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Department of the Treasury
Washington, DC 20224

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CC:CORP:BR2
PLR-116230-10

Date:
August 19, 2010

Shareholder =

Distributing 2 =

Controlled 2 =

Distributing 1 =

Controlled 1 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

LLC Sub =

Sub A =

Sub B =

Sub C =

Sub D =

Sub E =

Sub F =

Sub G =

Sub H =

Merger Sub =

Business =

Territory A =

Territory B =

Territory C =

Territory D =

State A =

Province B =

Province C =

Country T =

Country U =

Country V =

Country W =

Country X =

Country Y =

Country Z =

a =

b =

c =

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e =

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g =

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i =

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k =

l =

Dear _____ :

This letter responds to your April 9, 2010 request for rulings, submitted by your authorized representatives, on certain federal income tax consequences of a proposed transaction. The information submitted in that letter and in subsequent correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the Taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. While this office has not verified any of the material

submitted in support of the request for rulings, it is subject to verification on examination.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Proposed Transaction (defined below) (i) satisfies the business purpose requirement of section 1.335-2(b) of the Income Tax Regulations; (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 § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

Summary of Facts

Distributing 2 is the common parent of an affiliated group that files a consolidated federal income tax return. Distributing 2 has outstanding a single class of publicly traded common stock and publicly traded debt. Distributing 2 also has outstanding options to acquire a shares of Distributing 2 common stock, b restricted share units, c performance share units, and d shares of restricted stock (collectively, the “Compensatory Interests”). All such stock options, units, and shares of restricted stock were granted under equity compensation plans approved by Distributing 2’s shareholders.

The public owns e percent of Distributing 2 stock. Shareholder, a domestic corporation, owns directly f percent of Distributing 2 stock. Sub A, Shareholder’s wholly owned domestic subsidiary, owns g percent of Distributing 2 stock directly. Sub D, Sub A’s wholly owned domestic subsidiary, owns h percent of Distributing 2’s stock directly. Shareholder directly and indirectly owns i percent of Distributing 2 stock.

Shareholder also owns indirectly Sub B, a Country V corporation, and Sub C, a Country Y corporation. Sub B owns all of the stock in Sub E, a Country V corporation. Sub C owns all of the stock in Sub G, a Country X company, and Sub F, a Country Z company.

Distributing 2 owns all of the stock of Sub 1 and Sub 2, State A corporations, among other entities. Sub 1 is a holding company for Distributing 2’s foreign operations. In connection with the Proposed Transaction, Distributing 2 recently formed Controlled 2, a domestic corporation that has outstanding a single class of voting common stock.

Sub 1 owns all of the stock in Sub 3, a Country T company that is disregarded as an entity separate from Sub 1. Sub 1 owns all of the Class B Shares of Distributing 1, a Country T limited partnership treated as a corporation for U.S. federal income tax purposes, and Sub 3 owns the Class A shares of Distributing 1. For U.S. federal income tax purposes, Sub 1 is considered to own all of the stock of Distributing 1.

Distributing 1 is an intermediate holding company for Distributing 2's foreign operations. Distributing 1 wholly owns Sub 4, a Country T company. Sub 4 wholly owns Sub 5, a Country T company. Sub 5 wholly owns Sub 6, a Country W company, and Sub 7, a Country T company. Sub 7 wholly owns Sub 9, a Country V company. Sub 6 wholly owns Sub 8, a Country U company, which owns Sub 10, a Country V company. Sub 10 owns Sub 11, a Country V company and Controlled 1, a Country V company. Controlled 1 wholly owns Sub 12, a Country V corporation. Each of Sub 4, Sub 5, Sub 6, Sub 7, Sub 8, Sub 9, Sub 10, Sub 11, and Controlled 1 is disregarded as an entity separate from its owners. Sub 4, Sub 5, Sub 6, and Sub 8 are sometimes referred to collectively as the Territory A subsidiaries.

