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Department of the Treasury

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Person to Contact:

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Refer Reply To:
CC:DOM:CORP:5 - PLR-119748-99
Date:
May 18, 2000

In re:

Corp 1 =

Corp 2 =

Corp 3 =

Corp 4 =

Corp 5 =

Corp 6 =

Corp 7 =

Corp 8 =

Corp 9 =

Corp 10 =

Corp 11 =

Corp 12 =

Corp 13 =

Corp 14 =

Corp 15 =

Corp 16 =

D1 =

D2 =

Sub3 =

Sub4 =

Controlled 1 =

Controlled 2 =

P1 =

P2 =

P3 =

Date 1 =

Date 2 =

Date 3 =

Date 5 =

b =

c =

d =

e =

g =

Business A =

Business B =

T =

This is in reply to a letter dated December 14, 1999, in which rulings are requested as to the federal income tax consequences of a propose transaction. Additional information was submitted in letters dated March 21, March 24, March 31, April 6, April 10, and April 13, 2000. The facts submitted for consideration are substantially as set forth below.

Corp 1 is a bank holding company. Corp 1 wholly owns Corp 2, D1, and Sub3. D1 wholly owns D2, Controlled 1 and Corp 9. D2 wholly owns Controlled 2, which wholly owns Corp 7 and Corp 8. Corp 9 wholly owns Corp 10, which wholly owns Corp

11, Corp 12, Corp 13, and Corp 14. Sub3 wholly owns Sub4, which wholly owns Corp 16. All of the foregoing corporations are domestic.

Prior to the proposed transaction, Corp 2 will be merged into a newly created corporation named Corp 3.

On Date 1, Corp 1 acquired Corp 4 in a transaction in which no gain or loss was recognized in whole or in part. Corp 4 owned all of the stock of Corp 15, and a b percent partnership in interest in P1. Sub4 owned the remaining d percent partnership interest. Pursuant to prior agreement, Corp 4's ownership interest in P1 fell to e percent as of Date 5, with Sub4 holding the remaining g percent. P1 owned c percent of the member interests in P3. On Date 1, P1 acquired all of the member interests in P2.

On Date 2, D1 acquired D2 in a transaction in which no gain or loss was recognized in whole or in part. On Date 3, Corp 7 and Corp 8, previously subsidiaries of D2, were transferred to Controlled 2.

D1 is engaged in Business A. D2 is a holding company whose subsidiaries are engaged in Business A. Controlled 1 engages in business as a T. Controlled 2 operates Business B.

Financial information has been submitted which indicates that each of Controlled 1, Controlled 2, D1, D2's subsidiaries, and Corp 16 has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the last 5 years.

According to statements submitted by the taxpayer, along with supporting documentation, the distribution of D2 will accomplish the release of D2 from constraints by regulatory supervision, licensing requirements and restrictions on rates and fees. The distribution of Controlled 2 is necessary to allow it to remain a subsidiary of D1 after the D2 distribution, in order to ensure its retention of a status needed under the law for its operations. The distribution of Controlled 1 will release it from certain restrictions on the type of activities it may engage in. For these, and other reasons that are represented to be valid business reasons, the following transactions are proposed:

(i) D2 contributed Corp 7 and Corp 8 to Controlled 2 on Date 3, and will distribute all of the stock of Controlled 2 to D1.

(ii) D1 will distribute all of the stock of D2 to Corp 1.

(iii) Corp 1 will contribute the stock of Corp 3 to D2.

(iv) D1 will distribute all of the stock of Controlled 1 to Corp 1.

(v) Controlled 1 will merge in a statutory merger under state law with and into Corp 16.

(vi) Corp 1 will contribute all of the stock of Corp 16 received in step (v) to Sub3.

(vii) Sub3 will contribute all of the stock of Corp 16 received in step (vi) to Sub4.

(viii) Corp 11 will liquidate into Corp 10.

(ix) Corp 12 will liquidate into Corp 10.

(x) Corp 13 will liquidate into Corp 10.

In connection with the proposed transaction described in step (i), the taxpayer represents as follows:

(a) Controlled 2, D2, and D1 will each pay their own expenses, if any, incurred in connection with the transaction.

(b) Any indebtedness owed by Controlled 2 to D2 after the distribution of Controlled 2 will not constitute stock or securities.

(c) No part of the Controlled 2 stock to be distributed by D2 will be received by D1 as a creditor, employee, or in any capacity other than that of a shareholder of D2.

