Internal Revenue Service

Department of the Treasury

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LEGEND

Parent =

Sub 1 =

LLC 2 =

Sub 1B =

Corp 4 =

Corp 5 =

Corp 6 =

Acquiring Parent =

Acquiring =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Trust 5 =

Trust 6 =

Country A =

Country B =

State A =

State B =

State C =

a =

b =

p =

pp =

ppp =

h =

i =

da =

Industry E =

Business A =

Business B =

Business C =

Business D =

Method D =

Year 3 =

Year 4 =

Date A =

Date B =

Date C =

Date D =

Date E =

Founder =

Dear :

This letter responds to a letter dated September 19, 2002, requesting rulings concerning the federal income tax consequences of a proposed transaction. Additional information was provided in letters dated October 14, October 21, and November 4, 2002, and January 6 and 16, 2003.

Parent, a State A corporation, is a diversified company that directly and indirectly engages in several businesses, most of which are in Industry E. Parent directly conducts Business A, Business B, and Business C. Parent indirectly conducted Business D through subsidiary corporations. Parent and other members of the Parent consolidated group may hereinafter be referred to as the “Parent Group.” Parent, other members of Parent Group, and other entities controlled directly or indirectly by Parent may hereinafter be referred to as the “Parent Controlled Organization.”

The outstanding common stock of Parent is held by Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6 (some or all of which trusts may hereinafter be referred to as the "Shareholders").

The beneficiaries of Trust 1 are remote descendants of Founder, none of whom have yet been born, and charities. Trust 1 holds a majority of Parent's voting stock. The trustees of Trust 1 may, until the birth of the first great-great-grandchild of Founder, make distributions of net income for such charitable purposes as they deem advisable, provided the distributions are described in § 642(c)(1) of the Internal Revenue Code. The trustees have not made any distributions for charitable purposes and have no current plan or intention to make distributions for charitable purposes. After the birth of the first great-great-grandchild, the beneficiaries of the trust are solely individual descendants of Founder and a specified foundation, which is a remote contingent charitable remainder beneficiary that will benefit only if the trust instrument fails to provide for a particular contingency.

Each of Trusts 2 through 6 has current living individual beneficiaries and also has one or more remote contingent charitable remainder beneficiaries, who would benefit only if all of the descendants of Founder are deceased at the time of a distribution under the trust. The remote contingent charitable remainder beneficiaries of these trusts are a specified foundation and two specified church organizations.

Sub 1, a State B corporation, commenced the operation of Business D in Year 3 and conducted Business D in Country A. Some intellectual property used by Sub 1 in Business D was owned by Corp 5. At the time of the transaction described herein, Sub 1 was a wholly-owned subsidiary of Corp 4, a State B corporation, which was a wholly-owned subsidiary of Corp 5, a State B corporation, which was a wholly-owned subsidiary of Corp 6, a State A corporation, which was a wholly-owned subsidiary of Parent. Corp 5 and Corp 6 were primarily holding companies.

Sub 1B, a Country B corporation, conducted Business D in Country B. Sub 1B's assets and business were relatively minor compared to those of Sub 1. Sub 1B was a wholly-owned subsidiary of Corp 5.

Acquiring is a State B limited liability company. All the stock in Acquiring is held by Acquiring Parent, a State C limited liability company.

Parent, having concluded that Business D was not a good fit with its core businesses, decided to sell it and then decided to distribute the net proceeds to the Shareholders. In conjunction with these decisions, the following steps have been completed, commenced, or are planned:

i. On Date A, Parent entered into an agreement ("Old Agreement") with Acquiring Parent under which Acquiring Parent would purchase Sub 1 and Sub 1B.

ii. On Date B, Acquiring Parent assigned its rights under the Old Agreement to Acquiring, and the Old Agreement was amended to become the agreement ("Agreement") under which Acquiring would purchase Sub 1 and Sub 1B.