Distributing 2 and its affiliates conduct Business in Territories A, B, and C. Following the External Split-off, Distributing 2, through its separate affiliated group as defined in section 355(b)(3)(B) (the "Distributing 2 SAG"), will continue to conduct Business in Territories B and C (collectively, the "Territory D Business"). Controlled 2, through its separate affiliated group as defined in section 355(b)(3)(B) (the "Controlled 2 SAG"), will continue to conduct Business in Territory A. Financial information has been received indicating that each of the Businesses conducted in Territories A, B, and C has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing 2 has determined that it is necessary to separate the Territory A business from the Territory D business for the following corporate business reasons: (i) to increase efficiency and achieve cost savings by consolidating supply chain, distribution, marketing, sales, and other activities of the Territory D Business and Shareholder; and (ii) to allow Controlled 2's management to focus exclusively on the performance and profitability of the Territory A Business.

Proposed Transaction

For what are represented to be valid business reasons, the following steps have been proposed (some of which have been taken) to separate the Territory A Business from the Territory D Business (collectively, the "Proposed Transaction"):

- 1) Shareholder will cause Sub A to merge into Sub D. Sub D will then convert to a limited liability company that will be disregarded as separate from Shareholder for U.S. federal income tax purposes and distribute the Distributing 2 stock it holds to Shareholder (collectively, the "Ownership Consolidation"). As a result of the Ownership Consolidation, Shareholder will own i percent of the Distributing 2 stock directly.

- 2) Territory A subsidiaries will refinance Distributing 2's Country V debt through intercompany borrowing. Sub 10 and Controlled 1 will use these proceeds to repay intercompany payables owed to Sub 9, which will use the proceeds to repay public debt. Distributing 2 currently serves as a guarantor on the public debt. Distributing 2 will continue to guarantee the public debt after the External Split-off to the extent it is not repaid. The unpaid public debt, if any, will not remain outstanding for more than j months.
- 3) A Territory A subsidiary will repay intercompany debt owed to Distributing 2. Distributing 2 will use this repayment to fund a portion of the Cash Consideration (defined below).
- 4) An election will be made under Treas. Reg. § 301.7701-3(c) to treat Controlled 1 as a corporation for U.S. federal income tax purposes (the "Deemed Contribution").
- 5) Sub 8 sold all of its Sub 10 stock to Sub 5, which distributed the Sub 10 stock to Sub 4, which distributed the Sub 10 stock to Distributing 1, which distributed the Sub 10 stock to Sub 1. For U.S. tax purposes, Distributing 1 is considered to have distributed the stock of Controlled 1 to Sub 1 (the "Internal Spinoff").
- 6) Distributing 2 will form LLC Sub, a State A limited liability company that will be disregarded as an entity separate from Distributing 2. Sub 1 will then merge with and into LLC Sub, with LLC Sub surviving (the "LLC Merger").
- 7) LLC Sub will distribute the stock of Sub 10 to Distributing 2, which will be ignored for U.S. tax purposes.
- 8) Shareholder will loan money to Distributing 2 in order to fund a portion of the Cash Consideration. Shareholder will also contribute cash to Distributing 2 to fund a portion of the Cash Consideration (the "Shareholder Contribution").
- 9) Distributing 2 will transfer its membership interests in LLC Sub and other assets (including intercompany debt) to Controlled 2 (the "Contribution") in exchange for additional stock of Controlled 2, cash, some of which is derived from third-party lenders, and the assumption of certain liabilities (the "Specified Liabilities"). The cash will fund a portion of the Cash Consideration.
- 10) Shareholder will form Merger Sub, a wholly owned State A limited liability company that is disregarded as an entity separate from Shareholder. Shareholder will transfer its Distributing 2 stock to Merger Sub. Merger Sub will then merge with and into Distributing 2, with Distributing 2 surviving (the "Merger Transaction").

- 11) In the Merger Transaction:
 - a. The Distributing 2 stock held by Merger Sub will be canceled;
 - b. Each share of Distributing 2 stock held by the public shareholders of Distributing 2 that do not dissent to the Merger Transaction (the “Exchanging Shareholders”) will be converted into solely the right to receive one share of Controlled 2 common stock and \$k Cash Consideration upon the surrender of Distributing 2 stock;
 - c. Each outstanding membership interest in Merger Sub will be converted into one share of Distributing 2 common stock (collectively, steps 11(a)-(c) are the “External Split-off”).
 - d. Dissenting Shareholders may receive solely cash in exchange for their Distributing 2 stock.
 - e. All Compensatory Interests held by an employee or former employee of the Territory D business that does not transfer to the Territory A business will be replaced with Compensatory Interests of Shareholder.
 - f. All other Compensatory Interests will be replaced with Compensatory Interests of Controlled 2. Holders of shares of restricted stock of Distributing 2 converted into shares of restricted stock of Controlled 2 will also receive Cash Consideration with respect to their Distributing 2 restricted stock as if that stock had been fully vested at the time of the Merger Transaction (collectively, steps (e)-(f) are the “Compensatory Replacements”).
- 12) Contemporaneously with the External Split-off, Sub C will sell its interests in Sub G and Sub F to Sub 5 for fair market value cash consideration.
- 13) Contemporaneously with the External Split-off, Shareholder may make a determination, subject to then existing market conditions, to acquire a portion of Distributing 2’s outstanding debt by means of one or more public tender offers, open market purchases, and/or privately-negotiated purchases (the “Debt Acquisition”).
- 14) Shareholder has entered into an agreement (the “Letter Agreement”) with a third party providing that upon closing of the External Split-off (i) Distributing 2 and the third party will enter into a new agreement relating to Business in Territory D, and (ii) Shareholder will make a one-time cash payment of \$l to the third party. The Letter Agreement is conditioned on Shareholder obtaining all applicable

approvals for, and closing of, the External Split-off, and it will be effective upon and after such closing.

- 15) Shareholder (or direct or indirect subsidiaries of Shareholder) will transfer stock of direct or indirect subsidiaries of Shareholder or other assets to Distributing 2 in transactions that are anticipated to qualify as an exchange under section 351 or a reorganization under section 368(a)(1)(D) or both (the "Territory C Integration").
- 16) Controlled 1, Sub 10, Sub 11, Sub 12, and Sub E will change their place of organization from Province B to Province C.
- 17) Sub B will transfer all of its Sub E stock to Controlled 1 in exchange for newly issued shares of Controlled 1 stock.
- 18) Sub E, Sub 10, Controlled 1, Sub 11, and Sub 12 will amalgamate to form Sub H, a Country V company that will be treated as a corporation for U.S. tax purposes (collectively, steps (17)-(18) the "Territory B Integration" and together with the Ownership Consolidation, the Territory C Integration, the Debt Acquisition, and the Letter Agreement, the "Shareholder Restructuring").

In connection with the Proposed Transaction, Shareholder, Distributing 2, and Controlled 2 have entered into a number of agreements relating to the separation of the Territory A business from the Territory D business and certain continuing transactions between the companies. These include a Business Separation and Merger Agreement, certain Transitional Services Agreements, a Tax Sharing Agreement, and an Employee Matters Agreement (collectively, the "Agreements"). Except for certain provisions in the Agreements allocating transfer expenses and other transaction costs (the "Specified Expenses"), each of Distributing 2, Shareholder, and Controlled 2 has agreed to pay its own expenses incurred in connection with the Proposed Transaction.

With respect to the Compensatory Replacements, Distributing 2 has withheld shares of its stock from employees in payment of tax obligations relating to the vesting of restricted stock and settlement of restricted stock units. It is anticipated that Shareholder and Controlled 2 may similarly withhold shares of their stock in payment of withholding taxes relating to the issuance of stock pursuant to the Compensatory Replacements.

In addition, after the External Split-off, Controlled 2 will adopt a share repurchase program (the "Share Repurchases"). The Share Repurchases will be motivated by a business purpose, the stock to be repurchased will be widely held, the Share Repurchases will be made in the open market, and Controlled 2 will have no plan or intention to repurchase directly or through any of its subsidiaries an aggregate amount

of its stock that would equal or exceed 20 percent of its outstanding stock before the fifth anniversary of the External Split-off.

Representations

Deemed Contribution and Internal Spinoff

Distributing 2 has made the following representations with respect to the Deemed Contribution and Internal Spinoff:

