

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: 200514008

Release Date: 4/8/2005

Index Number: 1503.04-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
 , ID No.

Telephone Number:

Refer Reply To:
CC:INTL:B04
PLR-160698-04
Date:
December 21, 2004

TY:

Legend

Tax Year =
Parent =
Sub S Parent =

Date A =
Date B =

Dear :

This is in response to a letter dated November 10, 2004, submitted on your behalf by your authorized representative, requesting a ruling regarding the application of §1503(d) of the Internal Revenue Code with respect to a proposed transaction. Background information was submitted in letters dated May 28, 2004, August 12, 2004, August 31, 2004, September 8, 2004, October 21, 2004, and November 1, 2004.

FACTS

Parent is the parent of the consolidated return group and has been taxed as a subchapter C corporation. Parent and its affiliates conduct a worldwide business through a number of branches and partnerships that are dual resident corporations which have incurred dual consolidated losses. Parent has filed elections under Treas. Reg. §1.1503-2T(g)(2)(i) and certifications pursuant to Treas. Reg. §1.1503-2(g)(2)(vi).

PROPOSED TRANSACTION

Parent plans to elect to be taxed as a subchapter S corporation. In addition, Parent proposes to make elections for certain subsidiaries to be taxed as qualified subchapter S subsidiaries.

REPRESENTATIONS

The taxpayer has provided the following representations with regard to the proposed transaction:

1. All of the elections and agreements described in Treas. Reg. §1.1503-2(g)(2)(i) or Treas. Reg. §1.1503-2T(g)(2)(i) have been timely filed for each of the dual consolidated losses. Parent will timely file the elections and agreements described in Treas. Reg. §1.1503-2T(g)(2)(i) for each of the Parent Group dual consolidated losses for the fiscal year ending Date A. For tax years after Date B, Sub S Parent will timely file the necessary reporting and certifications that may be required under Treas. Reg. §1.1503-2(g)(2)(vi) or Treas. Reg. §1.1503-2T(g)(2)(vi) for the dual consolidated losses.
2. Each of the shareholders of Parent is an eligible S corporation shareholder pursuant to §1361(b)(1) of the Code.
3. All of the shareholders of Parent will consent to Parent's subchapter S election.
4. Each of the subsidiaries for which Parent will make a qualified subchapter S subsidiary election is a domestic corporation that is eligible to make a QSub election in accordance with §1361(b)(3)(B) of the Code.
5. Parent and each of Parent's shareholders recognize and agree that in order for Parent to convert to a subchapter S corporation without the recapture of the Parent Group DCLS and the related interest charge under Treas. Reg. §1.1503-2(g)(2)(vii), it is necessary to enter into a closing agreement with Parent and all of its shareholders as parties.

ANALYSIS

As a result of Parent's election to convert to a subchapter S corporation, all of the dual resident corporations will cease to be members of the consolidated group that filed elections pursuant to Treas. Reg. §1.1503-2(g)(2) with respect to their dual consolidated losses. Therefore, Parent's subchapter S election constitutes a triggering event under Treas. Reg. §1.1503-2(g)(2)(iii)(A)(2) requiring recapture of the dual consolidated losses pursuant to Treas. Reg. §1.1503-2(g)(2)(vii) unless Parent, all of Parent's shareholders, and the Internal Revenue Service agree to enter into a closing agreement setting forth the terms for recapture of the dual consolidated losses upon the occurrence of a

subsequent triggering event, within the parameters of subchapter S of the Code and under principles similar to the regulations under section 1503(d).

RULING

The subchapter S election made by Parent effective _____ will not trigger the recapture of the Parent Group dual consolidated losses provided Parent and all of Parents shareholders enter into the attached closing agreement with the Internal Revenue Service.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty 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.

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.

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.

Sincerely,

Michael H. Frankel
Senior Technical Reviewer, Branch 4
Office of the Associate Chief Counsel,
(International)

Enclosure (1)

cc:

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE
CLOSING AGREEMENT AS TO FINAL DETERMINATION
COVERING SPECIFIC MATTERS

This closing agreement is made in triplicate under and in pursuance of section 7121 of the Internal Revenue Code of 1986, as amended (the "Code"), by and between:

and
the Commissioner of Internal Revenue (the "Commissioner") based on the
representations and undertakings made in paragraphs (1) through (61) below:

WHEREAS:

(1) _____, a _____ corporation and party to this closing agreement, is the common parent of an affiliated group of corporations (the “_____”) that files a consolidated federal income tax return on a fiscal year basis ending _____. _____ will file an election to be a subchapter S corporation effective _____. Beginning with the effective date of this election, _____ is referred to as _____ S Corp for purposes of this closing agreement.

(2) The legal entities that _____ S Corp will elect to treat as qualified subchapter S subsidiaries under section 1361 of the Code effective _____, include:

(3) The shareholders of _____, all of whom will consent to subchapter S election include:

(4) _____ owns _____ of the stock of _____, a _____ corporation that was the common parent of the _____ from _____ through _____ when _____ became the common parent of the group. On _____, the shareholders of _____ contributed their _____ stock to _____ in exchange for stock in _____. After the contribution, _____ owned _____ of the stock of _____. Pursuant to Treas. Reg. §1.1502-75(d), the _____ was treated as remaining in existence with _____ becoming the common parent of the group.

(5) owns of the stock of , a corporation. was the common parent of the Group for the taxable years ending through was known as until it changed its name to on . All references to include the former and all references to the include the , as appropriate. On , the shareholders of contributed their stock to in exchange for stock in . Pursuant to Treas. Reg. § 1.1502-75(d), the was treated as remaining in existence with becoming the common parent of the . Since , has been wholly-owned by and has been a member of the .

(6) owns of the stock of , a corporation and a member of the . operates a business in through a branch (the "Branch"). The Branch is a separate unit as described in Treas. Reg. § 1.1503-2(c)(3)(i)(A) and a dual resident corporation ("DRC") as defined in Treas. Reg. § 1.1503-2(c)(2).

(7) The Branch incurred net operating losses ("NOLs") for the taxable years set forth below. These NOLs constituted dual consolidated losses (DCLs) as described in Treas. Reg. §1.1503-2(c)(5) and were computed in accordance with Treas. Reg. § 1.1503-2(d)(1). These DCLs, hereinafter collectively referred to as the Branch DCLs, are as follows:

<u>Year End</u>	<u>Amount</u>
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(8) maintains assets and operates a business in (the "Branch") through a wholly-owned hybrid entity, (""). was treated as a corporation for U.S. federal income tax purposes until when it elected to be disregarded as an entity separate from its owner under Treas. Reg. §301.7701-3. The

Branch is a separate unit as described in Treas. Reg. § 1.1503-2(c)(4) and a dual resident corporation as defined in Treas. Reg. §1.1503-2(c)(2).

(9) The Branch incurred net operating losses for the taxable years set forth below. These NOLs constituted DCLs as described in Treas. Reg. §1.1503-2(c)(5) and were computed in accordance with Treas. Reg. § 1.1503-2(d)(1). These DCLs, hereinafter collectively referred to as the Branch DCLs, are as follows:

<u>Year End</u>	<u>Amount</u>
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(10) owns of the stock of , a corporation and a member of the maintains assets and operates a business in through a branch (the “ Branch”). The Branch is a separate unit as described in Treas. Reg. § 1.1503-2(c)(3)(i)(A) and a dual resident corporation as defined in Treas. Reg. § 1.1503-2(c)(2).

(11) The Branch incurred net operating losses for the taxable years set forth below. These NOLs constituted DCLs as described in Treas. Reg. §1.1503-2(c)(5) and were computed in accordance with Treas. Reg. § 1.1503-2(d)(1). These DCLs, hereinafter collectively referred to as the Branch DCLs, are as follows:

<u>Year End</u>	<u>Amount</u>
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(12) owns of the stock of , a corporation, and a member of the owns of the interests in , a

general partnership. The remaining is owned by
 which is owned by .

maintains assets and operates a business in through a branch (the " Branch"). The Branch is a separate unit as described in Treas. Reg. § 1.1503-2(c)(3)(i)(A) and a dual resident corporation as defined in Treas. Reg. § 1.1503-2(c)(2).

(13) The Branch incurred net operating losses for the taxable year set forth below. These NOLs constituted DCLs as described in Treas. Reg. §1.1503-2(c)(5) and were computed in accordance with Treas. Reg. § 1.1503-2(d)(1). These DCLs, hereinafter collectively referred to as the Branch DCLs, are as follows:

<u>Year End</u>	<u>Amount</u>
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(14) owns of the stock of a corporation and a member of the . owns of the interests in , a general partnership. The remaining is owned by which is owned by maintains assets and operates a business in through a branch (the " Branch"). The Branch is a separate unit as described in Treas. Reg. § 1.1503-2(c)(3)(i)(A) and a dual resident corporation as defined in Treas. Reg. § 1.1503-2(c)(2).

