations of each business, and there have been no substantial operational changes since the date of the last financial statements submitted.

(d) Following the Distribution, Distributing and Controlled will each continue the active conduct of its business, independently and with its separate employees.

(e) The Distribution will be carried out to separate Business A from Business B and as a result (1) more closely align Parent's legal entity and management reporting systems, (2) streamline the process of reporting consolidated results of operations, and (3) segregate corporate activities from operating activities. The Distribution is motivated, in whole or substantial part, by this corporate business purpose.

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

(g) There is no plan or intention to liquidate either Distributing or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the Distribution, except in the ordinary course of business.

(h) The total adjusted basis and the fair market value of the assets transferred in the First Contribution will each equal or exceed the sum of the liabilities assumed (as determined under § 357(d)) by Controlled.

(i) The liabilities assumed (as determined under § 357(d)) by Controlled in the First Contribution will have been incurred in the ordinary course of business and will be associated with the assets transferred.

(j) Distributing will neither accumulate its receivables nor make extraordinary payments of its payables in anticipation of the Distribution.

(k) No intercorporate debt will exist between Distributing and Controlled at the time of, or after, the Distribution.

(l) Payments made in connection with any continuing transactions 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.

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

(n) The Distribution will not be a disqualified distribution (as defined in § 355(d)(2)) because immediately after the Distribution: (i) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Distributing that will constitute a 50 percent or greater interest (defined in § 355(d)(4)) in Distributing, and (ii) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Controlled that will constitute a 50 percent or greater interest (defined in § 355(d)(4)) in Controlled.

(o) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7T) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).

(p) No investment tax credit determined under § 46 has been, or will be, claimed for any property that will be transferred between Distributing and Controlled as part of the Distribution.

(q) 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 (see § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, and as currently in effect; § 1.1502-13 as published by T.D. 8597).

Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows on the First Contribution, the Tax Conversion, and the Distribution (described above in steps (ii), (iii), and (iv)):

(1) The First Contribution, followed by the Tax Conversion and the Distribution, will be a reorganization under § 368(a)(1)(D). Distributing and Controlled will each be “a party to the reorganization” under § 368(b).

(2) No gain or loss will be recognized by Distributing on the First Contribution and Tax Conversion (§§ 361(a) and 357(a)).

(3) No gain or loss will be recognized by Controlled on the First Contribution and Tax Conversion (§ 1032(a)).

(4) The basis of each asset received by Controlled will equal the basis of that asset in the hands of Distributing immediately before the First Contribution and Tax Conversion (§ 362(b)).

(5) The holding period of each asset received by Controlled will include the period during which Distributing held that asset (§ 1223(2)).

(6) No gain or loss will be recognized by Distributing on the Distribution (§ 361(c)(1)).

(7) No gain or loss will be recognized by Parent on the Distribution (§ 355(a)(1)).

(8) The aggregate basis of the Distributing stock and the Controlled stock in the hands of Parent will equal the basis of the Distributing stock held by Parent immediately before the Distribution, allocated between the Distributing stock and the Controlled stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(a)(1), (b)(1), and (c)).

(9) The holding period of the Controlled stock received by Parent will include the period Parent held Distributing stock before the Distribution, provided the stock was held as a capital asset immediately before the First Contribution (§ 1223(1)).

(10) Earnings and profits will be allocated between Distributing and Controlled in accordance with §§ 312(h), 1.312-10(a), and 1.1502-33(f)(2).

Caveats

We express no opinion about the tax treatment of any transaction described above under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effect resulting from, any of these transactions that is not specifically covered by the above rulings. In particular, no opinion is given regarding the validity of the Tax Conversion described above in step (iii).

Procedural Matters

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

A copy of this ruling letter must be attached to the federal income tax return of each party involved in the Transactions for the taxable year in which the Transactions are completed.

Under the power of attorney on file in this office, a copy of this letter has been sent to your authorized representative.

Sincerely yours,

Associate Chief Counsel
(Corporate)

By: _____
Wayne T. Murray
Special Counsel to the Associate Chief Counsel
(Corporate)