(d) The total adjusted basis and the fair market value of the assets transferred to Controlled 2 by D2 will each equal or exceed the sum of the liabilities assumed by Controlled 2.

(e) Following the transaction, Controlled 2 and D2 (through its controlled subsidiaries) will each continue its active business independently and with its separate employees.

(f) No intercorporate debt will exist between D2 and Controlled 2 at the time of, or subsequent to, the distribution of the Controlled 2 stock except, debt arising in the ordinary course of business. Any debt will not constitute stock or securities.

(g) No two parties to the transaction are investment companies as defined in § 368(a)(F)(iii) and (iv) of the Internal Revenue Code.

(h) The liabilities assumed in the transaction, if any, and the liabilities to which the transferred assets are subject were incurred in the ordinary course of

business and are associate with the assets being transferred.

(i) The 5 years of financial information submitted on behalf of Controlled 2 and D2 are representative of Controlled 2's and D2's present operations and there have been no substantial operational changes since the date of the last financial statements submitted.

(j) Immediately after the distribution, at least 90 percent of the fair market value of the gross assets of D2 consist of the stock and securities of controlled corporations that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(k) There is no plan or intention to liquidate either D2 or Controlled 2, or to merge any of these corporations with and into any other corporation, or to sell or dispose of the assets of these corporations after the transaction, except in the ordinary course of business.

(l) There is no plan or intention by D1 to sell, exchange, transfer by gift, or otherwise dispose of any of its stock in, or securities of either D2 or Controlled 2, subsequent to the transaction except as specifically described above .

(m) Payments made in connection with all continuing transactions, if any, between D2 and Controlled 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arms length.

(n) The distribution of Controlled 2 is being carried out for the corporate business purpose of "fit and focus." The distribution of the Controlled 2 stock is being motivated, in whole or substantial part, by this corporate business purpose.

(o) The distribution is not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire directly or indirectly stock possessing 50 percent or more of the total combined voting power of all classes of stock of either the distributing or controlled corporation, or stock possessing 50 percent of more of the total value of all classes of stock of either distributing or controlled.

(p) There is no plan or intention by either D2 or Controlled 2, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the distribution.

(q) Immediately before the distribution, items of income, gain loss, deduction

and credit will be taken into account as required by the applicable inter-company transaction regulations (See § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, D2's excess loss account, if any, with respect to the Controlled 2 stock will be included in income immediately before the distribution (See § 1.1502-19).

(r) Immediately after the distribution, no person will hold disqualified stock (within the meaning of § 355(d)) in D2 or Controlled 2 possessing 50 percent or more of the total combined voting power of all classes of stock of either D2 or Controlled 2, or stock possessing 50 percent or more of the total value of all classes of stock of either D2 or Controlled 2.

In connection with the proposed transaction described in step (ii), the taxpayer represents as follows:

(a) Any indebtedness owed by D2 to D1 after the distribution of D2 will not constitute stock or securities.

(b) No part of the consideration begin distributed by D1 is being received by Corp 1 as a creditor, employee, or in any capacity other than that of a shareholder.

(c) Immediately after the distribution, at least 90 percent of the fair market value of the gross assets of D2 consists of the stock and securities of controlled corporations that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(d) Following the transaction, D2 (through its controlled subsidiaries) and D1 will each continue the active conduct of its business independently and with its separate employees.

(e) No intercorporate debt will exist between D1 and D2 at the time of, or subsequent to, the distribution of the D2 stock, except debt arising in the ordinary course of business. Any debt will not constitute stock or securities.

(f) The 5 years of financial information submitted on behalf of D2 and D1 is representative of D2's and D1's present operations, and there have been no substantial operational changes since the date of the last financial statements submitted.

(g) There is no plan or intention to liquidate either D2 or D1 or to merge any of these corporations with and into any other corporation, or to sell or

dispose of the assets of these corporations except in the ordinary course of business.

(h) There is no plan or intention by Corp 1 to sell, exchange, transfer by gift, or otherwise dispose of any of its stock in, or securities of D2 or D1 subsequent to the transaction.

(i) Payments made in connection with all continuing transactions between D1 and D2, if any, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arms length.

(j) There is no plan or intention by either D1 or D2, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction, other than through stock purchases meeting the requirements of §4.05(1) of Rev. Proc. 96-30.