(15) The Branch incurred net operating losses for the taxable years set forth below. These NOLs constituted DCLs as described in Treas. Reg. §1.1503-2(c)(5) and were computed in accordance with Treas. Reg. § 1.1503-2(d)(1). These DCLs, hereinafter collectively referred to as the

Branch DCLs, are as follows:

<u>Year End</u>	<u>Amount</u>
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(16) _____ owns _____ of the stock of _____, a _____ corporation and a member of the _____ maintains assets and operates a business in _____ through a branch (the " _____ Branch"). The _____ Branch is a separate unit as described in Treas. Reg. § 1.1503-2(c)(3)(i)(A) and a dual resident corporation as defined in Treas. Reg. § 1.1503-2(c)(2).

(17) The _____ Branch incurred net operating losses for the taxable years set forth below. These NOLs constituted DCLs as described in Treas. Reg. §1.1503-2(c)(5) and were computed in accordance with Treas. Reg. § 1.1503-2(d)(1). These DCLs, hereinafter collectively referred to as the Branch DCLs, are as follows:

<u>Year End</u>	<u>Amount</u>
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(18) _____ owns _____ of the stock of _____, a _____ corporation and a member of the _____ maintains assets and operates a business in _____ through a branch (the " _____ Branch"). The _____ Branch is a separate unit as described in Treas. Reg. § 1.1503-2(c)(3)(i)(A) and a dual resident corporation as defined in Treas. Reg. § 1.1503-2(c)(2).

(19) The _____ Branch incurred net operating losses for the taxable years set forth below. These NOLs constituted DCLs as described in Treas. Reg. §1.1503-2(c)(5) and were computed in accordance with Treas. Reg. § 1.1503-2(d)(1). These DCLs, hereinafter collectively referred to as the Branch DCLs, are as follows:

<u>Year End</u>	<u>Amount</u>
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(20) owns of the interest in , a single member limited liability company that is disregarded as separate from its owner for tax purposes. Prior to , was , a corporation and member of the . The conversion qualified as an exception to a triggering event under Treas. Reg. §1.1503-2(g)(2)(iv)(A). Through , owns interests in three single-member limited liability companies each of which is disregarded as an entity separate from its owner as follows: , , and .

(21) maintains assets and operates a business in the through as a branch (the “ Branch”). The Branch is a separate unit as described in Treas. Reg. § 1.1503-2(c)(3)(i)(A) and a dual resident corporation as defined in Treas. Reg. § 1.1503-2(c)(2).

(22) The Branch incurred net operating losses for the taxable years set forth below. These NOLs constituted DCLs as described in Treas. Reg. §1.1503-2(c)(5) and were computed in accordance with Treas. Reg. § 1.1503-2(d)(1). These DCLs, hereinafter collectively referred to as the Branch DCLs, are as follows:

<u>Year End</u>	<u>Amount</u>
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(23) maintains assets and operates a business in through as a branch (the “ Branch”). The Branch is a separate unit as described in Treas. Reg. § 1.1503-2(c)(3)(i)(A) and a dual resident corporation as defined in Treas. Reg. § 1.1503-2(c)(2).

(24) The Branch incurred net operating losses for the taxable year set forth below. These NOLs constituted DCLs as described in Treas. Reg. §1.1503-2(c)(5) and were computed in accordance with Treas. Reg. § 1.1503-2(d)(1). These DCLs, hereinafter collectively referred to as the Branch DCLs, are as follows:

<u>Year End</u>	<u>Amount</u>
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(25) maintains assets and operates three businesses through in , , and as branches.

(26) maintains assets and operates a business through in through a branch (the “ Branch”). The Branch is a separate unit as described in Treas. Reg. § 1.1503-2(c)(3)(i)(A) and a dual resident corporation as defined in Treas. Reg. § 1.1503-2(c)(2).

(27) The Branch incurred net operating losses for the taxable years set forth below. These NOLs constituted DCLs as described in Treas. Reg. §1.1503-2(c)(5) and were computed in accordance with Treas. Reg. § 1.1503-2(d)(1). These DCLs, hereinafter collectively referred to as the Branch DCLs, are as follows:

<u>Year End</u>	<u>Amount</u>
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(28) maintains assets and operates a business through in through a branch. (the “ Branch”). The Branch is a separate unit as described in Treas. Reg. § 1.1503-2(c)(3)(i)(A) and a dual resident corporation as defined in Treas. Reg. § 1.1503-2(c)(2).

(29) The Branch incurred net operating losses for the taxable years set forth below. These NOLs constituted DCLs as described in Treas. Reg. §1.1503-2(c)(5) and were computed in accordance with Treas. Reg. § 1.1503-2(d)(1). These DCLs, hereinafter collectively referred to as the Branch DCLs, are as follows:

<u>Year End</u>	<u>Amount</u>
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(30) maintains assets and operates a business through in through a branch. (the “ Branch”). The Branch is a separate unit as described in Treas. Reg. § 1.1503-2(c)(3)(i)(A) and a dual resident corporation as defined in Treas. Reg. § 1.1503-2(c)(2).

(31) The Branch incurred net operating losses for the taxable years set forth below. These NOLs constituted DCLs as described in Treas. Reg. §1.1503-2(c)(5) and were computed in accordance with Treas. Reg. § 1.1503-2(d)(1). These DCLs, hereinafter collectively referred to as the Branch DCLs, are as follows:

<u>Year End</u>	<u>Amount</u>
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(32) Through , owns interests in the following six limited liability companies:

, The remaining interest in each of these six limited liability companies is owned by , a domestic corporation that is owned by .

(33) owns of the interests in formed under the laws of that is treated as a partnership for U.S. tax purposes under Treas. Reg. §301.7701-3. The remaining interest in is owned by maintains assets and operates a business in (the “ Partnership”). Each of the interest and the interest in the Partnership is each a hybrid entity separate unit as described in Treas. Reg. § 1.1503-2(c)(4) and a dual resident corporation as defined in Treas. Reg. §1.1503-2(c)(2).

(34) The Partnership incurred net operating losses for the taxable years set forth below. These NOLs constituted DCLs as described in Treas. Reg. §1.1503-2(c)(5) and were computed in accordance with Treas. Reg. § 1.1503-2(d)(1). These DCLs hereinafter collectively referred to as the Partnership DCLs, are as follows:

<u>Year End</u>	<u>Amount</u>
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(35) _____ maintains assets and operates a business in _____ (the “ _____ Branch”). The _____ Branch is a separate unit as described in Treas. Reg. § 1.1503-2(c)(3)(i)(A) and a dual resident corporation as defined in Treas. Reg. §1.1503-2(c)(2).

(36) The _____ Branch incurred net operating losses for the taxable years set forth below. These NOLs constituted DCLs as described in Treas. Reg. §1.1503-2(c)(5) and were computed in accordance with Treas. Reg. § 1.1503-2(d)(1). These DCLs hereinafter collectively referred to as the

Branch DCLs, are as follows:

<u>Year End</u>	<u>Amount</u>
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(37) _____ maintains assets and operates a business in _____ (the “ _____ Branch”). The _____ Branch is a separate unit as described in Treas. Reg. § 1.1503-2(c)(3)(i)(A) and a dual resident corporation as defined in Treas. Reg. §1.1503-2(c)(2).

(38) The _____ Branch incurred net operating losses for the taxable years set forth below. These NOLs constituted DCLs as described in Treas. Reg. §1.1503-2(c)(5) and were computed in accordance with Treas. Reg. § 1.1503-2(d)(1). These DCLs, hereinafter collectively referred to as the

Branch DCLs, are as follows:

<u>Year End</u>	<u>Amount</u>
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(39) maintains assets and operates a business in (the “ ”). The Branch is a separate unit as described in Treas. Reg. § 1.1503-2(c)(3)(i)(A) and a dual resident corporation as defined in Treas. Reg. §1.1503-2(c)(2).

(40) The Branch incurred net operating losses for the taxable years set forth below. These NOLs constituted DCLs as described in Treas. Reg. §1.1503-2(c)(5) and were computed in accordance with Treas. Reg. § 1.1503-2(d)(1). These DCLs, hereinafter collectively referred to as the Branch DCLs, are as follows:

<u>Year End</u>	<u>Amount</u>
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(41) owns a interest in owns a interest and , a interest in formed under the laws of . elected to be treated as a partnership (the “

Partnership”) for U.S. federal income tax purposes under Treas. Reg. §301.7701-3 on . The Partnership maintains assets and operates a business through a branch in (the “ Branch”). Each interest in the Partnership is an interest in a hybrid entity separate unit described in Treas. Reg. § 1.1503-2(c)(4) and a dual resident corporation as defined in Treas. Reg. §1.1503-2(c)(2).

(42) The Branch incurred net operating losses for the taxable years set forth below. These NOLs constituted DCLs as described in Treas. Reg. §1.1503-2(c)(5) and were computed in accordance with Treas. Reg. § 1.1503-2(d)(1). These DCLs, hereinafter collectively referred to as the

Branch DCLs are as follows:

<u>Year End</u>	<u>Amount</u>
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(43) _____ owns _____ of the stock of _____, a _____ corporation that is a member of the _____ r
 . The remaining _____ of the _____ stock is owned by _____. _____ owns _____ of the stock of three domestic corporations that are members of the _____
 _____, a _____ corporation _____, a
 corporation, and _____, a _____ corporation.

(44) _____ maintains assets and operates a business in _____ through a branch (the “ _____ Branch”). The _____ Branch is a separate unit as described in Treas. Reg. § 1.1503-2(c)(3)(i)(A) and a dual resident corporation as defined in Treas. Reg. §1.1503-2(c)(2).

(45) The _____ Branch incurred net operating losses for the taxable years set forth below. These NOLs constituted DCLs as described in Treas. Reg. §1.1503-2(c)(5) and were computed in accordance with Treas. Reg. § 1.1503-2(d)(1). These DCLs, hereinafter collectively referred to as the

Branch DCLs, are as follows:

<u>Year End</u>	<u>Amount</u>
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(46) _____ maintains assets and operates a business in _____ through a branch (the “ _____ Branch”). The _____ Branch is a separate unit as described in Treas. Reg. § 1.1503-2(c)(3)(i)(A) and a dual resident corporation as defined in Treas. Reg. §1.1503-2(c)(2).

(47) The _____ Branch incurred net operating losses for the taxable years set forth below. These NOLs constituted DCLs as described in Treas. Reg. §1.1503-2(c)(5) and were computed in accordance with Treas. Reg. § 1.1503-2(d)(1). These DCLs, hereinafter collectively referred to as the Branch DCLs, are as follows:

<u>Year End</u>	<u>Amount</u>
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(48) _____ maintains assets and operates a business in Portugal through a branch (the “ _____ Branch”). The _____ Branch is a separate unit as described in Treas. Reg. § 1.1503-2(c)(3)(i)(A) and a dual resident corporation as defined in Treas. Reg. §1.1503-2(c)(2).

(49) The _____ Branch incurred net operating losses for the taxable years set forth below. These NOLs constituted DCLs as described in Treas. Reg. §1.1503-2(c)(5) and were computed in accordance with Treas. Reg. § 1.1503-2(d)(1). These DCLs, hereinafter collectively referred to as the Branch DCLs, are as follows:

<u>Year End</u>	<u>Amount</u>
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(50) All of the

DCLs were used by the _____ in the years _____ incurred. These DCLs incurred by dual resident corporations that were included in the tax returns filed by the _____, the _____, and the _____ for taxable years ending _____ through _____ shall be referred to hereinafter collectively as the “_____ DCLs” before _____, and the “_____ S Corp DCLs” on or after _____.

(51) In the case of each of the _____ dual resident corporations described in paragraphs (6), (8), (10), (12), (14), (16), (18), (21), (23), (26), (28), (30), (33), (35), (37), (39), (41), (44), (46), and (48) above (the “_____ DRCs” before _____, and the “_____ S Corp DRCs” on or after _____), the assets of each dual resident corporation are referred to hereinafter, respectively, as the _____

_____ Assets” before _____, and the “_____ S Corp DRC Assets” on or after _____).

(52) _____ and _____, as the common parent of the _____, and the _____, respectively, filed the elections and agreements described in Treas. Reg. §1.1503-2(g)(2)(i) or Treas. Reg. §1.1503-2T(g)(2)(i) for each of the _____ DCLs, as appropriate.

(53) _____ will timely file the elections and agreements described in Treas. Reg. §1.1503-2T(g)(2)(i) with respect to all _____ DCLs for the fiscal year of _____ ending _____. _____ S Corp will timely file the necessary reporting and certifications that may be required under Treas. Reg. §§ 1.1503-2(g)(2)(vi) and 1.1503-2T(g)(2)(vi) for all _____ S Corp DCLs.

