

**Internal Revenue Service**

Number: **200608018**  
Release Date: 2/24/2006  
Index Number: 301.00-00, 368.06-00

Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

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CC:CORP:04  
PLR-141502-05  
Date:  
November 18, 2005

**Legend**

Parent =

Sub =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Products =

State A =

State B =

Country C =

Country D =

Country E =

Country F =

Country G =

Country H =

Country I =

Country J =

Region X =

Region Y =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

a =

b =

c =

d =

e =

f =

g =

Dear :

This letter responds to an August 5, 2005 request for rulings regarding certain federal income tax consequences of a series of proposed transactions. The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on facts 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.

### **Facts**

Parent is a publicly traded corporation incorporated in State A. Parent and its affiliates engage in the manufacture, marketing, and distribution of Products in Region X and Region Y. Parent's principal place of business is located in State B.

Parent is the common parent of an affiliated group of corporations that file a consolidated federal income tax return (the "Parent Group"). Parent wholly owns Sub, a State A corporation. Sub wholly owns Sub 1 and Sub 2, both Country C entities. Sub 1 has elected to be treated as a disregarded entity for U.S. federal tax purposes pursuant to Treas. Reg. § 301.7701-3 (a "Disregarded Entity"). Sub 2 is a corporation for U.S. federal tax purposes pursuant to Treas. Reg. § 301.7701-3 (a "Corporation"). Sub 2 wholly owns Sub 3, Sub 3 owns an interest in Sub 4, and Sub 4 owns an interest in Sub 5. Sub 2 owns the remaining interest in Sub 4 and Sub 5. Each of Sub 3, Sub 4, and Sub 5 are Disregarded Entities (the "Country C Disregarded Entities").

Sub, Sub 1, and Sub 2 are each holding companies that do not directly conduct any manufacturing, distribution, or marketing activities. However, Sub 2 indirectly manufactures, distributes, and markets Products throughout Region Y and Country D through various direct and indirect interests in Region Y and Country D entities (collectively, the “International Subsidiaries”).

Parent and its affiliates conduct their Products business throughout Country D, throughout most of Country E, and portions of Region Y including Countries F-J. Consistent with Parent’s objectives of operating its Region Y and Country D operations more efficiently, Parent intends to restructure its non-Country E operations by transferring all of Sub 2’s operations, in the form of the stock of Sub 2, to Sub 6, then liquidating Sub 2 for U.S. federal tax purposes. Parent’s principal purposes for the Proposed Transactions are (i) to better facilitate additional financing in Region Y necessary to expand the Region Y operations conducted by the International Subsidiaries, and (ii) to position Parent to repatriate earnings from its Region Y operations during its taxable year ending on Date 1 without incurring Country C withholding taxes.

### **Proposed Transaction**

To achieve these business objectives, Parent has proposed and partially completed the following series of transactions (the “Proposed Transactions”):

(i) Sub and Sub 1 formed Sub 6, a Country C partnership that is treated as a corporation for U.S. federal tax purposes, by contributing a on Date 2 to meet Country C minimal capitalization requirements. Sub 6 is a dormant Corporation that does not conduct any business activities.

(ii) On Date 3, Sub 6 formed Sub 7, a Country C entity that is a corporation, by contributing b to meet Country C minimal capitalization requirements. Sub 7 is a dormant corporation that does not conduct any business activities.

(iii) On Date 4, Sub formed Sub 8, a Country E Disregarded Entity.

(iv) On Date 4, Sub and Sub 8 formed Sub 9, a Country E Disregarded Entity

(v) Sub will transfer all of the stock of Sub 2 to Sub 9 in exchange for interests in Sub 9 and a note valued at \$c (the “Note”).

(vi) Sub will contribute the Note to Sub 8 in exchange for interests in Sub 8.

(vii) Sub 9 will contribute all of the stock of Sub 2 to Sub 6 in exchange for Sub 6 stock.

(viii) Sub 7 will make an election to be treated as a Disregarded Entity.

(ix) Sub 6 will contribute all of the stock of Sub 2, plus two nominal liabilities of d each, to Sub 7 in exchange for interests in Sub 7 after step (vii).

(x) Sub 2 will make an election to be treated as a Disregarded Entity (the "Election").

(xi) Sub 9 will merge into Sub under State A law.

(xii) Sub and Sub 8 will establish a hedge to treat the Note as an e denominated Note.

(xiii) One or more of the Country C Disregarded Entities will borrow up to f from unrelated, third party lenders (the "Loan"), which will be further lent to the International Subsidiaries. The Country C Disregarded Entities that borrow under the Loan are subsidiary Disregarded Entities of Sub 2. Sub 2 will be directly liable for the liabilities of Sub 4 and Sub 5. Parent will also guarantee the Loan in order for the Country C Disregarded Entities secure more favorable financing terms.

(xiv) The International Subsidiaries will distribute the Loan proceeds and up to g of excess cash (the "Cash Distribution Amount") to Sub 2.

(xv) Sub 2 will distribute the Cash Distribution Amount to Sub 7, which will further distribute the Cash Distribution Amount to Sub 6.

(xvi) Sub 6 will distribute the Cash Distribution Amount to Sub with respect to the stock of Sub 6 (the "Distribution").

(xvii) After the steps described above, Sub may further lend cash received in the Distribution to Parent or another member of the Parent Group. In addition, Sub 7 may be recapitalized to convert a portion of its equity to debt. Finally, intercompany receivables held by certain of the International Subsidiaries may be distributed to Sub 7.

The transactions described above in steps (ii) – (vi), (xi), (xii), (xiv), (xv) and (xvii) are regarded for Country C purposes, but are disregarded for U.S. federal tax purposes.

### **Representations**

Parent makes the following representations regarding the Proposed Transactions:

(a) The fair market value of the stock of Sub 6 received by Sub will be approximately equal to the fair market value of the Sub 2 stock surrendered in the exchange.

(b) Immediately following consummation of the Proposed Transactions, Sub, directly and through Sub 1, will own all of the outstanding Sub 6 stock and will own such stock solely by reason of its ownership of Sub 2 stock immediately prior to the Proposed Transactions, except for the nominal shares received for the initial, nominal amount of cash contributed by Sub and Sub 1 to form Sub 6.

(c) Sub 6 has no plan or intention to issue additional shares of its stock following the Proposed Transactions.

(d) Immediately following of step x above, Sub 6 will possess the same assets and liabilities as those possessed by Sub 2 immediately prior to the Proposed Transactions, except for the nominal amount of cash contributed to meet minimum capitalization requirements and the nominal liabilities accrued as of that date.

(e) At the time of the Proposed Transactions, Sub 2 will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Sub 2.

(f) Sub 6 has no plan or intention to reacquire any of its stock issued in the Proposed Transactions.

(g) The liabilities of Sub 2 assumed by Sub 6 plus the liabilities, if any, to which the transferred assets are subject were incurred by Sub 2 in the ordinary course of its business and are associated with the assets transferred.

(h) Sub will pay its own expenses, if any, incurred in connection with the Proposed Transactions.

(i) Sub 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) of the Code.

(j) Sub 2 and Sub 7 are each eligible to be treated as a Disregarded Entity under Treas. Reg. §§ 301.7701-1 through 301.7701- 3.

(k) The Country C Disregarded Entities that borrow under the Loan will have the capacity to satisfy the Loan through their own operations and could have secured the Loan without any support or assistance from Parent. The purpose of Parent's guarantee is to obtain the Loan on better financial terms than the Country C Disregarded Entities could have obtained without the guarantee.

(l) The lenders of the Loan will be independent, third parties that are unrelated to Parent, the Country C Disregarded Entities, and their affiliates.

(m) As of the effective date of their elections under Treas. Reg. § 301.7701-3(c) to be treated as DREs, neither Sub 2 nor Sub 7 will be prohibited by the 60 month limitation of Treas. Reg. § 301.7701-3(c)(1)(iv) from making such elections.

(n) The Loan is expected to be repaid by Sub 6 or its DREs out of future revenues and not from funds provided by Parent or any member of Parent's group.

(o) Sub will be a section 1248 shareholder of Sub 2 before the Proposed Transactions and Sub will be a section 1248 shareholder of Sub 6, the acquiring foreign corporation, after the Proposed Transaction

### **Rulings**

Based solely on the information and representations submitted, we rule as follows with respect to the Proposed Transactions:

(1) For U.S. federal income tax purposes, steps v, vii, viii, ix and x of the Proposed Transaction will be treated as a transfer by Sub 2 of its assets and liabilities to Sub 6 in exchange for Sub 6 stock (the "Reorganization") (Rev. Rul. 87-27, 1987-1 C.B. 134).