(k) Immediately before the distribution, items of income, gain loss, deduction and credit will be taken into account as required by the applicable inter-company transaction regulations (See § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, D1's excess loss account, if any, with respect to the D2 stock will be included in income immediately before the distribution (See § 1.1502-19).

(l) The distribution of D2 is being carried out for the corporate business purpose of “fit and focus.” The distribution of stock is being motivated, in whole or substantial part, by this corporate business purpose.

(m) The distribution is not part of a plan or series of related transactions (withing the meaning of § 355(e)) pursuant to which one or more persons will acquire directly or indirectly stock possessing 50 percent or more of the total combined voting power of all classes of stock of either distributing or controlled, or stock possessing 50 percent or more of the total value of all classes of stock of either distributing or controlled.

(n) Immediately after the distribution, no person will hold disqualified stock (within the meaning of § 355(d)) in D1 or D2 possessing 50 percent or more of the total combined voting power of all classes of stock of either D1 or D2, or stock possessing 50 percent or more of the total value of all classes of stock of D1 or D2.

In connection with the proposed transaction described in step (iv), the taxpayer represents as follows:

(a) Any indebtedness owed by Controlled 1 to D1 will not constitute stock or securities.

(b) No part of the Controlled 1 stock being distributed by D1 will be received by Corp 1 as a creditor, employee, or in any capacity other than that of a shareholder of D1.

(c) Following the transaction, Controlled 1 and D1 will each continue the active conduct of its business independently and with its separate employees.

(d) No intercorporate debt will exist between D1 and Controlled 1 at the time of, or subsequent to, the distribution of the Controlled 1 stock, except debt arising in the ordinary course of business.

(e) The 5 years of financial information submitted on behalf of Controlled 1 and D1 is representative of Controlled 1's and D1's present operations, and there have been no substantial operational changes since the date of the last financial statements submitted.

(f) There is no plan or intention to liquidate either Controlled 1 or D1 or to merge any of these corporations with and into any other corporation, or to sell or dispose of the assets of these corporations, except in the ordinary course of business or as specifically described above.

(g) There is no plan or intention by Corp 1 to sell, exchange, transfer by gift, or otherwise dispose of any of its stock in, or securities of Controlled 1 or D1 subsequent to the transaction except as specifically described above.

(h) Payments made in connection with all continuing transactions between D1 and Controlled 1, if any, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arms length.

(i) The distribution of Controlled 1 is being carried out for the corporate business purpose of "fit and focus." The distribution of stock is being motivated, in whole or substantial part, by this corporate business purpose.

(j) The distribution is not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more person will acquire directly or indirectly stock possessing 50 percent or more of the total combined voting power of all classes of stock of either distributing or controlled, or stock possessing 50 percent or more of the total value of all classes of stock of either distributing or controlled.

(k) There is no plan or intention by either D1 or Controlled 1, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction, other than through stock purchases meeting the requirements of section 4.05(1) of Rev. Proc. 96-30.

(l) Immediately before the distribution, items of income, gain loss, deduction and credit will be taken into account as required by the applicable inter-company transaction regulations (See § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, D1's excess loss account, if any, with respect to the Controlled 1 stock will be included in income immediately before the distribution (See § 1.1502-19).

(m) Immediately after the distribution, no person will hold disqualified stock (within the meaning of § 355(d)) in D1 or Controlled 1 possessing 50 percent or more of the total combined voting power of all classes of stock of either D1 or Controlled 1, or stock possessing 50 percent or more of the total value of all classes of stock of D1 or Controlled 1.

In connection with the proposed transaction described in step (iii), the taxpayer represents as follows:

(a) No stock will be issued for services rendered to or for the benefit of D2 in connection with the transfer, and no stock will be issued for indebtedness of D2 that is not evidenced by a security or for interest on indebtedness of D2 which accrued on or after the beginning of the holding period of Corp 1 for the debt.

(b) The transfer is not the result of the solicitation by a promoter, broker, or investment house.

(c) Corp 1 will not retain any rights in the property transferred to D2.

(d) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.

(e) All exchanges will occur on approximately the same date.

(f) There is no plan or intention on the part of D2 to redeem or otherwise reacquire any stock from Corp 1 in connection with the transaction.

(g) Taking into account any issuance of additional shares of D2 stock; any issuance of stock for services; the exercise of any D2 stock rights, warrants, or subscriptions; a public offering of D2 stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of D2 to

be received in the exchange, Corp 1 will be in “control” of D2 immediately after the transfer within the meaning of § 368(c).

(h) Corp 1 (the sole shareholder of D2) will constructively receive stock approximately equal to the fair market value of the property transferred to the transferee.

(i) D2 will remain in existence and retain and use the property transferred to it in a trade or business.

(j) There no plan or intention by D2 dispose of the transferred property other than in the normal course of business operations.

(k) Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the proposed transaction.

(l) D2 will not be an investment company within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii) of the Income Tax Regulations.

(m) Corp 1 is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(A)) and the stock received in the exchange will not be used to satisfy the indebtedness of such debtor.

(n) D2 will not be a “personal service corporation” within the meaning of § 269A.

(o) No liabilities will be assumed in the transfer.

In connection with the proposed transaction described in step (vi) the taxpayer represents as follows:

(a) No stock will be issued for service rendered to or for the benefit of Sub3 in connection with the proposed transaction, and (ii) no stock will be issued for indebtedness of Sub3 that is not evidenced by a security or for interest on indebtedness of Sub3 which accrued on or after the beginning of the holding period of Corp 1 for the debt.

(b) The transfer is not the result of the solicitation by a promoter, broker, or investment house.

(c) Corp 1 will not retain any rights in the property transferred to Sub3.

(d) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.

(e) All exchanges will occur on approximately the same date.

(f) There is no plan or intention on the part of Sub3 to redeem or otherwise reacquire the stock to be issued in the proposed transaction.

(g) Taking into account any issuance of additional shares of Sub3 stock; any issuance of stock for services; the exercise of any Sub3 stock rights, warrants, or subscriptions; a public offering of Sub3 stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of Sub3 to be received in the exchange, Corp 1 will be in "control" of Sub3 after the transfer within the meaning of § 368(c).

(h) Corp 1 will constructively receive stock approximately equal to the fair market value of the property transferred to the transferee.

(i) Sub3 will remain in existence and retain and use the property transferred to it in a trade or business, except as described above under step (vii).

(j) There is no plan or intention by Sub3 to dispose of the transferred property other than in the normal course of business operations, except as described above under step (vii).

(k) Each of the parties to the transaction will pay it own expenses, if any, incurred in connection with the proposed transaction.

(l) Sub3 will not be an investment company within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii).

(m) Corp 1 is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy the indebtedness of such debtor.

(n) Sub3 will not be a "personal service corporation" within the meaning of § 269A.

(o) No liabilities will be assumed in the transaction.

In connection with the proposed transaction described in step (vii), the taxpayer represents as follows:

(a) No stock will be issued for services rendered to or for the benefit of Sub4 in connection with the transfers, and no stock will be issued for indebtedness of Sub4 that is not evidenced by a security or for interest on indebtedness of Sub4 which accrued on or after the beginning of the holding period of Sub3 for the debt.

(b) The transfer is not the result of the solicitation by a promoter, broker, or investment house.

(c) Sub3 will not retain any rights in the property transferred to Sub4.

(d) The value of the 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.

(e) The adjusted basis and the fair market value of the assets to be transferred by Sub3 to Sub4 will, in each instance, be equal to or exceed the sum of the liabilities to be assumed by the transferee.

(f) There is no indebtedness between Sub4 and Sub3 and there will be no indebtedness created in favor of Sub3 as a result of the transaction.

(g) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.

(h) All exchanges will occur on approximately the same date.

(i) There is no plan or intention on the part of Sub4 to redeem or otherwise reacquire any stock to be issued in the proposed transaction.

(j) Taking into account any issuance of additional shares of Sub4 stock; any issuance of stock for services; the exercise of any Sub4 stock rights, warrants, or subscriptions; a public offering of Sub4 stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of Sub4 to be received in the exchange, Sub3 will be in “control” of Sub4 immediately after the transfers within the meaning of § 368(c).

(k) Sub3 will constructively receive stock approximately equal to the fair market value of the property transferred to Sub4.

(l) Sub4 will remain in existence and retain and use the property transferred to it in a trade or business.

(m) There is no plan or intention by Sub4 to dispose of the transferred property other than in the normal course of business operations, except as specifically described above.

(n) Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the transfers.

(o) Sub4 will not be an investment company within the meaning of

§ 351(e)(1) and §1.351-1(c)(1)(ii).

(p) Sub3 is not under the jurisdiction of a court in a title 11 or similar case (withing the meaning of § 368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy the indebtedness of such debtor.

(q) Sub4 will not be a “personal service corporation” within the meaning of § 269A.

In connection with the proposed transaction described in step (viii) the taxpayer represents as follows:

(a) Corp 10, on the date of adoption of the plan of liquidation, and at all times until the final liquidating distribution is completed, will be the owner of at least 80 percent of the single outstanding class of Corp 11 stock.

(b) No shares of Corp 11 stock will have been redeemed during the 3 years preceding the adoption of the plan of complete liquidation of Corp 11.

(c) As soon as the first liquidating distribution has been made, Corp 11 will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and distributing its remaining assets to its shareholders.

(d) Corp 11 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than 3 years prior to the date of adoption of the plan of liquidation.

(e) No assets of Corp 11 have been, or will be, disposed of by either Corp 11 or Corp 10 except for dispositions in the ordinary course of business and dispositions occurring more than 3 years prior to the date of adoption of the plan of liquidation.

(f) The liquidation of Corp 11 will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation (“Recipient”) of any of the businesses or assets of Corp 11, if persons holding directly or indirectly, more than 20 percent in value of the Corp 11 stock also hold, directly or indirectly, more than 20 percent of the stock in Recipient. For purposes of this representation, ownership will be determined by application of constructive ownership rules of § 318(a) as modified by § 304(c)(3).

(g) Corp 11 will report all earned income represented by assets that will be distributed to its shareholders such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

(h) The fair market value of the assets of Corp 11 will exceed its liabilities both at the date of the adoption of the plan of complete liquidation and immediately prior to the time the first liquidating distribution is made.

(i) There is no inter-corporate debt existing between Corp 10 and Corp 11 and none has been canceled, forgiven, or discounted, except for transactions that occurred more than 3 years prior to the date of adoption of the liquidation plan (or, alternatively, if such date is later) and for transactions occurring prior to the date Corp 10 initially acquired Corp 11 stock.

(j) Corp 10 is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.

(k) All distribution from Corp 11 to Corp 10 pursuant to the plan of complete liquidation will be made within a single taxable year of Corp 11.

In connection with the proposed transaction described in step (ix), the taxpayer represents as follows:

(a) Corp 10, on the date of adoption of the plan of liquidation, and at all times until the final liquidating distribution is completed, will be the owner of at least 80 percent of the single outstanding class of Corp 12 stock.

(b) No shares of Corp 12 stock will have been redeemed during the 3 years preceding the adoption of the plan of complete liquidation of Corp 12.

(c) All distributions from Corp 12 to Corp 10 pursuant to the plan of complete liquidation will be made within a single taxable year of Corp 12.

(d) As soon as the first liquidating distribution has been made, Corp 12 will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and distributing its remaining assets to its shareholders.

(e) Corp 12 will retain no assets following the final liquidating distribution.

(f) Corp 12 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than 3 years prior to the date of adoption of the plan of liquidation.

(g) No assets of Corp 12 have been, or will be, disposed of by either Corp 12 or Corp 10 except for dispositions in the ordinary course of business and dispositions in the ordinary course of business and dispositions occurring more than 3 years prior to the date of adoption of the plan of liquidation.

(h) The liquidation of Corp 12 will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation ("Recipient") of any of the businesses or assets of Corp 12, if persons holding directly or indirectly, more than 20 percent in value of the Corp 12 stock also hold, directly or indirectly, more than 20 percent of the stock in Recipient. For purposes of this representation, ownership will be determined by application of constructive ownership rules of § 318(a) as modified by § 304(c)(3).

(i) Corp 12 will report all earned income represented by assets that will be distributed to its shareholders such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

(j) The fair market value of the assets of Corp 12 will exceed its liabilities both at the date of the adoption of the plan of complete liquidation and immediately prior to the time the first liquidating distribution is made.

(k) There is no intercorporate debt existing between Corp 10 and Corp 12 and none has been canceled, forgiven, or discounted, except for transactions that occurred more than 3 years prior to the date of adoption of the liquidation plan (or, alternatively, if such date is later) except for transactions occurring prior to the date Corp 10 initially acquired Corp 12 stock.

(l) Corp 10 is not an organization that is exempt from federal income tax under § 501 of any other provisions of the Code.

In connection with the proposed transaction described in step (x), the taxpayer represents as follows:

(a) Corp 10, on the date of adoption of the plan of liquidation, and at all times until the final liquidating distribution is completed, will be the owner of at least 80 percent of the single outstanding class of Corp 13 stock.

(b) No shares of Corp 13 stock will have been redeemed during the 3 years preceding the adoption of the plan of complete liquidation of Corp 13.

(c) All distributions from Corp 13 to Corp 10 pursuant to the plan of complete liquidation will be made within a single taxable year of Corp 13.

(d) As soon as the first liquidation distribution has been made, Corp 13 will cease to be a going concern and its activities will be limited to winding up it affairs, paying its debts, and distributing its remaining assets to its shareholders.

(e) Corp 13 will retain no assets following the final liquidating distribution.

(f) Corp 13 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than 3 years prior to the date of the date of adoption of the plan of liquidation.

(g) No assets of Corp 13 have been, or will be, disposed of by either Corp 13 or Corp 10 except for dispositions in the ordinary course of business and dispositions occurring more than 3 years prior to the date of adoption of the plan of liquidation.

(h) The liquidation of Corp 13 will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation ("Recipient") of any of the business or assets of Corp 13, if persons holding directly or indirectly, more than 20 percent in value of the Corp 13 stock also hold, directly or indirectly, more than 20 percent of the stock in Recipient. For purposes of this representation, ownership will be determine by application of constructive ownership rules of § 318(a) as modified by § 304(c)(3).

(i) Corp 13 will report all earned income represented by assets that will be distributed to it shareholders such as receivables being report on a cash basis, unfinished construction contracts, commissions due, etc.

(j) The fair market value of the assets of Corp 13 will exceed its liabilities both at the date of the adoption of the plan of complete liquidation and immediately prior to the time the first liquidating distribution is made.

(k) There is no intercorporate debt exiting between Corp 10 and Corp 13 and none has been canceled, forgiven, or discounted, except for transactions that occurred more than 3 years prior to the date of adoption of the liquidation plan (or, alternatively, if such date is later) except for transactions occurring prior to the date Corp 10 initially acquired Corp 13 stock.

(l) Corp 10 is not an organization that is exempt from federal income tax under § 501 or any other provisions of the Code.

Based solely on the information submitted and on the representations set forth above, we rule as follows with respect to step (i) of the proposed transaction:

(1) The transfer by D2 to Controlled 2 of property, described above, solely in exchange for a constructive issuance of Controlled 2 stock, followed by the distribution of all of the Controlled 2 stock, will be a reorganization within the meaning of § 368(a)(1)(D). D2 and Controlled 2 will each be "a party to a reorganization" within the meaning of § 368(b).

(2) No gain or loss will be recognized by D2 upon the transfer of the property to Controlled 2 in exchange for a constructive issuance of Controlled 2

stock (§ 361(a)).

(3) No gain or loss will be recognized by Controlled 2 on the receipt of the property in exchange for a constructive issuance of Controlled 2 stock (§ 1032(a)).

(4) No gain or loss will be recognized by D2 upon the distribution of all of its stock in Controlled 2 (§ 361(c)).

(5) No gain or loss will be recognized by (and no amount shall be included in the income of) D1 upon the receipt of Controlled 2 stock (§ 355(a)(1)).

(6) The aggregate basis of the stock of Controlled 2 and D2 in the hands of D1 after the distribution will be the same as the basis of the D2 stock held immediately before the distribution, allocated in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(b)(2)).

(7) The holding period of the Controlled 2 stock received by D1 will include the holding period of the D2 stock on which the distributions will be made, provided such stock is held as a capital asset on the date of the distribution (§ 1223(1)).

(8) As provided in § 312(h), proper allocation of earnings and profits between D2 and Controlled 2 will be made under §1.312-10(a).

Based solely on the information submitted and on the representations set forth above, we rule as follows with respect to step (ii) of the proposed transaction:

(9) No gain or loss will be recognized by D1 upon the distribution of all of its stock in D2 (§ 355(c)).

(10) No gain or loss will be recognized by (and no amount shall be included in the income of) Corp 1 upon the receipt of the D2 stock (§ 355(a)(1)).

(11) The aggregate basis of the stock of D1 and D2 in the hands of Corp 1 after the distribution will be the same as the basis of the D1 stock held immediately before the distribution, allocated in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(b)(2)).

(12) The holding period of the D2 stock received by Corp 1 will include the holding period of D1 stock on which the distribution will be made, provided such stock is held as a capital asset on the date of the distribution (§ 1223(1)).