(54) Effective _____, _____, with the consent of all of its shareholders listed in paragraph (3) above, will elect to be taxed as an S corporation under section 1362 of the Code. Effective _____,

S Corp will elect to treat all of the subsidiaries listed in paragraph (2) above as qualified subchapter S subsidiaries (“QSubs”) under Treas. Reg. §1.1361-3. S Corp will file an S corporation return that reflects the activities of the former members in a manner consistent with the classification of such members as QSubs or other disregarded entities. S Corp will file its S corporation tax returns on a calendar year basis pursuant to section 1378 of the Code. S Corp will file a short-period return for the period beginning with and ending . S Corp will file the elections and agreements described in Treas. Reg. §1.1503-2T(g)(2)(i) as if they were required by Treas. Reg. §1.1503-2T(g)(2)(iv)(B)(3)(iii) with respect to each of the S Corp DCLs with its short period return for the period ending .

(55) Each of the shareholders of listed in paragraph (3) above, is an individual, a grantor trust, an electing small business trust (“ESBT”) or an exempt organization. Each individual listed in paragraph (3) is an eligible S corporation shareholder pursuant to §1361(b)(1) of the Code. Each grantor trust listed in paragraph (3) is an eligible S corporation shareholder pursuant to §1361(c)(2)(A)(i) of the Code. Each ESBT listed in paragraph (3) is an eligible S corporation shareholder pursuant to §1361(c)(2)(A)(v) of the Code. Each exempt organization listed in paragraph (3) is an eligible S corporation shareholder pursuant to §1361(c)(6) of the Code.

(56) Each of the subsidiaries for which S Corp made a qualified subchapter S subsidiary election (“QSub election”) is a domestic corporation that is eligible to make a QSub election in accordance with §1361(b)(3)(B) of the Code.

(57) Excluding the election by S Corp to be taxed as an S corporation and S Corp’s elections to treat and each of the entities listed in paragraph (2) above as qualified subchapter S corporations (“QSubs”), no triggering event described in Treas. Reg. §1.1503-2(g)(2)(iii) that does not qualify for an exception under Treas. Reg. §1.1503-2(g)(2)(iv)(A) has occurred that is applicable to the DCLs.

(58) If any of the following events occur subsequent to the elections described in paragraph (54) above, and in any taxable year up to and including the 15th taxable year following the year in which an S Corp DCL was incurred, such event shall constitute a triggering event with respect to the agreement that was filed under Treas. Reg. §1.1503-2T(g)(2)(i) related to the S Corp DRC Assets at issue:

(A) Any portion of the losses, expenses, or deductions taken into account in computing any S Corp DCL is used by any means to offset the income of any other person under the income tax laws of a foreign country. For purposes

of the paragraph, a loss, expense, or deduction taken into account in computing a dual consolidated loss shall be deemed to offset the income of another person under the income tax laws of a foreign country in the year it is made available for offset. The fact that the other person does not have sufficient income in that year to benefit from such an offset shall not be taken into account. However, where the laws of a foreign country provide an election that would enable an S Corp DRC to use its losses, expenses, or deductions to offset income of another person, the losses, expenses, or deductions shall be considered to offset such income only if the election is made. However, the losses, expenses, or deductions taken into account in computing an S Corp dual consolidated loss shall not be deemed to offset income of another person under the income tax laws of a foreign country for purposes of this section, if under the laws of the foreign country the losses, expenses, or deductions of the S Corp DRC are used to offset the income of another S Corp DRC. If the losses, expenses, or deductions of an S Corp DRC are made available under the laws of a foreign country to offset the income of other S Corp DRCs as well as the income of another person, and the laws of the foreign country do not provide applicable rules for determining which person's income is offset by the losses, expenses, or deductions, then for purposes of this closing agreement, the losses, expenses or deductions shall be deemed to offset the income of the other S Corp DRCs, to the extent of such income, before being considered to offset the income of the other person.

(B) Assets that are owned by an S Corp DRC are transferred or otherwise disposed of directly or indirectly, by S Corp. For purposes of this paragraph, a transfer, either in a single transaction or a series of transactions within a twelve-month period, of 50% or more of such assets (measured by the fair market value of the assets at the time of such transfer or other disposition (or for multiple transactions, at the time of the first transfer), shall be deemed a triggering event, unless the taxpayer demonstrates, to the satisfaction of the Commissioner, by attaching documents to its timely filed U.S. income tax return for the year in which the presumed transfer or disposition occurs, that the transfer or disposition of assets did not result in a carryover under foreign law of the dual resident corporation's losses, expenses, or deductions to the transferee of the assets;

(C) A subsidiary for which S Corp files a QSub election fails to qualify as a QSub, other than an inadvertent failure to qualify for which relief pursuant to §1362(f) of the Code is obtained;

(D) S Corp fails to file a certification with respect to any of the S Corp DCLs as required under paragraph (53) and Treas. Reg. § 1.1503-2T(g)(2)(vi).

(59) If S Corp terminates its subchapter S election or fails to qualify as a subchapter S corporation, such event shall constitute a triggering event with respect to any S Corp DCL that is the subject of an agreement filed under Treas. Reg. § 1.1503-2T(g)(2)(i) or Treas. Reg. § 1.1503-2T(g)(2)(4)(B)(3)(iii) for which the applicable 15 year period has not yet expired, unless all of the S group members, all of the S Corp shareholders, and the Internal Revenue Service enter into a closing agreement wherein it is agreed that such termination is not a triggering event. For this purpose, a termination of the subchapter S election shall not include an inadvertent termination in which relief pursuant to § 1362(f) of the Code is obtained.

(60) If an S Corp shareholder sells or otherwise disposes of any of its stock in S Corp to any person who is not an existing shareholder listed in paragraph (3) above, such disposition or sale shall constitute a triggering event. However, such sale or other disposition will not constitute a triggering event provided that the person acquiring the stock in S Corp agrees to be liable for the recapture income and interest charge, and the acquiring shareholder enters into a closing agreement with the Internal Revenue Service.

(61) and the shareholders listed in paragraph (3) above recognize and agree that in order for to convert to a subchapter S corporation without the recapture of the DCLS and the related interest charge under Treas. Reg. § 1.1503-2(g)(2)(vii), it is necessary to enter into this closing agreement with and all of its shareholders as parties.

THEREFORE, based on the above information and material submitted by , S Corp, and the shareholders of / S Corp in connection with this Closing Agreement, and in the absence of other material fact or legal circumstances concerning the events described above, it is determined for U.S. federal income tax purposes as follows:

(1) This Closing Agreement is a closing agreement described in section 7121.

(2) But for the signing of this closing agreement, election to be taxed as a Subchapter S corporation would be a triggering event described in Treas. Reg. § 1.1503-2(g)(2)(iii)(A)(2) applicable to the NOLs, requiring recapture under Treas. Reg. § 1.1503-2(g)(2)(vii).

(3) Upon the occurrence of any triggering event described in paragraph (58), (59), or (60) above, S Corp will recapture and report as gross income the total amount of the dual consolidated loss to which the triggering event relates, computed as if Treas. Reg. § 1.1503-2(g)(2)(vii)(A) were applicable, on its

income tax return for the taxable year in which the triggering event occurs. In connection with the recapture, S Corp shall pay an interest charge under principles similar to Treas. Reg. §1.1503-2(g)(2)(vii)(A)(2). Such interest charge shall be determined under the rules of section 6601(a) as if the additional tax owed as a result of the recapture had accrued and been due and owing for the taxable year in which the losses, expenses, or deductions taken into account in computing the dual consolidated loss gave rise to a tax benefit for U.S. income tax purposes. For purposes of this paragraph, a tax benefit shall be considered to have arisen in a taxable year in which such losses, expenses or deductions reduced U.S. taxable income. However, if the triggering event is use of the loss for foreign purposes, the recapture must be reported as income on the tax return for the taxable year that includes the last day of the foreign tax year during which such use occurs; and if the triggering event is the sale or disposition of any stock in S Corp, the triggering event must be deemed to occur immediately before the sale or disposition and the income must be recaptured and reported as income on the returns that reflect that timing.

(4) Under principles similar to Treas. Reg. §1.1503-2(g)(2)(ii), If any loss, expense, or deduction taken into account in computing an S Corp DCL is used under the laws of a foreign country to offset the income of another person, then all other dual consolidated losses in that same country that are covered by this closing agreement shall be treated as also having been used to offset income of another person under the laws of such foreign country, but only if the income tax laws of the foreign country permit any loss, expense, or deduction taken into account in computing the other dual consolidated loss to be used to offset the income of another person in the same taxable year.