iii. To comply with a provision in the Agreement requiring Sub 1 and Sub 1B to have a specific amount of cash on hand ("Cash-on-Hand Requirement") amounts of cash were transferred between Sub 1 and Corp 4, its parent. Taking into account both the amount initially distributed by Sub 1`and the amount subsequently returned to Sub 1, there was a net distribution from Sub 1 to Corp 4 of $h million ("Excess Cash Distribution").

iv. On Date C, pursuant to the Agreement, Sub 1 was merged into LLC 2, a State B limited liability company. LLC 2 survived the merger and became in all respects the successor to Sub 1. After the merger, Corp 4 was the sole member of LLC 2.

v. On Date C, immediately following step iv, pursuant to the Agreement, Acquiring purchased all of the interests in LLC 2 from Corp 4 for $p and purchased all of the outstanding shares of Sub 1B from Corp 5 for $pp. The total amount paid by Acquiring ($p plus $pp) was $ppp million ("Total Payment"). Of this Total Payment, $i was allocated as a payment for Parent having entered into a covenant not to compete ("Covenant-Not-To-Compete"). In addition, intellectual property used in Business D was purchased by Acquiring from Corp 5.

vi. Shortly after its receipt, the Total Payment was invested by the Parent Group, on a temporary basis, in a segregated account ("Segregated Account") in order to preserve the funds received. (Subsequently, a portion of this cash has been used to pay expenses related to the sale.)

vii. On or before Date D, Corp 5 liquidated Corp 4 in a transaction qualifying as a complete liquidation of a subsidiary under § 332.

viii. On or before Date D, Corp 6 liquidated Corp 5 in a transaction qualifying as a complete liquidation of a subsidiary under § 332.

ix. On or before Date D, Parent liquidated Corp 6 in a transaction qualifying as a complete liquidation of a subsidiary under § 332.

x. On or before Date D, Parent adopted a plan of partial liquidation calling for Parent to distribute all of the net proceeds from the sale of Sub 1 and Sub 1B ("Sale Proceeds Cash") in redemption of certain outstanding shares of Parent voting and nonvoting stock. The Sale Proceeds Cash included the Total Payment (including the amount allocable to the Covenant-Not-To-Compete) less expenses and taxes connected to the sale and distribution.

xi. On Date D, pursuant to the plan of partial liquidation, Parent distributed all of the Sale Proceeds Cash ($da million) to the Shareholders. The distribution of the proceeds was non-pro rata among the Shareholders and was in redemption of voting common stock from Trusts 1 and 2, and nonvoting common stock from Trusts 3, 4, 5, and 6.

xii. On or before Date E, a further distribution may be made from Parent to the Shareholders, if it should be concluded by Parent that there are additional assets properly attributable to Business D.

The following representations have been made in connection with the proposed transactions.

(a) Throughout the period beginning 5 years prior to Date C and continuing up until the date of the final distribution in partial liquidation, Parent will have continuously and actively conducted (within the meaning of § 1.351-1(c) of the Income Tax Regulations) each of Businesses A, B, and C. Throughout this period, Parent will have been directly engaged through its own activities in Businesses A, B, and C, and Parent will have directly employed over 50 full-time employees in each of these businesses throughout this period. Moreover, at the time of the final distribution in partial liquidation, there will be no plan or intent for Parent to cease being directly engaged in these three businesses. It is anticipated that Parent will continue to actively and continuously conduct (within the meaning of § 1.355-1(c)) each of these three businesses, and will continue to have over 50 full-time employees engaged in each of these businesses subsequent to the completion of the partial liquidation distribution to the Shareholders.

(b) Throughout the short period of its existence, LLC 2 (the successor to Sub 1) will have been wholly owned by Corp 4, and will have been treated by Corp 4 (and other members of the Parent Group) as a disregarded entity. Moreover, neither Corp 4 (nor any other member of the Parent Group) will have taken any action to cause the default classification of § 301.7701-3 not to apply.

(c) LLC 2, and/or Corp 4 (LLC 2's parent), and/or its predecessor, Sub 1, will have directly continuously and actively conducted Business D (within the meaning of § 1.355-1(c)) throughout the 5 year period prior to Date C, and will have directly employed over 50 full-time employees in Business D throughout this 5 year period.

(d) Business D was not acquired by LLC 2, Corp 4, Sub 1, or any predecessor within the 5 year period prior to Date C in a transaction in which gain or loss was recognized in whole or in part.

(e) Financial information has been submitted indicating that each of Parent's Businesses A, B, and C, and Business D operated by LLC 2, Corp 4, and/or Sub 1 had income and expenses indicative of business activity in every year in the period beginning 5 years prior to Date C up until the present or, for Business D, up until Date C.

(f) Throughout the 5 year period prior to Date C, LLC 2, Corp 4, and/or Sub 1 carried on the activities of Business D for the purpose of earning income or profit from Business D. Their Business D activities included every step in the process of earning income or profit. In Year 4, Sub 1 had revenue of over $a million and profits of over $b million, which constituted a substantial contribution to Parent's combined corporate enterprise.

(g) Sub 1, Corp 4, and LLC 2 were, in large part, operated independently of Parent. Except for the Corp 4 Secretary, Sub 1, Corp 4, and LLC 2 had no officers or directors who also were officers or directors of Parent. Sub 1's, Corp 4's, and LLC 2's operations were managed from a location in a different state than the location of Parent's headquarters. Sub 1 had its own depot equipment, plant equipment, trucks, and office equipment. In addition to having separate officers and directors, it had separate lower-level management, books and records, and employees.

(h) Each of the series of transactions through which Parent received the proceeds from the step v. sale (the liquidations of Corps 4, 5, and 6) constituted the complete liquidation of a subsidiary within the meaning of § 332.

(i) Parent has not acquired, and has no plan or intention of acquiring, either directly or through other members of the Parent Controlled Organization: (i) stock in Acquiring or Acquiring Parent; or (ii) any part of Business D sold to Acquiring. In addition, neither Parent nor any other member of the Parent Controlled Organization has any intent to engage in Business D.

(j) Parent has no plan or intention either to completely liquidate or to engage in another distribution in partial liquidation.

(k) The Shareholders are receiving nothing except cash in the transaction.

(l) None of the cash proceeds from the step v. sale has been used in any manner by Parent Group, except that Corp 4 placed cash proceeds in an account that bears interest at the 90-day United States T-bill rate. There have been no losses with respect to the invested proceeds.

(m) The Sale Proceeds Cash is proceeds from the sale of business assets that were actively used in Business D. None of the amount distributed in partial liquidation is, or is attributable to, any of the following: (i) a reserve for expansion; (ii) a mere business decline; (ii) a mere decrease in working capital, or in the need for working capital; (iv) proceeds from the sale of a business which is nominal in relation to the entire business of the Parent Controlled Organization; or (v) a business operated at a loss which acquired assets from another business of the Parent Controlled Organization. None of the Sale Proceeds Cash was proceeds from the sale of assets that were idle, passive, or investment assets.

(n) The step xi. distribution (and any step xii. distribution) in partial liquidation will be consummated during the taxable year in which the plan of partial liquidation is adopted or in the succeeding taxable year.

(o) The distribution in partial liquidation will consist of all of the net proceeds from the termination of Business D (that is, the entire amount received from Acquiring for Business D plus any other assets properly attributable to Business D) less: (i) any retained liabilities properly attributable to Business D; (ii) all taxes and expenses of Parent Group attributable to the sale of Business D to Acquiring; and (iii) all taxes and expenses of Parent Group incident to the proposed distribution in partial liquidation. .

(p) There will have been no unreasonable delay in making the distribution in partial liquidation. The time between the step v. receipt of proceeds and the step xi. distribution (and any step xii. distribution) represents the period reasonably necessary for the Parent Group to make informed decisions, to obtain legal guidance and governmental rulings, to make appraisals and/or cost and liability determinations; and to take other actions such that the transaction proceeds in an orderly and businesslike manner.

(q) The amount of cash distributed by Parent to each of the Shareholders will in each instance be equal to the fair market value of the share of stock surrendered by such shareholder in exchange therefor.

(r) There are no declared but unpaid dividends on the stock being redeemed by Parent.

(s) The Shareholders have no plan or intention to repay to any entity of the Parent Controlled Organization, or to reinvest in the Parent Controlled Organization, any of the amount distributed in partial liquidation.

(t) None of the amounts distributed by Parent in the partial liquidation will be received by a Shareholder as a debtor, creditor, employee, or in any capacity other than that of a Parent shareholder.

(u) The present transaction -- the step v. sale and the step xi. (and possible step xii.) distribution in partial liquidation – is not a step in a larger integrated transaction. The comprehensive corporate restructuring (occurring contemporaneously) and the partial liquidation are independently motivated, have been planned separately from one another, and have no interrelationship (other than as necessary to ensure that the two transactions do not conflict with one another).

(v) There are no outstanding options or warrants to acquire Parent stock or obligations convertible into Parent stock.

Based solely on the information submitted and on the representations set forth above, and provided that each of steps vii., viii., and ix. qualifies as a § 332 liquidation, and provided further that Parent succeeds to the items of Sub 1 described in § 381(c), we hold as follows:

(1) For purposes of making a § 302(b)(4) partial liquidation determination with regard to the step xi. distributions from Parent to the Shareholders (and possible step xii. distributions), in light of the applicability of §§ 332 and 381 to Parent's receipt of the proceeds from the sale of Sub 1 assets: (i) the separate corporate existence of Sub 1 will be disregarded and the assets and activities of Sub 1 will be considered to be those of Parent; and (ii) the acquisition of Sub 1 assets by Acquiring through LLC 2 will be viewed as a transfer of the assets and activities of Sub 1 from Parent to Acquiring (Rev. Rul. 77-376, 1977-2 C.B. 107, dealing with distributions in partial liquidation under § 346(a)(2) and (b), the predecessor of present § 302(b)(4) and (e)(2)).

(2) The Excess Cash Distribution of $h million from Sub 1 to Corp 4 constitutes assets wholly or partly attributable to Sub 1. In the event any of this $h million amount is working capital of Business D, or otherwise properly allocable to Business D, it has to be taken into account in determining whether the distribution to the Shareholders meets the § 302(e)(2) termination of business requirement that the entire business and/or the entire net proceeds from the sale (or other disposition) of the business be distributed (§ 1.346-1(b)).

(3) The placement of cash in the Segregated Account in step vi. with such cash being invested in limited risk assets, all as described above, will not change the identity or character of the money so invested. For purposes of the distributions in partial liquidation, these temporary investments will not prevent this cash from being considered the proceeds received by Parent from the step v. sale.

(4) The proposed distributions of cash by Parent to the Shareholders in redemption of some or all of the Parent stock held by the Shareholders pursuant to the plan of partial liquidation, as described above, will be treated as distributions in partial liquidation under §§ 302(b)(4) and 302(e)(2) to the extent provided in rulings (5) and (6) below.

(5) The distributions from Parent to the Shareholders will be treated as exchanges under § 302(b)(4), provided that each of the three following conditions applies: (i) the redeemed shareholder is not a corporation; (ii) the cash distributed is the proceeds from the sale of operating assets ("Operating Asset Proceeds"); and (iii) the distribution occurs within the taxable year of Parent in which the plan of partial liquidation was adopted, or within the succeeding taxable year. For purposes of this ruling (5) in determining whether the redeemed shareholder is a corporation, any Parent stock held by a trust (or certain other pass-through entities) will be treated as if it were actually held by the beneficiaries of the trust (or other entity). In addition, for purposes of this ruling (5), the term "corporation" does not include individuals but generally does include "C" corporations and similar entities, and the term "Operating Asset Proceeds" includes that portion of the cash that was received with regard to Sub 1's Business D business operations (including an appropriate amount of working capital), but does not include any amount that was received with regard to a reserve for expansion, investment assets, or working capital in excess of that reasonably needed for business operations. Moreover, in determining whether the distribution is made within the requisite time period, it should be noted that the date of adoption of a plan of liquidation may, in some circumstances, be the date of a prior informal plan rather than the date of formal plan adoption.

(6) The maximum amount of cash that will be considered to be distributed in partial liquidation is the amount of cash received with regard to the business operations of Sub 1's Business D less all properly attributable liabilities and expenses. The amount of cash received includes the Total Payment received from Acquiring in exchange for the business operations of Sub 1's Business D, plus any amount of the $h million Excess Cash Distribution that may properly be allocable to the business operations of Sub 1's Business D. Excluded from the partial liquidation is any cash properly allocable to the business of Sub 1B, or to the Covenant-Not-To-Compete, or to any intellectual property acquired from Corp 5, or to any

asset acquired from any other member of the Parent Controlled Organization. Moreover, the distribution in partial liquidation does not include any earned or accrued investment earnings or gains on the cash received. The properly attributable liabilities and expenses (which must be deducted from the amount that may be distributed in partial liquidation) include all liabilities and expense arising from the sale and distribution of Sub 1's Business D assets (including taxes and expenses of Parent and the Parent Group arising from the sale and distribution of these assets) but not any liabilities or expenses connected with Sub 1B's assets or other items such as the Covenant-Not-To-Compete. Moreover, there also must be deducted from the amount distributable in partial liquidation any expenses with regard to, or any current or accrued losses on, any investment of the cash received, such as the temporary investment in the Segregated Account. (See Rev. Rul. 60-262, 1960-2 C.B. 115; Rev. Rul. 71-250, 1971-1 C.B. 112; Rev. Rul. 76-279, 1976-2 C.B. 99; Rev. Rul. 76-289, 1976-2 C.B. 100.)

(8) Any amount distributed to the Shareholders that is not considered to be distributed in partial liquidation in accordance with the above rulings or that otherwise fails to constitute a distribution in partial liquidation under § 302(b)(4) may, nonetheless, constitute a distribution in redemption under § 302(b)(1), (2), or (3) that will be treated as in full payment for the stock redeemed under § 302(a), or, alternatively, depending on the circumstances of the particular shareholder, may be treated as a distribution of property under §§ 301 and 316.

(9) For each of the Shareholders, the amount of the distribution received by the Shareholder that constitutes a distribution in partial liquidation under § 302(b)(4) will be treated as received by the Shareholder as full payment in exchange for the shares of stock redeemed by such Shareholder, as provided by § 302(a). Gain or loss will be recognized by the Shareholder to the extent of the difference between the amount received in the partial liquidation distribution and the adjusted bases of the shares of stock surrendered in exchange therefor. Provided that the redeemed stock constitutes a capital asset in the hands of the exchanging shareholder and that § 341(a) (relating to collapsible corporations) is not applicable, the gain or loss will be considered capital gain or loss subject to the provisions and limitations of Subchapter P of Chapter 1 of the Code.

No opinion is expressed 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 directly covered by the above rulings. In particular, no opinion is expressed: (i) as to the proper federal tax treatment of any aspect of the transaction that deals with Sub 1B or the distribution of assets allocable to Sub 1B, or as to whether an amount other than $ pp should have been allocated to the purchase of Sub 1B; (ii) as to the proper federal tax treatment of any purchase by Acquiring of intellectual property from Corp 5, or as to whether the amount of the Total Payment allocated to the purchase of Business D from Sub 1 needs to be adjusted in light of any such purchase of intellectual property; (iii) as to the proper federal tax treatment of Parent entering into the Covenant-Not-To-Compete, or as to whether it was correct to allocate $i of the Total Payment to this covenant; (iv) as to whether some or all of the $h million Excess Cash Distribution is properly attributable to the operating assets of the Business D operated by LLC 2, its parent, Corp 4, or its predecessor, Sub 1; and (v) as to whether a particular entity is a beneficiary of one of the Trusts and whether such entity is a corporation.

This ruling letter 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 transaction covered by this ruling letter is consummated.

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

Sincerely,

Marnie Rapaport

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Office of Associate Chief Counsel
(Corporate)