(13) As provided in § 312(h), proper allocation of earnings and profits between

D1 and D2 will be made under §1.312-10(b).

Based solely on the information submitted and on the representations set forth above, we rule as follows with the respect to step (iv) of the proposed transaction:

(14) No gain or loss will be recognized by D1 upon the distribution of all of its stock in Controlled 1 (§ 355(c)).

(15) No gain or loss will be recognized by (and no amount shall be included in the income of) Corp 1 upon the receipt of the Controlled 1 stock (§ 355(a)(1)).

(16) The aggregate basis of the stock of D1 and Controlled 1 stock in the hands of Corp 1 after the distribution will be the same as the basis of the D1 stock held immediately before the distribution, allocated in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(b)(2)).

(17) The holding period of the Controlled 1 stock received by Corp 1 will include the holding period of D1 stock on which the distributions will be made, provided such stock is held as a capital asset on the date of the distribution (§ 1223(1)).

(18) As provided in §312 (h), proper allocation of earnings and profits between D1 and Controlled 1 will be made under §1.312-10(b).

Based solely on the information submitted and on the representations set forth above, we rule as follows with respect to step (iii) of the proposed transaction:

(19) No gain or loss will be recognized by Corp 1 upon the transfer of property to D2 solely in exchange for a constructive issuance of D2 stock (§ 351(a)).

(20) No gain or loss will be recognized by D2 upon the receipt of property from Corp 1 solely in exchange for a constructive issuance of D2 stock (§ 1032(a)).

(21) The basis in the property received by D2 will be the same as it was in the hands of Corp 1 immediately before the transfer (§ 362(a)).

(22) The basis in the D2 stock constructively received in the exchange by Corp 1 will be the same as its basis in the property transferred immediately before the transfer (§ 358(a)).

(23) The holding period of the property transferred in the hands of D2 will include the holding period of Corp 1 in the property transferred immediately before the transfer (§ 1223(2)).

(24) The holding period of the D2 stock held by Corp 1 will include the holding period of Corp 1 in the property transferred immediately before the transfer to the extent that the property was held as a capital asset on the date of the exchange (§ 1223(1)).

Based solely on the information submitted and on the representations set forth above, we rule as follows with the respect to step (vi) of the proposed transaction:

(25) No gain or loss will be recognized by Corp 1 upon the transfer of its Corp 16 stock received in step (v) to Sub3 solely in exchange for a constructive issuance of Sub3 stock (§ 351(a)).

(26) No gain or loss will be recognized by Sub3 upon receipt of the Corp 16 stock from Corp 1 solely in exchange for a constructive issuance of Sub3 stock (§ 1032(a)).

(27) The basis in the Corp 16 stock received by Sub3 will be the same as it was in the hands of Corp 1 immediately before the transaction (§ 362(a)).

(28) The basis in the Sub3 stock received by Corp 1 will be the same as its basis in the Corp 16 stock immediately before the transfer (§ 358(a)).

(29) The holding period of the Corp 16 stock in the hands of Sub3 will include the holding period of the Corp 16 stock in the hands of Corp 1 immediately before the transfer (§ 1223(2)).

(30) The holding period of the Sub3 stock held by Corp 1 will include the holding period of Corp 16 stock held by Corp 1 immediately before the transfer to the extent that the property was held as a capital asset on the date of the exchange (§ 1223(1)).

Based solely on the information submitted and on the representations set forth above, we rule as follows with respect to step (vii) of the proposed transaction:

(31) No gain or loss will be recognized by Sub3 upon the transfer of its Corp 16 stock received in step (vi) to Sub4 solely in exchange for a constructive issuance of Sub4 stock (§ 351(a)).

(32) No gain or loss will be recognized by Sub4 upon the receipt of the Corp 16 stock from Sub3 solely in exchange for a constructive issuance of Sub4 stock (§ 1032(a)).

(33) The basis in the Corp 16 stock received by Sub4 will be the same as it was in the hands of Sub3 immediately before the transfer (§ 362(a)).

(34) The basis in the Sub4 stock received by Sub3 will be the same as its

basis in the Corp 16 stock immediately before the transfer (§ 358(a)).

(35) The holding period of the Corp 16 stock in the hands of Sub4 will include the holding period of the Corp 16 stock in hands of Sub3 immediately before the transfer (§ 1223(2)).

