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In Re:

Legend

Parent =

Sub 1 =

Sub 2 =

Fsub 1 =

Fsub 2 =

Fsub 3 =

Fsub 4 =

Fsub 5 =

Fsub 6 =

Fsub 7 =

Fsub 8 =

Fsub 9 =

Business A =

Business B =

Country C =

Type AA =

Type BB =

a =

b =

c =

d =

e =

f =

g =

Dear :

This responds to a letter dated February 9, 2004, submitted on behalf of Parent, requesting rulings under sections 351, 368(a)(1)(C) and 368(a)(1)(D) of the Internal Revenue Code with respect to a proposed transaction. Additional information was submitted in letters dated April 22, 2004, May 27, 2004, July 20, 2004, August 19, 2004 and August 26, 2004. The information submitted is summarized below.

### **Summary of Facts**

Parent is a publicly traded corporation and the common parent of a U.S. consolidated tax group. Parent owns all of the stock of Sub 1, Sub 2, Fsub 1, Fsub 2, and approximately a percent of Fsub 3. Sub 1 owns a nominal amount of stock in Fsub 3. Sub 2 owns approximately b percent of the stock of Fsub 3. Fsub 1 owns approximately c percent of the stock of Fsub 4. Fsub 2 owns approximately d percent of the stock of Fsub 4. Fsub 3 owns all of the stock of Fsub 5 and Fsub 6, and e percent of the stock of Fsub 7. Fsub 5 owns f percent of Fsub 8. Fsub 6 owns g percent of Fsub 9.

Each of Fsub 2, Fsub 3, Fsub 5, and Fsub 6 is engaged in Business A and Business B in Country C. (Fsub 2, Fsub 3, Fsub 5, and Fsub 6 hereinafter are sometimes referred to collectively as the "Targets.") The management of Parent has determined that the Parent group can increase efficiency and achieve savings by combining the Business A businesses of the Targets in a single Country C company, and all of the Business B businesses of the Targets in a second Country C company, as set forth below.

### **Proposed Transactions**

Parent has proposed the following series of transactions (the "Proposed Transactions") to achieve the desired benefits and savings:

- i. Each of Sub 1 and Sub 2 will distribute all of its Fsub 3 stock to Parent.
- ii. Parent will transfer the shares of Fsub 2 to Fsub 3 in exchange for additional shares of Fsub 3.
- iii. Fsub 2, Fsub 5, and Fsub 6 will "merge" into Fsub 3 under the laws of Country C.
- iv. Fsub 3 will undergo a de-merger transaction in which its assets will be divided between two new Country C entities, Newco 1 and Newco 2, under the laws of Country C, and Fsub 3 will cease to exist (the "De-merger"). As a result of the De-merger, Newco 1 will become the owner of the Business B operations of the Targets and the shares of Fsub 4, Fsub 7, Fsub 8, and Fsub 9 formerly held by the Targets. Also as a result of the De-merger, Newco 2 will become the owner of the Business A

operations of the Targets. Parent will own all of the stock of Newco 1 and Newco 2.

- v. Parent will transfer its shares of Newco 2 to Newco 1 in exchange for additional shares of Newco 1.
- vi. Each of Newco 1 and Newco 2 will convert from a Type AA corporation to a Type BB corporation.

## **Representations**

- a. The following representations are submitted in connection with the Proposed Transactions based on a characterization of steps (ii)-(v) of the Proposed Transactions as: (1) transfers of all of the assets of Fsub 5 and Fsub 6 to Newco 1 in exchange for stock of, and the assumption of the liabilities of Fsub 5 and Fsub 6 by, Newco 1, followed by liquidations of Fsub 5 and Fsub 6 (hereinafter referred to as the “Fsub 5 Combination” and the “Fsub 6 Combination”); (2) transfers of the assets of Fsub 2 and Fsub 3 to Newco 1 in exchange for stock of, and the assumption of the liabilities of Fsub 2 and Fsub 3 by, Newco 1, followed by liquidations of Fsub 2 and Fsub 3 (hereinafter referred to as the “Fsub 2 Combination” and the “Fsub 3 Combination”); and (3) a contribution by Newco 1 of the assets related to Business A of each of the Targets to Newco 2 in exchange for the stock of, and the assumption of the related liabilities by, Newco 2 (hereinafter referred to as the “Contribution”).
- b. Newco 1 and Newco 2 will be corporations, within the meaning of section 7701(a)(3), from its formation and throughout their existence for U.S. federal income tax purposes.
- c. Fsub 2, Fsub 3, Fsub 5 and Fsub 6 will be corporations, within the meaning of section 7701(a)(3), at all times before the Proposed Transactions. Fsub 8 and Fsub 9 will be corporations, within the meaning of section 7701(a)(3), at all times before and after the Proposed Transactions.
- d. Parent is a § 1248 shareholder (within the meaning of § 1.367(b)-2(b)) of Fsub 2, Fsub 3, Fsub 5, Fsub 6, before the Proposed Transactions.
- e. Parent is a § 1248 shareholder (within the meaning of § 1.367(b)-2(b)) of Newco 1 and Newco 2 immediately before and after the Contribution.

## **The Fsub 5 Combination**

- f. The fair market value of the stock of Newco 1 received by the shareholder of Fsub 5 will be approximately equal to the fair market value of the stock of Fsub 5 surrendered in exchange therefor.

- g. There is no plan or intention for Newco 1, or any person related (as defined in section 1.368-1(e)(3)) to Newco 1, to acquire, during the five-year period beginning on the date of the Fsub 5 Combination, with consideration other than Newco 1 stock, Newco 1 stock furnished in exchange for a proprietary interest in Fsub 5 in the Fsub 5 Combination, either directly or through any transaction, agreement, or arrangement with any other person. Further, during the five-year period ending on the date of the Fsub 5 Combination, (i) neither Newco 1 nor the shareholder of Fsub 5, nor any person related (as defined in section 1.368-1(e)(3)) to Newco 1 or Fsub 5, will have acquired, with consideration other than Newco 1 stock, any stock of Fsub 5, either directly or through any transaction, agreement, or arrangement with any other person; and (ii) no distributions will have been made with respect to the stock of Fsub 5 (other than ordinary, regular dividend distributions) either directly or through any transaction, agreement, or arrangement with any other person.
- h. Newco 1 has no plan or intention to reacquire any of its stock issued in the Fsub 5 Combination.
- i. Fsub 5 will distribute the stock, securities, and other properties it receives in the Fsub 5 Combination, and its other properties, in pursuance of the plan of reorganization.
- j. Newco 1 will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by Fsub 5 immediately prior to the Fsub 5 Combination. For purposes of this representation, amounts paid by Fsub 5 to dissenters, amounts paid by Fsub 5 to shareholders who receive cash or other property, amounts used by Fsub 5 to pay its reorganization expenses, and all redemptions and distributions (except for regular, normal dividends) made by Fsub 5 immediately preceding the Fsub 5 Combination will be included as assets of Fsub 5 held immediately prior to the Fsub 5 Combination.
- k. Newco 1 has no plan or intention to sell or otherwise dispose of any of the assets of Fsub 5 acquired in the Fsub 5 Combination, except for the Contribution and any dispositions made in the ordinary course of business.
- l. The liabilities of Fsub 5 to be assumed (as determined under section 357(d)) by Newco 1 will have been incurred by Fsub 5 in the ordinary course of its business and will be associated with the assets transferred.
- m. Following the Fsub 5 Combination, Newco 1 and Newco 2 will continue the historic business of Fsub 5 or use a significant portion of Fsub 5's historic business assets in a business.
- n. Each of Newco 1, Fsub 5, and the shareholder of Fsub 5 will pay its respective expenses, if any, incurred in connection with the Fsub 5 Combination.

- o. There is no intercorporate indebtedness existing between Newco 1 and Fsub 5 that was issued or acquired, or will be settled, at a discount.
- p. No two parties to the Fsub 5 Combination are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- q. The fair market value of the assets of Fsub 5 transferred to Newco 1 will exceed the sum of the liabilities of Fsub 5 assumed (as determined under section 357(d)) by Newco 1.
- r. Fsub 5 is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).
- s. Parent has no plan or intention to sell or otherwise dispose of any of the shares of Newco 1.
- t. Fsub 5 will not be a passive foreign investment company as defined in section 1297(a) immediately before the Fsub 5 Combination.
- u. Fsub 5 will be a controlled foreign corporation, within the meaning of section 957(a), immediately before the Fsub 5 Combination.

#### **The Fsub 6 Combination**

- v. The fair market value of the stock of Newco 1 received by the shareholder of Fsub 6 will be approximately equal to the fair market value of the stock of Fsub 6 surrendered in exchange therefor.
- w. There is no plan or intention for Newco 1, or any person related (as defined in section 1.368-1(e)(3)) to Newco 1, to acquire, during the five-year period beginning on the date of the Fsub 6 Combination, with consideration other than Newco 1 stock, Newco 1 stock furnished in exchange for a proprietary interest in Fsub 6 in the Fsub 6 Combination, either directly or through any transaction, agreement, or arrangement with any other person. Further, during the five-year period ending on the date of the Fsub 6 Combination, (i) neither Newco 1 nor the shareholder of Fsub 6, nor any person related (as defined in section 1.368-1(e)(3)) to Newco 1 or Fsub 6, will have acquired, with consideration other than Newco 1 stock, any stock of Fsub 6, either directly or through any transaction, agreement, or arrangement with any other person; and (ii) no distributions will have been made with respect to the stock of Fsub 6 (other than ordinary, regular dividend distributions) either directly or through any transaction, agreement, or arrangement with any other person.
- x. Newco 1 has no plan or intention to reacquire any of its stock issued in the Fsub 6 Combination.

- y. Fsub 6 will distribute the stock, securities, and other properties it receives in the Fsub 6 Combination, and its other properties, in pursuance of the plan of reorganization.
- z. Newco 1 will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by Fsub 6 immediately prior to the Fsub 6 Combination. For purposes of this representation, amounts paid by Fsub 6 to dissenters, amounts paid by Fsub 6 to shareholders who receive cash or other property, amounts used by Fsub 6 to pay its reorganization expenses, and all redemptions and distributions (except for regular, normal dividends) made by Fsub 6 immediately preceding the Fsub 6 Combination will be included as assets of Fsub 6 held immediately prior to the Fsub 6 Combination.
- aa. Newco 1 has no plan or intention to sell or otherwise dispose of any of the assets of Fsub 6 acquired in the Fsub 6 Combination, except for the Contribution and any dispositions made in the ordinary course of business.
- bb. The liabilities of Fsub 6 to be assumed (as determined under section 357(d)) by Newco 1 will have been incurred by Fsub 6 in the ordinary course of its business and will be associated with the assets transferred.
- cc. Following the Fsub 6 Combination, Newco 1 and Newco 2 will continue the historic business of Fsub 6 or use a significant portion of Fsub 6's historic business assets in a business.
- dd. Each of Newco 1, Fsub 6, and the shareholder of Fsub 6 will pay its respective expenses, if any, incurred in connection with the Fsub 6 Combination.
- ee. There is no intercorporate indebtedness existing between Newco 1 and Fsub 6 that was issued or acquired, or will be settled, at a discount.
- ff. No two parties to the Fsub 6 Combination are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- gg. The fair market value of the assets of Fsub 6 transferred to Newco 1 will exceed the sum of the liabilities of Fsub 6 assumed (as determined under section 357(d)) by Newco 1.
- hh. Fsub 6 is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).
- ii. Parent has no plan or intention to sell or otherwise dispose of any of the shares of Newco 1.
- jj. Fsub 6 will not be a passive foreign investment company as defined in section 1297(a) immediately before the Fsub 6 Combination.

- kk. Fsub 6 will be a controlled foreign corporation, within the meaning of section 957(a), immediately before the Fsub 6 Combination.

### **The Fsub 2 Combination**

- ll. The fair market value of the stock of Newco 1 received by the shareholder of Fsub 2 will be approximately equal to the fair market value of the stock of Fsub 2 surrendered in exchange therefor.
- mm. There is no plan or intention for Newco 1, or any person related (as defined in section 1.368-1(e)(3)) to Newco 1, to acquire, during the five-year period beginning on the date of the Fsub 2 Combination, with consideration other than Newco 1 stock, Newco 1 stock furnished in exchange for a proprietary interest in Fsub 2 in the Fsub 2 Combination, either directly or through any transaction, agreement, or arrangement with any other person. Further, during the five-year period ending on the date of the Fsub 2 Combination, (i) neither Newco 1 nor the shareholder of Fsub 2, nor any person related (as defined in section 1.368-1(e)(3)) to Newco 1 or Fsub 2, will have acquired, with consideration other than Newco 1 stock, any stock of Fsub 2, either directly or through any transaction, agreement, or arrangement with any other person; and (ii) no distributions will have been made with respect to the stock of Fsub 2 (other than ordinary, regular dividend distributions) either directly or through any transaction, agreement, or arrangement with any other person.
- nn. Newco 1 has no plan or intention to reacquire any of its stock issued in the Fsub 2 Combination.
- oo. Fsub 2 will distribute the stock, securities, and other properties it receives in the Fsub 2 Combination, and its other properties, in pursuance of the plan of reorganization.
- pp. Newco 1 will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by Fsub 2 immediately prior to the Fsub 2 Combination. For purposes of this representation, amounts paid by Fsub 2 to dissenters, amounts paid by Fsub 2 to shareholders who receive cash or other property, amounts used by Fsub 2 to pay its reorganization expenses, and all redemptions and distributions (except for regular, normal dividends) made by Fsub 2 immediately preceding the Fsub 2 Combination will be included as assets of Fsub 2 held immediately prior to the Fsub 2 Combination.
- qq. After the Fsub 2 Combination, the shareholder of Fsub 2 will be in control of Newco 1 within the meaning of section 368(a)(2)(H)(i).

- rr. Newco 1 has no plan or intention to sell or otherwise dispose of any of the assets of Fsub 2 acquired in the Fsub 2 Combination, except for the Contribution and any dispositions made in the ordinary course of business.
- ss. The liabilities of Fsub 2 to be assumed (as determined under section 357(d)) by Newco 1 will have been incurred by Fsub 2 in the ordinary course of its business and will be associated with the assets transferred.
- tt. Following the Fsub 2 Combination, Newco 1 and Newco 2 will continue the historic business of Fsub 2 or use a significant portion of Fsub 2's historic business assets in a business.
- uu. At the time of the Fsub 2 Combination, Newco 1 will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Newco 1 that, if exercised or converted, would affect the acquisition or retention of control of Newco 1 by Fsub 2's shareholder, as defined in section 368(a)(2)(H)(i).
- vv. Each of Newco 1, Fsub 2, and the shareholder of Fsub 2 will pay its respective expenses, if any, incurred in connection with the Fsub 2 Combination.
- ww. There is no intercorporate indebtedness existing between Newco 1 and Fsub 2 that was issued or acquired, or will be settled, at a discount.
- xx. No two parties to the Fsub 2 Combination are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- yy. The fair market value of the assets of Fsub 2 transferred to Newco 1 will exceed the sum of the liabilities of Fsub 2 assumed (as determined under section 357(d)) by Newco 1.
- zz. The total adjusted basis of the assets of Fsub 2 transferred to Newco 1 will exceed the sum of the liabilities of Fsub 2 assumed (as determined under section 357(d)) by Newco 1.
- aaa. Fsub 2 is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).
- bbb. Parent has no plan or intention to sell or otherwise dispose of any of the shares of Newco 1.
- ccc. Fsub 2 will not be a passive foreign investment company as defined in section 1297(a) immediately before the Fsub 2 Combination.
- ddd. Fsub 2 will be a controlled foreign corporation, within the meaning of section 957(a), immediately before the Fsub 2 Combination.

**The Fsub 3 Combination**

- eee. The fair market value of the stock of Newco 1 received by the shareholder of Fsub 3 will be approximately equal to the fair market value of the stock of Fsub 3 surrendered in exchange therefor.
- fff. There is no plan or intention for Newco 1, or any person related (as defined in section 1.368-1(e)(3)) to Newco 1, to acquire, during the five-year period beginning on the date of the Fsub 3 Combination, with consideration other than Newco 1 stock, Newco 1 stock furnished in exchange for a proprietary interest in Fsub 3 in the Fsub 3 Combination, either directly or through any transaction, agreement, or arrangement with any other person. Further, during the five-year period ending on the date of the Fsub 3 Combination, (i) neither Newco 1 nor the shareholder of Fsub 3, nor any person related (as defined in section 1.368-1(e)(3)) to Newco 1 or Fsub 3, will have acquired, with consideration other than Newco 1 stock, any stock of Fsub 3, either directly or through any transaction, agreement, or arrangement with any other person; and (ii) no distributions will have been made with respect to the stock of Fsub 3 (other than ordinary, regular dividend distributions) either directly or through any transaction, agreement, or arrangement with any other person.
- ggg. Newco 1 has no plan or intention to reacquire any of its stock issued in the Fsub 3 Combination.
- hhh. Fsub 3 will distribute the stock, securities, and other properties it receives in the Fsub 3 Combination, and its other properties, in pursuance of the plan of reorganization.
- iii. Newco 1 will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by Fsub 3 immediately prior to the Fsub 3 Combination. For purposes of this representation, amounts paid by Fsub 3 to dissenters, amounts paid by Fsub 3 to shareholders who receive cash or other property, amounts used by Fsub 3 to pay its reorganization expenses, and all redemptions and distributions (except for regular, normal dividends) made by Fsub 3 immediately preceding the Fsub 3 Combination will be included as assets of Fsub 3 held immediately prior to the Fsub 3 Combination.
- jjj. After the Fsub 3 Combination, the shareholder of Fsub 3 will be in control of Newco 1 within the meaning of section 368(a)(2)(H)(i).
- kkk. Newco 1 has no plan or intention to sell or otherwise dispose of any of the assets of Fsub 3 acquired in the Fsub 3 Combination, except for the Contribution and any dispositions made in the ordinary course of business.

- III. The liabilities of Fsub 3 to be assumed (as determined under section 357(d)) by Newco 1 will have been incurred by Fsub 3 in the ordinary course of its business and will be associated with the assets transferred.
- mmm. Following the Fsub 3 Combination, Newco 1 and Newco 2 will continue the historic business of Fsub 3 or use a significant portion of Fsub 3's historic business assets in a business.
- nnn. At the time of the Fsub 3 Combination, Newco 1 will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Newco 1 that, if exercised or converted, would affect the acquisition or retention of control of Newco 1 by Fsub 3's shareholder, as defined in section 368(a)(2)(H)(i).
- ooo. Each of Newco 1, Fsub 3, and the shareholder of Fsub 3 will pay its respective expenses, if any, incurred in connection with the Fsub 3 Combination.
- ppp. There is no intercorporate indebtedness existing between Newco 1 and Fsub 3 that was issued or acquired, or will be settled, at a discount.
- qqq. No two parties to the Fsub 3 Combination are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- rrr. The fair market value of the assets of Fsub 3 transferred to Newco 1 will exceed the sum of the liabilities of Fsub 3 assumed (as determined under section 357(d)) by Newco 1.
- sss. The total adjusted basis of the assets of Fsub 3 transferred to Newco 1 will exceed the sum of the liabilities of Fsub 3 assumed (as determined under section 357(d)) by Newco 1.
- ttt. Fsub 3 is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).
- uuu. Parent has no plan or intention to sell or otherwise dispose of any of the shares of Newco 1.
- vvv. Fsub 3 will not be a passive foreign investment company as defined in section 1297(a) immediately before the Fsub 3 Combination.
- www. Fsub 3 will be a controlled foreign corporation, within the meaning of section 957(a), immediately before the Fsub 3 Combination.

**The Contribution**

- xxx. No stock or securities will be issued for services rendered to or for the benefit of Newco 2 in connection with the Contribution.
- yyy. No stock or securities will be issued for indebtedness of Newco 2 that is not evidenced by a security or for interest on indebtedness of Newco 2 that accrued on or after the beginning of the Newco 1's holding period for the debt.
- zzz. Newco 1 will use the accrual method of accounting.
- aaaa. The Contribution is not the result of the solicitation by a promoter, broker, or investment house.
- bbbb. Newco 1 will not retain any rights in the property transferred to Newco 2.
- cccc. No stock of any corporation will be transferred to Newco 2.
- dddd. The value of the Newco 2 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).
- eeee. The adjusted basis and the fair market value of the assets to be transferred by Newco 1 to Newco 2 will exceed the sum of the liabilities to be assumed (within the meaning of section 357(d)).
- ffff. The liabilities of Newco 1 to be assumed (within the meaning of section 357(d)) by Newco 2 (excluding liabilities to which section 357(c)(3) applies) will have been incurred in the ordinary course of business and will be associated with the assets to be transferred.
- gggg. There is no indebtedness between Newco 1 and Newco 2 and there will be no indebtedness created in favor of Newco 1 as a result of the Contribution.
- hhhh. The transfers and exchanges will occur under a plan agreed on before the Contribution in which the rights of the parties will be defined.
- iiii. All exchanges will occur on approximately the same date.
- jjjj. There is no plan or intention on the part of Newco 2 to redeem or otherwise reacquire any stock or indebtedness to be issued in the Contribution.
- kkkk. Taking into account any issuance of additional shares of Newco 2 stock; any issuance of stock for services; the exercise of any Newco 2 stock rights, warrants, or subscriptions; a public offering of Newco 2 stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of Newco 2 to

- be received in the exchange, Newco 1 will be in “control” of Newco 2 within the meaning of section 368(c).
- llll. Newco 1 will receive stock, securities or other property approximately equal to the fair market value of the property transferred to Newco 2 (less any liabilities assumed by Newco 2 within the meaning of section 357(d)).
- mmmm. Newco 2 will remain in existence and retain and use the property transferred to it in a trade or business.
- nnnn. There is no plan or intention by Newco 2 to dispose of the transferred property other than in the normal course of business operations.
- oooo. Each of Newco 1 and Newco 2 will pay its own expenses, if any, incurred in connection with the Contribution.
- pppp. Newco 2 will not be an investment company within the meaning of sections 351(e)(1) and 1.351-1(c)(1)(ii).
- qqqq. Newco 1 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 or securities received in the exchange will not be used to satisfy the indebtedness of such debtor.
- rrrr. Newco 2 will not be a “personal service corporation” within the meaning of section 269A.
- ssss. Newco 1 has no plan or intention to sell or otherwise dispose of any of the shares of Newco 2.
- tttt. Neither Newco 1 nor Newco 2 will be a passive foreign investment company as defined in section 1297(a) immediately before or after the Contribution.
- uuuu. Each of Newco 1 and Newco 2 will be a controlled foreign corporation, within the meaning of section 957(a), immediately before and after the Contribution.
- vvvv. All rights, title, and interest for each copyright, in each medium of exploitation, that is part of the assets related to Business A, if any, will be transferred by Newco 1 to Newco 2 in the Contribution.
- wwww. Newco 1 will not retain any significant power, right, or continuing interest (within the meaning of section 1253(b)) in the franchises, trademarks, or trade names being transferred by Newco 1 to Newco 2 in the Contribution, if any.
- xxxx. Newco 1 will not transfer any technical “know how” to Newco 2 in exchange for stock in the Contribution.

- yyyy. Newco 1 will transfer all substantial rights in patents or patent applications, within the meaning of section 1235, that are associated with Business A, if any.
- zzzz. Parent will enter into any gain recognition agreement that may be appropriate as provided for in the regulations under Treas. Reg. § 1.367(a), including with respect to any transaction that may be described in Treas. Reg. § 1.367(a)-3(d) for which a gain recognition agreement may be appropriate.
- aaaaa. Parent will comply with the notice and information reporting requirements of sections 367 and 6038B with respect to the transactions described herein.

### **Rulings**

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

#### **Generally Applicable**

1. For federal income tax purposes, the Proposed Transactions will be treated as: (1) transfers by Fsub 5 and Fsub 6 of all of each entity's assets to Newco 1 in exchange for stock of, and the assumption of each entity's liabilities by, Newco 1, followed by the liquidation of each of these entities; (2) transfers by Fsub 2 and Fsub 3 of all of each entity's assets to Newco 1 in exchange for the stock of, and the assumption of each entity's liabilities by, Newco 1, followed by the liquidation of each of these entities; and (3) the contribution by Newco 1 to Newco 2 of all the assets of these targets related to Business A in exchange for the stock of, and the assumption by Newco 2 of any liabilities related to Business A.

#### **Fsub 5**

2. The Fsub 5 Combination will be a reorganization within the meaning of section 368(a)(1)(C). Each of Fsub 5 and Newco 1 will be "a party to a reorganization" within the meaning of section 368(b).
3. No gain or loss will be recognized by Fsub 5 on the transfer of all of its assets to Newco 1 in exchange for Newco 1 stock and the assumption by Newco 1 of the liabilities of Fsub 5 (sections 361(a) and 357(a)).
4. No gain or loss will be recognized by Fsub 5 on the transfer of Newco 1 stock to its shareholder (section 361(c)(1)).
5. No gain or loss will be recognized by Newco 1 on the receipt of the assets of Fsub 5 in exchange for Newco 1 stock (section 1032(a)).
6. The basis of the assets of Fsub 5 in the hands of Newco 1 will be the same as the basis of those assets in the hands of Fsub 5 immediately prior to the transfer (section 362(b)).

7. The holding period of the assets of Fsub 5 in the hands of Newco 1 will include the period during which those assets were held by Fsub 5 (section 1223(2)).
8. No gain or loss will be recognized by the shareholder of Fsub 5 on the receipt of Newco 1 stock in exchange for the stock of Fsub 5 (section 354(a)(1)).
9. The basis of the shares of Newco 1 received by the shareholder of Fsub 5 will be the same as the basis of the stock of Fsub 5 surrendered in exchange therefor (section 358(a)(1)).
10. Pursuant to section 1223(1), the holding period of the Newco 1 stock received by the shareholder of Fsub 5 will include the period during which such shareholder held the stock of Fsub 5 surrendered in exchange therefor provided the stock of Fsub 5 is held as a capital asset on the date of the Fsub 5 Combination.
11. The Contribution will not prevent the Fsub 5 Combination from qualifying as a reorganization within the meaning of section 368(a)(1)(C) (section 368(a)(2)(C)).

#### **Fsub 6**

12. The Fsub 6 Combination will be a reorganization within the meaning of section 368(a)(1)(C). Each of Fsub 6 and Newco 1 will be "a party to a reorganization" within the meaning of section 368(b).
13. No gain or loss will be recognized by Fsub 6 on the transfer of all of its assets to Newco 1 in exchange for Newco 1 stock and the assumption by Newco 1 of the liabilities of Fsub 6 (sections 361(a) and 357(a)).
14. No gain or loss will be recognized by Fsub 6 on the transfer of Newco 1 stock to its shareholder (section 361(c)(1)).
15. No gain or loss will be recognized by Newco 1 on the receipt of the assets of Fsub 6 in exchange for Newco 1 stock (section 1032(a)).
16. The basis of the assets of Fsub 6 in the hands of Newco 1 will be the same as the basis of those assets in the hands of Fsub 6 immediately prior to the transfer (section 362(b)).
17. The holding period of the assets of Fsub 6 in the hands of Newco 1 will include the period during which those assets were held by Fsub 6 (section 1223(2)).
18. No gain or loss will be recognized by the shareholder of Fsub 6 on the receipt of Newco 1 stock in exchange for the stock of Fsub 6 (section 354(a)(1)).
19. The basis of the shares of Newco 1 received by the shareholder of Fsub 6 will be the same as the basis of the stock of Fsub 6 surrendered in exchange therefor (section 358(a)(1)).

20. Pursuant to section 1223(1), the holding period of the Newco 1 stock received by the shareholder of Fsub 6 will include the period during which such shareholder held the stock of Fsub 6 surrendered in exchange therefor provided the stock of Fsub 6 is held as a capital asset on the date of the Fsub 6 Combination.
21. The Contribution will not prevent the Fsub 6 Combination from qualifying as a reorganization within the meaning of section 368(a)(1)(C) (section 368(a)(2)(C)).

### **Fsub 2**

22. The Fsub 2 Combination will be a reorganization within the meaning of section 368(a)(1)(D). Each of Fsub 2 and Newco 1 will be "a party to a reorganization" within the meaning of section 368(b).
23. No gain or loss will be recognized by Fsub 2 on the transfer of all of its assets to Newco 1 in exchange for Newco 1 stock and the assumption by Newco 1 of the liabilities of Fsub 2 (sections 361(a) and 357(a)).
24. No gain or loss will be recognized by Fsub 2 on the transfer of Newco 1 stock to its shareholder (section 361(c)(1)).
25. No gain or loss will be recognized by Newco 1 on the receipt of the assets of Fsub 2 in exchange for Newco 1 stock (section 1032(a)).
26. The basis of the assets of Fsub 2 in the hands of Newco 1 will be the same as the basis of those assets in the hands of Fsub 2 immediately prior to the transfer (section 362(b)).
27. The holding period of the assets of Fsub 2 in the hands of Newco 1 will include the period during which those assets were held by Fsub 2 (section 1223(2)).
28. No gain or loss will be recognized by the shareholder of Fsub 2 on the receipt of Newco 1 stock in exchange for the stock of Fsub 2 (section 354(a)(1)).
29. The basis of the shares of Newco 1 received by the shareholder of Fsub 2 will be the same as the basis of the stock of Fsub 2 surrendered in exchange therefor (section 358(a)(1)).
30. Pursuant to section 1223(1), the holding period of the Newco 1 stock received by the shareholder of Fsub 2 will include the period during which such shareholder held the stock of Fsub 2 surrendered in exchange therefor provided the stock of Fsub 2 is held as a capital asset on the date of the Fsub 2 Combination.
31. The Contribution will not prevent the Fsub 2 Combination from qualifying as a reorganization within the meaning of section 368(a)(1)(D) (Rev. Rul. 2002-85, 2002-2 C.B. 986).

**Fsub 3**

32. The Fsub 3 Combination will be a reorganization within the meaning of section 368(a)(1)(D). Each of Fsub 3 and Newco 1 will be “a party to a reorganization” within the meaning of section 368(b).
33. No gain or loss will be recognized by Fsub 3 on the transfer of all of its assets to Newco 1 in exchange for Newco 1 stock and the assumption by Newco 1 of the liabilities of Fsub 3 (sections 361(a) and 357(a)).
34. No gain or loss will be recognized by Fsub 3 on the transfer of Newco 1 stock to its shareholder (section 361(c)(1)).
35. No gain or loss will be recognized by Newco 1 on the receipt of the assets of Fsub 3 in exchange for Newco 1 stock (section 1032(a)).
36. The basis of the assets of Fsub 3 in the hands of Newco 1 will be the same as the basis of those assets in the hands of Fsub 3 immediately prior to the transfer (section 362(b)).
37. The holding period of the assets of Fsub 3 in the hands of Newco 1 will include the period during which those assets were held by Fsub 3 (section 1223(2)).
38. No gain or loss will be recognized by the shareholder of Fsub 3 on the receipt of Newco 1 stock in exchange for the stock of Fsub 3 (section 354(a)(1)).
39. The basis of the shares of Newco 1 received by the shareholder of Fsub 3 will be the same as the basis of the stock of Fsub 3 surrendered in exchange therefor (section 358(a)(1)).
40. Pursuant to section 1223(1), the holding period of the Newco 1 stock received by the shareholder of Fsub 3 will include the period during which such shareholder held the stock of Fsub 3 surrendered in exchange therefor provided the stock of Fsub 3 is held as a capital asset on the date of the Fsub 3 Combination.
41. The Contribution will not prevent the Fsub 3 Combination from qualifying as a reorganization within the meaning of section 368(a)(1)(D) (Rev. Rul. 2002-85, 2002-2 C.B. 986).

**The Contribution**

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

42. No gain or loss will be recognized by Newco 1 on the transfer of the Business A assets to Newco 2 in exchange for Newco 2 stock and the assumption by Newco 2 of the related liabilities (sections 351(a) and 357(a)).
43. No gain or loss will be recognized by Newco 2 on the receipt of the Business A assets of Newco 1 in exchange for Newco 2 stock (section 1032(a)).
44. The holding period of the stock of Newco 2 received by Newco 1 will include the holding period of Business A assets transferred to Newco 2, provided that Business A assets were held by Newco 1 as capital assets on the date of the exchange (section 1223(1)).
45. The basis of the Business A assets of Newco 1 in the hands of Newco 2 will be the same as the basis of those assets in the hands of Newco 1 immediately prior to the Contribution (section 362(a)).
46. The holding period of the Business A assets of Newco 1 in the hands of Newco 2 will include the period during which those assets were held by Newco 1 (section 1223(2)).
47. The basis of the shares of Newco 2 received by Newco 1 will be the same as the basis of the Business A assets transferred in exchange therefor, reduced by the amount of the liabilities assumed by Newco 2 (section 358(a)(1) and 358(d)).

**Caveats**

We express no opinion about the tax treatment of the Proposed Transactions under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effect resulting from, the Proposed Transactions that is not specifically covered by the above rulings. In particular, no opinion is given regarding the treatment of step (i) of the Proposed Transactions described above.

No opinion is expressed or implied as to when a gain recognition agreement may be appropriate.

The rulings contained in this letter are 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.

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.

A copy of this letter must be attached to any income tax return to which it is relevant.

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

Sincerely,

*Steven J. Hankin*

Steven J. Hankin  
Senior Technician Reviewer, Branch 6  
Office of Associate Chief Counsel  
(Corporate)