(5) Upon the occurrence of a triggering event described in paragraph (58), (59), and (60) of this closing agreement,

agree to be jointly and severally liable for the total amount of the corporate-level recapture tax of the S Corp DCLs and the related interest charge under Treas. Reg. §1.1503-2(g)(2)(vii), despite any entity's disregarded status under subchapter S or Treas. Reg. §§301.7701-1 through 3, to the extent the triggering event does

not fall under one of the exceptions provided in Treas. Reg. §1.1503-2(g)(2)(iv)(A) or (B).

(6) Upon the occurrence of a triggering event described in this closing agreement, any amount recaptured shall be treated in a manner consistent with §1374, except as provided in paragraphs (7) and (8) below. As a result, the following shall occur: amounts recaptured by S Corp will be treated as income of S Corp that is subject to §1374(a) in the taxable year of recapture. In addition, such income will be included in each shareholder's distributive share of S Corp income under §1366(a). Solely for purposes of determining each shareholder's pro-rata share of income, gain, loss or deduction under §1366(a), amounts paid by S Corp, or any of the parties identified in paragraph (5) immediately preceding this paragraph, as tax on amounts recaptured under §1.1503-2(g)(2)(vii) will be treated as a loss sustained by

S Corp in the taxable year of recapture. Such loss will be included in the shareholder's distributive share of S Corp's loss under §1366(a). The source and character of the loss will be determined by reference to the character and source of the recaptured amount by allocating the loss proportionately among the recaptured amounts giving rise to the tax. Solely for purposes of determining the shareholder's pro-rata share of income, gain, loss or deduction under §1366(a), amounts paid by S Corp, or any of the parties identified in paragraph (5) immediately preceding this paragraph, as the interest charge under § 1.1503-2(g)(2)(vii) will be treated as a loss sustained by S Corp in the taxable year of recapture. Such loss will be included in the shareholder's distributive share of S Corp's loss under §1366(a). The source of the loss will be determined by reference to the source of the recaptured amount by allocating the loss proportionately among the recaptured amounts giving rise to the tax. The loss shall be characterized as tax.

(7) Upon the occurrence of a triggering event described in this closing agreement, amounts recaptured by S Corp under Treas. Reg. §1.1503-2(g)(2)(vii) will not increase or decrease the shareholders' bases in S Corp stock, regardless of the fact that such amounts are included in the shareholder's distributive share under paragraph (6) above, to the extent such amounts pass through to the shareholders as provided in section 1367 of the Code.

(8) Upon the occurrence of a triggering event described in this closing agreement, amounts recaptured by S Corp under paragraph (3) of this closing agreement will not increase S Corp's accumulated adjustments account. Amounts recaptured by S Corp under paragraph (4) above will not increase S Corp's accumulated earnings and profits.

(9) The tax rate imposed on S Corp upon recapture shall be the highest rate of tax specified in section 11(b) with the appropriate interest charge applied as provided in paragraph (3) above.

(10) The termination of the Sub S election will constitute a triggering event pursuant to paragraph (59) above with respect to the S Corp DCLs. However, such termination of the Sub S election will not constitute a triggering event provided all of the S Corp group members, the S Corp shareholders, and the Internal Revenue Service agree to enter into a closing agreement.

(11) If the amount of any of the S Corp DCLs are adjusted by the Internal Revenue Service, a judicial authority, or otherwise in a final determination of taxes, the provisions of this Closing Agreement shall apply *mutatis mutandis* to such final adjusted loss amounts.

NOW THIS CLOSING AGREEMENT WITNESSETH, that the Taxpayers and the Commissioner of Internal Revenue hereby mutually agree to the determinations set forth above and further mutually agree that those determinations shall be final and conclusive, subject, however, to reopening in the event of fraud, malfeasance, or misrepresentation of material fact, and provided that any change or modification of applicable statutes or tax conventions shall render this Closing Agreement ineffective to the extent that it is dependent upon such statutes or tax conventions.

IN WITNESS WHEREOF, the above parties have subscribed their names to these presents, in triplicate.

By: _____ Date: _____
Name,
On behalf of, and pursuant to powers of attorney
from the parties set forth above

COMMISSIONER OF INTERNAL REVENUE

By: _____ Date: _____
Acting Associate Chief Counsel
(International)

By: _____ Date: _____