Internal Revenue Service

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LEGEND

Parent =

Holding =

DSub =

FSub =

FSub1 =

FSub2 =

State A =

Activity A =

Activity B =

Dear :

This letter responds to your representative's letter of November 8, 2007, requesting rulings as to the Federal income tax consequences of a proposed

transaction. The material information submitted in that letter and subsequent correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations that were submitted on behalf of the taxpayer and accompanied by a statement executed under penalties of perjury by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding the matters described in the caveats section below.

SUMMARY OF FACTS

Parent is a State A corporation that uses the accrual method of accounting and a calendar year. Parent was organized under the laws of State A as a not-for-profit corporation without capital stock and qualifies as a tax exempt organization under section 501(c)(3) of the Internal Revenue Code. Parent is engaged in Activity A and Activity B.

Parent owns all the outstanding stock in Holding, an existing for-profit domestic corporation that uses the accrual method of accounting. Holding will have domestic and foreign subsidiaries that will engage directly and/or indirectly in for-profit business activity. Holding has outstanding Class A common stock ("Holding Class A Stock"). Holding may issue a second class of common stock with a relatively low vote ("Holding Class B Stock"). Hereinafter, Holding Class A Stock and Holding Class B Stock may be referred to collectively as "Holding Stock."

Parent intends to form one or more domestic corporations, DSub, in State A. Initially, all of the outstanding stock in DSub will be held by Parent. DSub will use the accrual method of accounting. Parent also intends to form a foreign corporation, FSub, under the applicable laws of the relevant foreign jurisdiction. Initially, all of the outstanding stock in FSub will be held by Parent. FSub will use the accrual method of accounting.

If there is more than one DSub (or more than one FSub), then each of the representations and rulings below regarding DSub and FSub applies separately to each such entity.

Management of Parent has determined that its overall objectives can best be achieved by operating Activity B as a for-profit enterprise via domestic and foreign subsidiaries, pursuant to the proposed transaction described below.

PROPOSED TRANSACTION

Step (I). Parent will transfer to DSub assets relating to Activity B operations. Parent will also transfer to DSub marketable securities. In exchange, Parent will receive all the stock in DSub ("DSub Stock") and, potentially, debt of DSub ("DSub Debt").

Step (II). Parent will transfer to FSub assets relating to Activity B operations (including goodwill, other intangibles, and stock in foreign subsidiaries). In exchange, Parent will receive all the stock in FSub including both common stock ("FSub Common Stock") and preferred stock intended to be treated as nonqualified preferred stock within the meaning of section 351(g) ("FSub NQPS"). FSub will transfer some of these assets to its wholly owned subsidiary.

Step (III). Parent will transfer to Holding everything it received from DSub and FSub in Steps (I) and (II) including the DSub Stock, the DSub Debt (if any), the FSub Common Stock, the FSub NQPS and other assets unrelated to DSub or FSub. In exchange, Parent will receive additional Holding Class A Stock and possibly Holding Class B Stock.

Steps (I) and (II) will occur substantially contemporaneously with one another, and Step (III) will occur as soon as practicable thereafter.

UNRELATED TRANSACTIONS

It is anticipated that Parent will transfer all of the stock of FSub1 to FSub2 and that, at some future time, Holding Class B Common Stock may be issued to Holding employees, to a Holding employee stock ownership plan, and/or to outside investors.

REPRESENTATIONS

Parent has made the following representations in connection with the Proposed Transaction.

(a) No stock or securities will be issued for services rendered to or for the benefit of DSub, FSub, or Holding in connection with the Proposed Transaction, and no stock or securities will be issued for indebtedness of DSub, FSub, or Holding that is not evidenced by a security or for interest on indebtedness of DSub, FSub, or Holding which accrued on or after the beginning of the holding period of the transferor for the debt.

(b) None of the stock to be transferred is section 306 stock within the meaning of section 306(c), except possibly FSub NQPS. Holding will comply with all the requirements of section 306(a) on the sale or disposition of any section 306(c) stock.

(c) The value of the DSub or FSub stock received in exchange for accounts receivable, if any, will be equal to the net value of the accounts transferred, i.e., the face

amount of the accounts receivable previously included in income less the amount of the reserve for bad debts.

(d) Any debt relating to the stock being transferred that is being assumed (or to which such stock is subject) was incurred to acquire such stock and was incurred when such stock was acquired, and Parent is transferring all of the stock for which the acquisition indebtedness being assumed (or to which such stock is subject) was incurred.

(e) The adjusted basis and the fair market value of the assets to be transferred by Parent to DSub, FSub, and Holding will, in each instance, be equal to or exceed the sum of the liabilities to be assumed by DSub, FSub, or Holding (as determined under section 357(d)), except the basis of the assets transferred by Parent to DSub and to Holding may be less than the sum of the liabilities assumed.

(f) The liabilities of Parent assumed by DSub, FSub, or Holding, if any, were incurred in the ordinary course of business and are associated with the assets transferred.

(g) There is no plan or intention on the part of DSub, FSub, or Holding, to redeem or otherwise reacquire any stock or indebtedness to be issued in the Proposed Transaction.

(h) Holding, DSub, and FSub will each have outstanding solely a single class of stock, except as specified in the next two sentences. In addition to common stock, it is anticipated that FSub will also have outstanding the NQPS being issued in Step (II). It is possible that Holding will issue Class B Stock to Parent, so that Holding may have outstanding both Class A Stock and Class B Stock. At the time of the Proposed Transaction, neither Holding, DSub, nor FSub will have outstanding any debt or convertible securities, warrants or options, or any other type of right or instrument, where such right or instrument constitutes an equity interest in Holding, DSub, or FSub, or where pursuant to such right or instrument any person could acquire an equity interest in Holding, DSub, or FSub.

(i) Parent will receive stock, securities, or other property approximately equal to the fair market value of the net assets transferred to DSub, FSub, and Holding.

(j) DSub, FSub, and Holding will each remain in existence and retain and use the property transferred to it in a trade or business. Some assets received by DSub, FSub and Holding may be transferred to a wholly owned subsidiary.

(k) There is no plan or intention by DSub, FSub, or Holding to dispose of the transferred property other than in the normal course of business operations, except that assets may be transferred to controlled subsidiaries following the Proposed

Transaction.

(l) DSub, FSub, and Holding will not be investment companies within the meaning of section 351(e)(1) and Treas. Reg. § 1.351-1(c)(1)(ii).

(m) Parent is not under the jurisdiction of a court in a "title 11" or similar case (within the meaning of section 368(a)(3)(A)) and the stock and securities received in the Proposed Transaction will not be used to satisfy the indebtedness of Parent.

(n) DSub, FSub, and Holding will not be "personal service corporations" within the meaning of section 269A.

(o) There is no plan, agreement, or understanding on the part of Parent to engage in any transaction, such as any merger, acquisition, stock issuance, or debt issuance, at the time of, or in connection with, the Proposed Transaction, that would involve DSub, FSub, or Holding, or the assets to be transferred in connection with the Proposed Transaction except for transactions undertaken in the normal course of business.

(p) There is no plan, agreement, or understanding on the part of any of DSub, FSub, or Holding to engage in any other transaction, such as any merger, acquisition, stock issuance, or debt issuance, at the time of, or in connection with, the Proposed Transaction except for transactions undertaken in the normal course of business.

(q) Parent is neither retaining nor receiving any right to income from DSub, FSub or Holding with regard to any of the property transferred.

(r) Each intangible being transferred from Parent to DSub, FSub or Holding (including all patents, copyrights, trademarks, tradenames, and know-how, and all applications to receive patents or other intangibles) will constitute "property" within the meaning of section 351(a).

(s) None of the assets to be transferred from Parent to DSub, FSub or Holding were received by Parent pursuant to a plan of liquidation of another corporation where such liquidation was undertaken in contemplation of, or connection with, the Proposed Transaction.

RULINGS

Based solely on the information submitted and the representations set forth above, we rule as follows:

Rulings as to Step (l):

(1) The transfer of assets from Parent to DSub in exchange for DSub Stock, DSub Debt (if any), and the assumption of Parent liabilities will constitute a transfer to a controlled corporation meeting the requirements of section 351, and, except as provided under sections 351(b) and 357(c), no gain or loss will be recognized by Parent (§ 351(a)). Pursuant to section 351(b), Parent will recognize gain on the transfer but not in excess of the fair market value of the DSub Debt (if any). The excess of liabilities assumed over the basis of the property transferred will be treated in accordance with section 357(c).

(2) The basis of the DSub Stock and the DSub Debt (if any) received by Parent in the exchange will be determined as provided under section 358.

(3) No gain or loss will be recognized by DSub on the receipt of assets of Parent in exchange for DSub Stock and DSub Debt (if any) (section 1032(a)).

(4) The basis of each asset received by DSub will be determined as provided under sections 362(a), (d), and (e). Unless an exception under sections 362(d) or (e) applies, the basis of each asset received by DSub shall be the same as it would be in the hands of Parent, increased in the amount of gain recognized to Parent on such transfer. The transfer of assets from Parent to DSub will constitute an importation into the Federal income tax system. In the event that there is "an importation of a net built-in loss" within the meaning of section 362(e)(1)(A), then the basis of each asset received by DSub will be the asset's fair market value immediately after its transfer to DSub (section 362(e)(1)).

(5) The holding period for each of the assets received by DSub will include the period during which such asset was held by Parent (section 1223(2)).

Rulings as to Step (II):

(6) The transfer of assets from Parent to FSub in exchange for FSub Common Stock, FSub NQPS, and the assumption of Parent liabilities will constitute a transfer to a controlled corporation meeting the requirements of section 351. Provided that the FSub NQPS constitutes nonqualified preferred stock within the meaning of section 351(g), it will constitute "other property" within the meaning of section 351(b).

(7) The basis of the FSub Common Stock and all FSub NQPS received by Parent in the exchange will be determined as provided under section 358.

(8) No gain or loss will be recognized by FSub on the receipt of assets of Parent in exchange for FSub Common Stock and FSub NQPS (section 1032(a)).

(9) The basis of each asset received by FSub other than intangible assets to which section 367(d) applies, will be determined as provided under sections 362(a), (d), and (e). Unless an exception under sections 362(d) or (e) applies, the basis of each

asset received by FSub shall be the same as it would be in the hands of Parent, increased in the amount of gain recognized to Parent on such transfer.

(10) The holding period for each of the assets received by FSub, other than intangible assets to which section 367(d) applies, will include the period during which such asset was held by Parent (section 1223(2)).

(11) Section 367(d) will apply to the transfer of intangible assets within the meaning of section 936(h)(3)(B) from Parent to FSub in exchange for FSub common stock and FSub NQPS (section 367(d)(1)).

(12) Section 351(b) will not apply to Parent's transfer of assets to FSub to the extent section 367(d)(1) applies to such transfer (section 367(d)(1)).

(13) The value of the FSub NQPS received by Parent that is allocated to, and treated as exchanged for, intangible property (within the meaning of section 936(h)(3)(B)) will be included in Parent's income in the year of the transfer, and will, to the extent it exceeds the deemed payment required under section 367(d) for the tax year of the transfer, be treated as a prepayment of the amounts required to be included in income under section 367(d) in subsequent tax years. The FSub NQPS will be allocated among assets in the manner described in Rev. Rul. 68-55, 1968-1 C.B. 140, as amplified by Rev. Rul. 85-164, 1985-2 C.B. 117.

Rulings as to Step (III):

(14) The transfers of DSub Stock, DSub Debt (if any), FSub Common Stock, and FSub NQPS from Parent to Holding in exchange for Holding Stock and the assumption of liabilities will constitute a transfer to a controlled corporation meeting the requirements of section 351. No gain or loss will be recognized by Parent upon the transfer of assets to Holding solely in exchange for Holding Stock, except to the extent section 357(c) applies (§ 351(a)). Any excess of the liabilities assumed over the basis of the property transferred will be treated in accordance with section 357(c).

(15) The basis of the Holding Stock received by Parent in the exchange will be determined as provided under section 358.

(16) No gain or loss will be recognized by Holding on the receipt of assets of Parent in exchange for Holding Stock (§ 1032(a)).

(17) The basis of each asset received by Holding will be determined as provided under sections 362(a), (d), and (e). Unless an exception under sections 362(d) or (e) applies, the basis of each asset received by Holding shall be the same as it would be in the hands of Parent, increased in the amount of gain recognized to Parent on such transfer. The transfer of assets from Parent to Holding will constitute an importation into the Federal income tax system. In the event that there is "an

importation of a net built-in loss" within the meaning of section 362(e)(1)(A), then the basis of each asset received by Holding will be the asset's fair market value immediately after its transfer to Holding (§ 362(e)(1)).

(18) The holding period for each of the assets received by Holding will include the period during which such asset was held by Parent (§ 1223(2)).

(19) The required adjustments provided under the section 367(d) regulations will be taken into account annually over the life of the intangible property (within the meaning of section 936(h)(3)(B)) transferred to FSub, but not to exceed a period of 20 years (Treas. Reg. § 1.367(d)-1T(c)).

(20) Holding will succeed only to the section 367(d) annual payments in excess of the amount of the FSub NQPS treated as a prepayment recognized by Parent and shall include such amounts into income once the aggregate amount of the section 367(d) payments exceed the amount included in Parent's income as a prepayment (Treas. Reg. § 1.367(d)-1T(e)).

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any matter or item discussed or referenced in this letter. Moreover, no opinion is expressed about the tax treatment of the transactions or of any other matter under other provisions of the Code or regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

(A) whether each of the entities that is intended to be formed as a domestic corporation or a foreign corporation will in fact be formed as intended and will properly be treated as a corporation for Federal income tax purposes;

(B) whether any of the Parent assets being transferred to DSub, FSub or Holding constitute accounts receivable and, if so, how they should be treated;

(C) whether any subsequent loss or deduction with regard to any of the transferred property is properly allocable to Parent or disallowed under sections 269 or 482;

(D) whether any property transferred from DSub to Parent is treated as debt for Federal tax purposes;

(E) whether any property transferred from FSub to Parent is treated as nonqualified preferred stock within the meaning of section 351(g);

(F) whether any transfers of intellectual property from Parent to DSub, FSub or Holding constitute transfers of “property” within the meaning of section 351; and

(G) whether any of the transfers of property by Parent to FSub will qualify for the exception under section 367(a)(3) for property used in the active conduct of a trade or business outside the United States.

In addition, no opinion is expressed with regard to the tax consequences of the Unrelated Transactions described above.

PROCEDURAL STATEMENTS

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

It is important that a copy of this letter be attached to the Federal income tax returns of each taxpayer involved for the taxable year(s) in which the transactions are consummated. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching to the return a statement that provides the date and control number (PLR-150578-07) of this ruling letter.

Pursuant to a power of attorney on file in this matter, a copy of this letter is being sent to your authorized representative.

Sincerely

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Thomas D. Beem
Senior Technical Reviewer
Associate Chief Counsel
(International, Branch 4)

cc: