

Internal Revenue Service

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Date:

June 16, 2000

Distributing =

Controlled =

Foreign Sub =

A =

B =

C =

D =

E =

Business A =

Business B =

a =

This letter responds to your February 16, 2000 request for rulings on certain aspects of the proposed transaction described below.

Summary of Facts

Distributing is the common parent of an affiliated group whose includible members join in filing a consolidated federal income tax return. Distributing has outstanding Class A voting common stock (the "Distributing Voting Common"), Class B nonvoting common stock (the "Distributing Nonvoting Common"), and cumulative preferred stock (the "Distributing Preferred"). The Distributing Voting Common is owned by A, B, and C; the Distributing Nonvoting Common is owned by A, B, and D; and the Distributing Preferred is owned by A, B, D, and E.

Distributing wholly owns Controlled and Foreign Sub.

Distributing directly conducts Business A. Controlled and Foreign Sub each directly conducts Business B. We have received financial information indicating that each of Business A (as conducted by Distributing) and Business B (as conducted by Controlled) has had gross receipts and operating expenses representing the active

conduct of a trade or business for each of the past five years.

Proposed Transaction

Certain key employees of Controlled (the "Key Employees") wish to acquire stock in a stand-alone corporation operating only Business B. To accommodate these employees, the following transaction has been proposed.

(i) Holders of Distributing Nonvoting Common and Distributing Preferred will exchange this stock for Distributing Voting Common in a transaction the taxpayer represents will qualify as a reorganization under § 368(a)(1)(E) of the Internal Revenue Code (the "Recapitalization").

(ii) Distributing will transfer the stock of Foreign Sub to Controlled (the "Contribution").

(iii) Distributing will distribute the Controlled stock to its shareholders pro rata (the "Distribution").

(iv) Within one year of the Distribution, Controlled will issue to the Key Employees sufficient Controlled stock to give them, in the aggregate, a percent of the outstanding Controlled stock. The employees will pay for the stock with a combination of cash and promissory notes. No promissory note will have a term exceeding three years, and all notes will be recourse.

Representations

(a) No part of the consideration distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

(b) The five years of financial information submitted on behalf of Distributing and Controlled for Business A and Business B, respectively, represents the present operations of each corporation, and there have been no substantial operational changes to either corporation since the date of the last financial statements submitted.

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

(d) The Distribution will be carried out to provide the Key Employees with a substantial equity interest in Controlled. The Distribution is motivated in whole or substantial part by this corporate business purpose.

(e) There is no plan or intention by the shareholders or security holders of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, either Distributing or Controlled after the Distribution.

(f) There is no plan or intention by either Distributing or Controlled, directly or

through any subsidiary corporation, to purchase any of its outstanding stock after the Distribution.

(g) There is no plan or intention to liquidate either Distributing or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the Distribution, except in the ordinary course of business.

(h) The total adjusted basis and the fair market value of the assets to be transferred to Controlled by Distributing in the Contribution will, in each instance, equal or exceed the liabilities assumed (as determined under § 357(d)) by Controlled.

(i) The liabilities assumed (as determined under § 357(d)) in the Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.

(j) No intercorporate debt will exist between Distributing and Controlled at the time of, or after, the Distribution.

(k) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and § 1.1502-14 of the Income Tax Regulations 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, any excess loss account Distributing may have in the Controlled stock will be included in income immediately before the Distribution (see § 1.1502-19).

(l) Payments made in any continuing transactions between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(m) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(n) 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 either Distributing or Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of either Distributing or Controlled stock.

(o) Distributing is not an S corporation (within the meaning of § 1361(a)), and there is no plan or intention by Distributing or Controlled to make an S corporation election under § 1362(a).

(p) Foreign Sub will be a controlled foreign corporation (a "CFC"), as defined in § 957, immediately before and immediately after the Distribution.

(q) Distributing is not receiving any consideration (other than Controlled stock that is not nonqualified preferred stock within the meaning of § 351(g)) for the

Contribution.

Rulings

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

(1) The Contribution, followed by Distribution, will be a reorganization under § 368(a)(1)(D). Distributing and Controlled each will be "a party to a reorganization" under § 368(b).

(2) No gain or loss will be recognized by Distributing on the Contribution (§§ 361(a) and 357(a)).

(3) No gain or loss will be recognized by Controlled on the Contribution (§1032(a)).

(4) The basis of Foreign Sub shares received by Controlled will equal the basis of those shares in the hands of Distributing immediately before the Contribution (§ 362(b)).

(5) The holding period of Foreign Sub stock received by Controlled will include the period during which Distributing held the stock (§ 1223(2)).

(6) No gain or loss will be recognized by Distributing on the Distribution (§ 361(c)).

(7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the Distributing shareholders on the Distribution (§ 355(a)(1)).

(8) The aggregate basis of the Distributing stock and Controlled stock in the hands of each Distributing shareholder after the Distribution will equal the basis of the Distributing stock held by the shareholder immediately before the Distribution, allocated between the two classes in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(b)(2) and (c)).

(9) The holding period of the Controlled stock received by each Distributing shareholder will include the holding period of the Distributing stock on which the Distribution is made, provided the Distributing stock is held as a capital asset on the date of the Distribution (§ 1223(1)).

(10) The earnings and profits of Distributing will be allocated in accordance with §§ 312(h), 1.312-10(a), and 1.1502-33(e)(3).

(11) The earnings and profits of Foreign Sub, to the extent attributable to Foreign Sub stock under § 1.1248-2 or § 1.1248-3 (whichever is applicable) that were accumulated in taxable years of Foreign Sub after December 31, 1962, during the period Distributing held the Foreign Sub stock (or was considered as holding it by

reason of the application of § 1223) while Foreign Sub was a CFC, will be attributable to such stock held by Controlled (§ 1.1248-1(a)).

Caveats

No opinion is expressed about the tax treatment of the proposed transactions 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. In particular, no opinion is expressed concerning the tax effect of the Recapitalization described above in step (i).

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 this transaction should attach a copy of this ruling letter to the taxpayer's federal income tax return for the taxable year in which the transaction covered by this letter is completed.

In accordance with the power of attorney on file in this office, a copy of this letter is being sent to the taxpayer/

Sincerely yours,

Assistant Chief Counsel (Corporation)

By: Wayne T. Murray

Senior Technician/Reviewer, Branch