(36) The holding period of the Sub4 stock held by Sub3 will include the holding period of the Corp 16 stock held by Sub3 immediately before the transfer to the extent that the property was held as a capital asset on the date of the exchange (§ 1223(1)).

Based solely on the information submitted and on the representations set forth above, we rule as follows with respect to step (viii) of the proposed transaction:

(37) No gain or loss will be recognized by Corp 10 on its receipt of the assets of Corp 11 (§ 332(a)).

(38) No gain or loss will be recognized by Corp 11 on the distribution of its assets to Corp 10 in complete liquidation (§ 337(a)).

(39) The basis of the assets of Corp 11 in the hands of Corp 10 will be the same as the basis of those assets in the hands of Corp 11 immediately prior to the liquidation (§ 334(b)(1)).

(40) The holding period of the assets of Corp 11 in the hands of Corp 10 will include the period during which such assets were held by Corp 11 (§ 1223(2)).

(41) Pursuant to § 381(a) and §1.381(a)-1, Corp 10 will succeed to and take into account the items of Corp 11 described in § 381(c), subject to the conditions and limitations specified in §§ 381(b) and (c), 382 and 383.

(42) As provided in § 381(c)(2) and § 1.381(c) (2)-1, Corp 10 will succeed to and take into account the earnings and profits or deficit in earnings and profits of Corp 11 as of the date of the transfer. Any deficit in earnings and profits of Corp 10 or Corp 11 will be used only to offset earnings and profits accumulated after the date of the transfer.

Based solely on the information submitted and on the representations set forth above, we rule as follows with respect to step (ix) of the proposed transaction:

(43) No gain or loss will be recognized to Corp 10 on its receipt of the assets of Corp 12 (§ 332(a)).

(44) No gain or loss will be recognized by Corp 12 on the distribution of its assets to Corp 10 in complete liquidation (§ 337(a)).

(45) The basis of assets of Corp 12 in the hands of Corp 10 will be the same

as the basis of those assets in the hands of Corp 12 immediately prior to the liquidation (§ 334(b)(1)).

(46) The holding period of the assets of Corp 12 in the hands of Corp 10 will include the period during which such assets were held by Corp 12 (§ 1223(2)).

(47) Pursuant to § 381(a) and §1.381(a)-1, Corp 10 will succeed to and take into account the items of Corp 12 described in §381(c), subject to the conditions and limitations specified in §§ 381(b) and (c), 382 and 383.

(48) As provided in § 381(c)(2) and § 1.381(c)(2)-1, Corp 10 will succeed to and take into account the earnings and profits or deficit in earnings and profits of Corp 12 as of the date of the transfer. Any deficit in earnings and profits of Corp 10 or Corp 12 will be used only to offset earnings and profits accumulated after the date of the transfer.

Based solely on the information submitted and on the representations set forth above, we rule as follows with respect to step (x) of the proposed transaction:

(49) No gain or loss will be recognized to Corp 10 on its receipt of the assets of Corp 13 (§ 332(a)).

(50) No gain or loss will be recognized by Corp 13 on the distribution of its assets to Corp 10 in complete liquidation § 337(a)).

(51) The basis of the assets of Corp 13 in the hands of Corp 10 will be the same as the basis of those assets in the hands of Corp 13 immediately prior to the liquidation (§ 334(b)(1).

(52) The holding period of the assets of Corp 13 in the hands of Corp 10 will include the period during which such assets were held by Corp 13 (§ 1223(2)).

(53) Pursuant to § 381(a) and § 1.381(a)-1, Corp 10 will succeed to and take into account the items of Corp 13 described in § 381(c), subject to the conditions and limitations specified in §§ 381(b) and (c), 382 and 383.

(54) As provided in § 381(c)(2) and § 1.381(c)(2)-1, Corp 10 will succeed to and take into account the earnings and profits of deficit in earnings and profits of Corp 13 as of the date of the transfer. Any deficit in earnings and profits of Corp 10 or Corp 13 will be used only to offset earnings and profits accumulated after the date of the transfer.

We express no opinion about the tax treatment of the transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed as to the tax

consequences of step (v).

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter should be attached to the federal income tax return of the taxpayers involved for the taxable year in which the transaction covered by this letter is consummated.

Pursuant to a power of attorney on file in this office, we have sent a copy of this letter to the taxpayer and an authorized representative.

Sincerely yours,
Assistant Chief Counsel (Corporate)
By: _Debra Carlisle_____
Chief, Branch 5