- (a) No part of the consideration to be distributed by Distributing 1 in the Internal Spinoff will be received by Sub 1 as creditor, employee or in any capacity other than that of a shareholder of Distributing 1.
- (b) The five years of financial information submitted on behalf of the Territory A Business is representative of its present operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (c) The five years of financial information submitted on behalf of the Territory B Business is representative of its present operation, and with regard to that business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) Neither the Territory A Business nor control of an entity conducting that business was acquired during the five-year period ending on the date of the Internal Spinoff in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with transfers between members of the Distributing 1 SAG (as defined in section 355(b)(3)(B)), or in connection with the expansion of an existing five-year trade or business. Throughout the five-year period ending on the date of the Internal Spinoff, Distributing 1 (through its subsidiaries) has been the principal owner of the goodwill and significant assets of the Territory A Business. Distributing 1 (through its subsidiaries) will be the principal owner of the goodwill and significant assets of the Territory A Business following the Internal Spinoff.
- (e) Neither the Territory B Business nor control of an entity conducting that business was acquired during the five-year period ending on the date of the Internal Spinoff in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with transfers between members of the Controlled 1 SAG (as defined in section 355(b)(3)(B)), or in connection with the expansion of an existing five-year trade or business. Throughout the five-year period ending on the date of the Internal Spinoff, Controlled 1 has been the principal owner of the goodwill and significant assets

of the Territory B Business. Controlled 1 or its successor will be the principal owner of the goodwill and significant assets of the Territory B Business following the Internal Spinoff.

- (f) Following the Internal Spinoff, the Distributing 1 SAG will continue the active conduct of the Territory A Business and the Controlled 1 SAG, or its successor, will continue the active conduct of the Territory B Business, in each case independently and with their respective separate employees.
- (g) The Internal Spinoff will be carried out for the corporate business purpose of facilitating the External Split-off, and is motivated, in whole or substantial part, by that corporate business purpose.
- (h) The Internal Spinoff will not be used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled 1 or both.
- (i) The total adjusted bases of the assets deemed to be transferred to Controlled 1 by Distributing 1 in the Deemed Contribution will equal or exceed the sum of the total liabilities assumed, within the meaning of section 357(d), by Controlled 1, plus any liabilities to which those assets are subject.
- (j) The liabilities deemed to be assumed, within the meaning of section 357(d), by Controlled 1 in the Deemed Contribution and the liabilities to which the assets are subject were incurred in the ordinary course of business and are associated with the assets deemed transferred.
- (k) The total fair market value of the assets deemed transferred to Controlled 1 in the Deemed Contribution will exceed the sum of (i) the amount of any liabilities deemed to be assumed, within the meaning of section 357(d), by Controlled 1 in the Deemed Contribution, and (ii) the amount of any liabilities owed to Controlled 1 by Distributing 1 that are discharged or extinguished in connection with the Deemed Contribution.
- (l) The fair market value of the assets of Controlled 1 will exceed the amount of its liabilities immediately after the Deemed Contribution.
- (m) Distributing 1 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Internal Spinoff.
- (n) No intercorporate debt will exist between Distributing 1 and Controlled 1 at the time of, or subsequent to, the Internal Spinoff, except for payables arising under transitional arrangements or otherwise in the ordinary course of business.

- (o) Payments made in connection with any continuing transactions between Distributing 1 and Controlled 1 following the Internal Spinoff will be for fair market value based on terms and conditions arrived at by the parties at arm's length.
- (p) Neither Distributing 1 nor Controlled 1 is an investment company as defined in section 368(a)(2)(F)(iii) and (iv).
- (q) For purposes of section 355(d), immediately after the Internal Spinoff, no person (determined after applying section 335(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50 percent or more of the total value of all classes of Distributing 1 stock, that was acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Internal Spinoff.
- (r) For purposes of section 355(d), immediately after the Internal Spinoff, no person (determined after applying section 335(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50 percent or more of the total value of all classes of Controlled 1 stock, that was either (i) acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Internal Spinoff, or (ii) attributable to distributions on Distributing 1 stock that was acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Internal Spinoff.
- (s) Except as described above, there is no acquisition of stock of Distributing 1 or Controlled 1 (including any predecessor of such corporation) that is part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) that includes the Internal Spinoff.
- (t) Stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Distributing 1 or Controlled 1 (including any predecessor or successor of such corporation) will not be acquired by any person or persons solely as a result of the indirect acquisition of Controlled 1 stock due to the following: (1) the constructive acquisition of Distributing 2 stock by Shareholder resulting from the Shareholder Contribution, and (2) the increase in ownership of Distributing 2 stock by Shareholder which occurs as a result of the payment of the Cash Consideration for outstanding Distributing 2 stock and the payment of cash to Dissenting Shareholders.

- (u) Immediately after the Internal Spinoff, as defined in section 355(g)(4), neither Distributing 1 or Controlled 1 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (v) The percentage of Controlled 1 stock owned directly or indirectly by Shareholder will not decrease as a result of the Shareholder Restructuring, taking into account the attribution rules under section 318(a)(2), as modified by section 355(e)(4)(C)(ii).
- (w) Pursuant to section 362(e)(2)(C), a timely election will be made to reduce the stock basis in Controlled 1 to the fair market value of the assets transferred.

LLC Merger

Distributing 2 has made the following representations with respect to the LLC Merger:

- (x) Distributing 2, on the date of adoption of the Proposed Transaction, and at all times until the final liquidating distribution is completed by the consummation of the LLC Merger, will be the owner of at least 80 percent of the single outstanding class of Sub 1 stock.
- (y) No shares of Sub 1 stock will have been redeemed during the three years preceding the effective time of the LLC Merger.
- (z) Upon the LLC Merger, Sub 1 will cease to be a going concern.
- (aa) Sub 1 will not retain any assets following the LLC Merger.
- (bb) Sub 1 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years prior to the effective time of the LLC Merger.
- (cc) No assets of Sub 1 have been, or will be, disposed of by either Sub 1 or Distributing 2 except for the LLC Merger, the Contribution, the payment of the Cash Consideration in the External Split-off, dispositions in the ordinary course of business, and dispositions occurring more than three years prior to the effective time of the LLC Merger.
- (dd) Except for the Contribution, the liquidation of Sub 1 pursuant to the LLC Merger will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation of any of the businesses or assets of Sub 1, if persons holding, directly or indirectly, more than 20 percent in value of the stock of Sub 1 also hold, directly or indirectly, more than 20 percent in value of the stock in the recipient corporation. For purposes of this representation, ownership will be

determined by application of the constructive ownership rules of section 318(a) as modified by section 304(c)(3).

- (ee) Prior to the effective time of the LLC Merger, no assets of Sub 1 will have been distributed in kind, transferred, or sold to Distributing 2, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years prior to the effective time of the LLC Merger.
- (ff) Sub 1 will report all earned income represented by assets that will be distributed to its shareholders, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, dividends, etc.
- (gg) The fair market value of the assets of Sub 1 will exceed its liabilities both at the date of adoption of the Proposed Transaction and at the effective time of the LLC Merger.
- (hh) The total fair market value of the assets of Sub 1 transferred to Distributing 2 by Sub 1 will exceed the sum of (i) the amount of liabilities assumed by Distributing 2 and (ii) the amount of liabilities owed to Distributing 2.
- (ii) On the date of the LLC Merger, other than obligations arising in the ordinary course of business, there will be no intercorporate debt between Distributing 2 and Sub 1, and none will have been cancelled, forgiven, or discounted, except for transactions that occurred more than three years prior to the effective time of the LLC Merger.
- (jj) Distributing 2 is not an organization that is exempt from federal income tax under section 501 or other provision of the Code.
- (kk) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the LLC Merger have been fully disclosed.
- (ll) The LLC Merger will be effected pursuant to the laws of State A.

Contribution and External Split-off

Distributing 2 has made the following representations with respect to the Contribution and External Split-off:

- (mm) The fair market value of the Controlled 2 stock and Cash Consideration to be received by each Distributing 2 shareholder in the External Split-off will be approximately equal to the fair market value of the Distributing 2 common stock surrendered by such shareholder in the External Split-off.

- (nn) No part of the consideration to be distributed by Distributing 2 in the External Split-off will be received by a shareholder as creditor, employee or in any capacity other than that of a shareholder of Distributing 2, except as contemplated by the Compensatory Replacements. Any shares of Controlled 2 common stock distributed in the External Split-off with respect to restricted stock of Distributing 2 will not represent more than 20 percent of the stock of Controlled 2 outstanding after the External Split-off.
- (oo) The five years of financial information submitted on behalf of the Territory C Business is representative of its present operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (pp) The five years of financial information submitted on behalf of the Territory A Business is representative of its present operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (qq) Neither the Territory C Business nor control of an entity conducting that business was acquired during the five-year period ending on the date of the External Split-off in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with transfers between members of the Distributing 2 SAG, or in connection with the expansion of an existing five-year trade or business. Throughout the five-year period ending on the date of the External Split-off, the Distributing 2 SAG has been the principal owner of the goodwill and significant assets of the Territory C Business. The Distributing 2 SAG will be the principal owner of the goodwill and significant assets of the Territory C Business following the External Split-off.
- (rr) Neither the Territory A Business nor control of an entity conducting that business was acquired during the five-year period ending on the date of the External Split-off in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with transfers between members of the Controlled 2 SAG, or in connection with the expansion of an existing five-year trade or business. Throughout the five-year period ending on the date of the External Split-off, the Distributing 2 SAG and the Controlled 2 SAG will have been the principal owners of the goodwill and significant assets of the Territory A Business. The Controlled 2 SAG will be the principal owner of the goodwill and significant assets of the Territory A Business following the External Split-off.

- (ss) Following the External Split-off, the Distributing 2 SAG will continue the active conduct of the Territory C Business, and the Controlled 2 SAG will continue the active conduct of the Territory A Business, independently and with their respective separate employees.
- (tt) The External Split-off will be carried out for business purposes including: (1) to increase efficiency and achieve cost savings by consolidating supply chain, distribution, marketing, sales, and other activities of the Territory D Business and Shareholder; and (2) to allow Controlled 2's management to focus exclusively on the performance and profitability of the Territory A Business. The External Split-off is motivated, in whole or substantial part, by one or both of those corporate business purposes.
- (uu) The External Split-off will not be used principally as a device for the distribution of the earnings and profits of Distributing 2 or Controlled 2 or both.
- (vv) The total adjusted bases of the assets transferred to Controlled 2 by Distributing 2 in the Contribution will equal or exceed the sum of the total liabilities assumed, within the meaning of section 357(d), by Controlled 2, plus any liabilities to which those assets are subject.
- (ww) The total fair market value of the assets transferred to Controlled 2 in the Contribution will exceed the sum of (i) the amount of any liabilities assumed, within the meaning of section 357(d), by Controlled 2 in the Contribution; (ii) the amount of any liabilities owed to Controlled 2 by Distributing 2 that are discharged or extinguished in connection with the Contribution; and (iii) the amount of cash and the fair market value of any other property (other than stock or securities permitted to be received under section 361(a) without recognition of gain) received by Distributing 2 in connection with the Contribution.
- (xx) The fair market value of the assets of Controlled 2 will exceed the amount of Controlled 2's liabilities immediately after the Contribution.
- (yy) The fair market value of the assets of Controlled 2 will exceed the amount of Controlled 2's aggregate adjusted tax basis in those assets immediately after the Contribution.
- (zz) Except for the Specified Liabilities, any liabilities assumed, within the meaning of section 357(d), by Controlled 2 in the Contribution and the liabilities to which the assets are subject will have been incurred in the ordinary course of business and will be associated with the assets transferred.

- (aaa) No intercorporate debt will exist between Distributing 2 and Controlled 2 at the time of, or subsequent to, the External Split-off, except for payables arising under the Agreements or otherwise in the ordinary course of business.
- (bbb) Immediately before the External Split-off, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations. See Treas. Reg. §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13, as published by T.D. 8597.
- (ccc) At the time of the External Split-off, Distributing 2 will not have any excess loss account with respect to the stock of Controlled 2.
- (ddd) Payments made in connection with any continuing transactions between Distributing 2 and Controlled 2 will be for fair market value based on terms and conditions arrived at by the parties at arm's length.
- (eee) No two parties to the transaction are investment companies as defined in sections 368(a)(2)(F)(iii) and (iv).
- (fff) For purposes of section 355(d), immediately after the External Split-off, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote, or 50 percent or more of the total value of all classes of Distributing 2 stock, that was acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the External Split-off.
- (ggg) For purposes of section 355(d), immediately after the External Split-off, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 2 stock entitled to vote, or 50 percent or more of the total value of all classes of Controlled 2 stock, that was either (i) acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the External Split-off, or (ii) attributable to distributions on Distributing 2 stock that was acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the External Split-off.
- (hhh) Except as described above, there is no acquisition of Distributing 2 or Controlled 2 (including any predecessor of such corporation) that is part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) that includes the External Split-off.

- (iii) Stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Distributing 2 or Controlled 2 (including any predecessor or successor of such corporation) will not be acquired by any person or persons solely as a result of the following: (1) the constructive acquisition of Distributing 2 stock by Shareholder resulting from the Shareholder Contribution and (2) the increase in ownership of Distributing 2 stock by Shareholder which occurs as a result of the payment of the Cash Consideration for outstanding Distributing 2 stock and the payment of cash to Dissenting Shareholders.
- (jjj) Immediately after the External Split-off, as defined in section 355(g)(4), neither Distributing 2 nor Controlled 2 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (kkk) Except as described above, each of the parties to the Contribution and External Split-off will pay its own expenses, if any, incurred in connection with the Contribution and External Split-off.
- (lll) The percentage of Distributing 2 stock owned directly or indirectly by Shareholder will not decrease as a result of the Shareholder Restructuring, taking into account the attribution rules under section 318(a)(2), as modified by section 355(e)(4)(C)(ii).
- (mmm) Any acquisition of stock of Shareholder or Controlled 2 pursuant to the Compensatory Replacements will be in connection with the performance of services for Shareholder or Controlled 2, as applicable, will be in a transaction to which section 83 applies and will not be excessive by reference to the services performed.

Rulings

Based on the information submitted and the representations made, we rule as follows on the Proposed Transaction:

Deemed Contribution and Internal Spinoff

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

- 3) No gain or loss will be recognized by Controlled 1 on the Deemed Contribution. § 1032(a).
- 4) The basis of each asset deemed received by Controlled 1 in the Deemed Contribution will be equal to the basis of such asset in the hands of Distributing 1 immediately prior to the Deemed Contribution. § 362(e)(2).
- 5) The holding period of each asset deemed received by Controlled 1 in the Deemed Contribution will include the holding period during which that asset was held by Distributing 1. § 1223(2).
- 6) No gain or loss will be recognized by Distributing 1 on the Internal Spinoff. § 361(c)(1).
- 7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Sub 1 on the Internal Spinoff. § 355(a)(1).
- 8) The aggregate basis of the stock of Distributing 1 and Controlled 1 in the hands of Sub 1 immediately after the Internal Spinoff will be equal to the basis of the stock of Distributing 1 held immediately before the Internal Spinoff, and will be allocated between the stock of Distributing 1 and Controlled 1 in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2). § 358(b)(2), (c).
- 9) The holding period of the stock of Controlled 1 received by Sub 1 in the Internal Spinoff will include the holding period of the Distributing 1 stock with respect to which the Internal Spinoff will be made, provided that such Distributing 1 stock is held as a capital asset on the date of the Internal Spinoff. § 1223(1).
- 10) Earnings and profits will be allocated between Distributing 1 and Controlled 1 in accordance with section 312(h) and Treas. Reg. § 1.312-10(a).

LLC Merger

- 11) The LLC Merger will be treated as a complete liquidation under section 332.
- 12) No gain or loss will be recognized by Distributing 2 upon its receipt of the assets and liabilities of Sub 1 in the LLC Merger. § 332(a).
- 13) No gain or loss will be recognized by Sub 1 on the distribution of its assets to, or the assumption of liabilities by, Distributing 2 in the LLC Merger. §§ 336(d)(3), 337(a).

- 14) Except as otherwise provided in section 334(b)(1)(B), Distributing 2's basis in each asset received from Sub 1 will be the same as the basis of that asset in the hands of Sub 1 immediately before the LLC Merger. § 334(b)(1).
- 15) Distributing 2's holding period in each asset received from Sub 1 in the LLC Merger will include the period during which the asset was held by Sub 1. §1223(2).
- 16) Distributing 2 will succeed to and take into account the items of Sub 1 described in section 381(c) and the foreign tax credit carryovers of Sub 1, subject to the conditions and limitations specified in sections 381, 382, 383, 384, 904, and 1502 and the regulations thereunder (§ 381(a)(1) and § 1.381(a)-1).

Shareholder Contribution

- 17) Distributing 2 will not recognize gain or loss on the Shareholder Contribution.

Contribution and External Split-off

- 18) The Contribution, followed by the External Split-off, will qualify as a reorganization under section 368(a)(1)(D). Distributing 2 and Controlled 2 will each be a party to the reorganization under section 368(b).
- 19) The Contribution will be treated as an intercompany transaction within the meaning of Treas. Reg. § 1.1502-13(b)(1), including for purposes of Temp. Treas. Reg. § 1.1502-9T.
- 20) No gain or loss will be recognized by Distributing 2 on the Contribution. §§ 357(a), 361(a)-(b).
- 21) No gain or loss will be recognized by Controlled 2 on the Contribution. § 1032(a).
- 22) The basis of each asset received by Controlled 2 in the Contribution will be equal to the basis of that asset in the hands of Distributing 2 immediately before its transfer to Controlled 2. § 362(b).
- 23) The holding period of each asset received by Controlled 2 in the Contribution will include the holding period during which that asset was held by Distributing 2. § 1223(2).
- 24) No gain or loss will be recognized by Distributing 2 in the External Split-off. § 361(c)(1).

- 25) The Exchanging Shareholders will recognize gain, if any, on their receipt of Controlled 2 stock and the Cash Consideration in the External Split-off, but not in excess of the Cash Consideration received. § 356(a)(1). Any such gain will be treated as gain from the exchange of property. § 356(a)(2); Rev. Rul. 93-62, 1993-2 C.B. 118. For purposes of section 356, the Exchanging Shareholders will be treated as if they had retained their Distributing 2 stock actually exchanged for Controlled 2 stock and received the Cash Consideration in exchange for Distributing 2 stock equal in value to the Cash Consideration. Rev. Rul. 93-62. If the exchange has the effect of a distribution of a dividend, determined with application of section 318(a), the amount of gain recognized that is not in excess of an Exchanging Shareholder's ratable share of the undistributed earnings and profits will be treated as a dividend. § 356(a)(2). The Exchanging Shareholders will not recognize any loss on the External Split-off. § 356(c).
- 26) The aggregate basis of the stock of Controlled 2 in the hands of each of the Exchanging Shareholders immediately after the External Split-off will be equal to the holder's adjusted basis in the shares of Distributing 2 stock surrendered in the External Split-off, decreased by the amount of the Cash Consideration received, and increased by (i) the amount, if any, treated as a dividend, and (ii) any gain recognized on the exchange, other than the portion of the gain that was treated as a dividend. § 358(a)(1).
- 27) The holding period of the stock of Controlled 2 received by an Exchanging Shareholder in the External Split-off will include the holding period of Distributing 2 stock surrendered in the External Split-off, provided that Distributing 2 stock is held as a capital asset on the date of the External Split-off. § 1223(1).
- 28) Earnings and profits will be allocated between Distributing 2 and Controlled 2 in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33.
- 29) Where solely cash is received by a Dissenting Shareholder in exchange for its Distributing 2 stock, such cash will be treated as having been distributed in redemption of the shareholder's Distributing 2 stock, subject to the provisions and limitations of section 302. Where, as a result of such distribution, a Dissenting Shareholder owns no Distributing 2 stock, either directly or through application of section 318(a), the redemption will be a complete termination of interest within the meaning of section 302(b)(3), and the cash will be treated as a distribution in full payment in exchange for the shareholder's Distributing 2 stock, as provided in section 302. Under section 1001, gain will be realized and recognized to such shareholder in an amount equal to the difference between the amount of the cash received and the adjusted basis of the Distributing 2 stock surrendered, as determined under section 1011.

- 30) Except for purposes of section 355(g), payments made between Distributing 2 and Controlled 2 and their respective affiliates under the Agreements regarding liabilities, indemnities or other obligations that (i) have arisen or will arise for a taxable period ending on or before the External Split-off or for a taxable period beginning before and ending after the External Split-off, and (ii) will not become fixed or ascertainable until after the Distribution, will be treated as occurring immediately before the External Split-off. See *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.
- 31) For purposes of testing the effect of the Share Repurchases on the External Split-off under section 355(e), the Share Repurchases will be treated as being made from all holders of Controlled 2 common stock on a pro rata basis. The effect of the Share Repurchases will be taken into account under section 355(e) and this ruling only to the extent such Share Repurchases are otherwise treated, for purposes of section 355(e), as part of a plan (or series of related transactions) with the External Split-off.

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

In particular, no opinion is expressed regarding whether the Internal Spinoff and External Split-Off: (i) satisfy the business purpose requirement of § 1.355-2(b), (ii) are being used principally as a device for the distribution of earnings and profits of Distributing 1, Distributing 2, Controlled 1, or Controlled 2 or any combination thereof (see § 355(a)(1)(B) and § 1.355-2(d)), or (iii) are part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii).

Procedural Matters

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.

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

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.

Sincerely,
Lisa R. Fuller
Senior Counsel, Branch 1
(Corporate)