(2) The Reorganization will qualify as a reorganization under section 368(a)(1)(F) of the Internal Revenue Code (the "Code"). Sub 2 and Sub 6 will each be "a party to a reorganization" under section 368(b). The Distribution will not prevent the Reorganization from qualifying as a reorganization under section 368(a)(1)(F) (Rev. Rul. 96-29, 1996-1 C.B. 50).

(3) No gain or loss will be recognized by Sub 2 upon the transfer of its assets to Sub 6 in the Reorganization in exchange for Sub 6 stock and Sub 6's assumption of Sub 2 liabilities in the Reorganization (section 361(a) and section 357(a)).

(4) No gain or loss will be recognized by Sub 6 upon the receipt of Sub 2's assets in exchange for Sub 6 stock (section 1032(a)).

(5) The basis of the Sub 2 assets held by Sub 6 will be the same as the basis of such assets in the hands of Sub 2 immediately prior to the Reorganization (section 362(b)).

(6) The holding period of the Sub 2 assets held by Sub 6 will include the period during which such assets were held by Sub 2 (section 1223(2)).

(7) No gain or loss will be recognized by Sub upon its exchange of the shares of Sub 2 stock for shares of Sub 6 stock (section 354(a)).

(8) The basis of the Sub 6 common stock received by Sub will be the same as the basis of the Sub 2 shares for which they will be exchanged (section 358(a)).

(9) The holding period of the Sub 6 common stock received in exchange will include the holding period of the Sub 2 shares, provided the Sub 2 shares are held as a capital asset at the time of the Reorganization (section 1223(1)).

(10) The tax year of Sub 2 will not close on the date of the Reorganization and Sub 6 will be treated just as Sub 2 would have been treated if there had been no Reorganization (Treas. Reg. § 1.381(b)-1 and Rev. Rul. 57-276, 1957-1 C.B. 126). Sub 6 will succeed to and take into account the tax attributes of Sub 2 described in section 381(c) (section 381(a) and Treas. Reg. § 1.381(a)-1). These items will be taken into account by Sub 6 subject to the conditions and limitations specified in sections 381, 382, 383 and 384 of the Code and the Regulations thereunder.

(11) The Distribution will be treated as a distribution of property from Sub 6 to Sub separate from the Reorganization (Rev. Rul. 96-29 and Treas. Reg. § 1.301-1(l)).

(12) Sub will treat the Distribution as (i) a dividend with respect to each outstanding share of Sub 6 stock to the extent of Sub 6's earnings and profits (sections 301(c)(1) and 316(a)), (ii) the portion of the Distribution which is not a dividend shall be applied against and reduce the basis of each share of Sub 6 stock (section 301(c)(2)), and (iii) the portion of the Distribution which is not a dividend, to the extent that it exceeds the adjusted basis of such stock shall be treated as gain from the sale or exchange of property (section 301(c)(3)).

### **Caveats**

No opinion is expressed about the federal tax treatment of the Proposed Transaction under other provisions of the Code or Regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings. Specifically, no opinion is expressed regarding the following:

1. The treatment of the Dividend Equivalent Distribution under § 965.
2. The consequences under § 965 of any loans in these transactions and the repayment of such loans, including the effect of any related party loan repayment under § 965(b)(3).
3. The adjustments to earnings and profits or deficit in earnings and profits, if any, in any of the transactions to which §§ 367(a) or (b) apply.
4. Any other consequences under § 367 on any internal restructuring transaction in this ruling letter.

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5. No opinion is expressed as to the federal income tax consequences of the transaction under section 987.

The rulings contained in this letter are predicated upon the facts and representations submitted by the taxpayer and accompanied by the signature of an appropriate party under penalty of perjury. This office has not verified any of the materials submitted in support of the ruling request. The taxpayer, as part of the audit process, may be required to verify the information, representations, and other data it provided.

This ruling 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.

Each taxpayer involved in the transaction should attach a copy of this ruling letter to the taxpayer's federal income tax return for the taxable year in which the Proposed Transactions are completed.

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

Sincerely,

***Lewis K. Brickates***

Lewis K Brickates  
Branch Chief, Branch 4  
Office of Chief Counsel  
(Corporate)

cc: