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Distributing =

Controlled =

Subsidiary A =

Subsidiary B =

Subsidiary C =

Subsidiary D =

Subsidiary E =

Subsidiary F =

Subsidiary G =

Corporation H =

Business A =

Business B =

Business C =

Target =

L=

M=

N=

O=

Corporation P=

Corporation Q=

X =

Country W=

Country Y =

Z =

Date=

Dear :

This is in response to a letter dated April 30, 1998 requesting a ruling as to the federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated September 14, October 6, October 28, November 19, November 20, November 23, November 24, November 25 and November 27, 1998.

The rulings contained in this letter are predicated upon facts and representations submitted by your authorized representatives and accompanied by a penalties of perjury statement executed by you. This office has not verified any of the material submitted in support of this request for ruling. Verification of the factual information, representations, and other data

may be required as part of the audit process.

Distributing is the common parent of an affiliated group of corporations that files a consolidated return for federal income tax purposes. The principal assets of Distributing are 100% of the stock of each of Controlled, Subsidiary A, Subsidiary B, Subsidiary C, Subsidiary D and approximately X% of the stock of Corporation H. Subsidiary E is a wholly-owned subsidiary of Subsidiary A. Subsidiary F and Subsidiary G are wholly-owned subsidiaries of Subsidiary C. Subsidiary G is a foreign corporation organized under the laws of Country Y.

Distributing has outstanding two classes of stock: its common stock and its preferred stock. Its common stock is widely-held and publicly traded. Its preferred stock is nonvoting and nonconvertible and is not publicly held or traded. The class of preferred stock was issued earlier in 1998 in a private placement. The Distributing preferred stock will not participate in the proposed transactions described below. Distributing has two shareholders who each own over five percent of its common stock. One of these shareholders is an advisory firm for a group of mutual funds, and holds the Distributing shares for a number of these funds, none of which beneficially owns as much as five percent of the Distributing common stock. Further, Distributing has certain nonqualified stock option plans pursuant to which as of Date there were outstanding options for M shares of Distributing common stock

Controlled is a wholly-owned domestic subsidiary of Distributing. It has one class of common stock outstanding. Controlled is engaged, directly and through its subsidiaries, in Business B.

Subsidiary A, a wholly-owned domestic subsidiary of Distributing conducts, directly and through its subsidiaries, substantially all of Distributing's Business A.

Subsidiary B, a wholly-owned domestic subsidiary of Distributing, directly and through its subsidiaries, conducts Business C, which is related to Business B

Subsidiary C, a wholly-owned domestic subsidiary of Distributing, provides administrative services to Distributing and the other members of the Distributing consolidated group.

Subsidiary D, a wholly-owned domestic Distributing subsidiary, is part of a financing arrangement by Distributing under which receivables are sold by Distributing members to Subsidiary D and are then resold to lenders in loan transactions to the Distributing group.

Subsidiary E, a wholly-owned domestic corporation, sells Distributing branded products in Country W.

Subsidiary F, also a wholly-owned domestic corporation, is engaged in an unrelated activity in Country W.

Subsidiary G insures risks of Distributing's affiliated group, principally the product liability risks. Its assets consist of short-term debt obligations. It is not an insurance company for federal income tax purposes. It classifies insurance premiums as contributions to capital and insurance payments as distributions.

Target is a widely held and publicly traded corporation unrelated to Distributing.

It has one class of stock outstanding, its common stock. Target is also engaged in Business B domestically and in Country W. Target also has certain stock option and restricted share plans under which, as of Date, there were options outstanding for N shares of its common stock. The holders of the Target options can receive a similar substitute option or restricted share award in respect of Controlled common stock at the time of the Merger discussed in Step (7) below.

Financial information has been received which reflects that Distributing's Business A, conducted principally by Subsidiary A, and its Business B, conducted principally by Controlled, have each had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past 5 years.

It is proposed that Controlled will acquire 100 percent of the outstanding stock of Target. However, Target has expressed its unwillingness to be acquired by a corporation that also conducts Business A. Furthermore, Target is unwilling to be acquired in a transaction which would result in its shareholders owning a minority interest in a corporation the majority of stock of which would be owned by a single corporate shareholder.

Accordingly, to both permit Controlled to acquire Target and to satisfy Target's expressed concerns, Distributing and Controlled have entered into agreements with Target pursuant to which, or in furtherance of which, the following transactions have been proposed or consummated:

- (1) Subsidiary A will be statutorily merged into a single member limited liability company wholly-owned by Distributing. The limited liability company will not elect to be taxable as a corporation. As a result of this step, Business A thereafter will be conducted directly by Distributing for federal income tax purposes.
- (2) Subsidiary E previously transferred a substantial part of its assets and liabilities directly to Controlled, retaining principally the stock of a Country W corporation .
- (3) Subsidiary C will distribute (i) 100% of the stock of Subsidiary F to Distributing, and (ii) 100% of the stock of Subsidiary G to Distributing,.
- (4) Subsidiary D will distribute certain accounts receivable attributable to Business A to Distributing as a dividend. Subsidiary G will reduce both its assets and liabilities by approximately \$ L as part of a reinsurance agreement with an insurance company. It will then distribute approximately O percent of its then remaining assets and liabilities attributable to

Business A to Distributing as a dividend.

(5) Distributing will contribute 100% of the outstanding stock of Subsidiary B, Subsidiary D, Subsidiary F and Subsidiary G to Controlled, and Controlled will assume certain liabilities to employees of Controlled and its subsidiaries and its ratable share of certain liabilities to employees of operations previously discontinued by the Distributing group.

(6) Distributing will distribute 100% of the stock of Controlled pro rata to the holders of Distributing common stock on a one-for-one basis.

(7) Target will merge with and into a recently-formed, wholly-owned subsidiary of Controlled (the "Merger"). Target shareholders will receive approximately Z% (less than 50%) of the stock of Controlled in the Merger.

(8) Controlled will enter into a royalty-free license for three years with Distributing for its temporary use of the Distributing trademark. In addition, Distributing and Controlled have entered into a Transition Services Agreement under which a Distributing indirect subsidiary will provide certain administrative services to Controlled for a period of up to one year after the transactions.

(9) Distributing and Controlled also will enter into an Employee Benefit Agreement which will provide among other matters that: (i) Controlled will adopt a stock option plan; (ii) each Distributing option will be fully vested and exercisable at the date of step (7); (iii) the holder of each Distributing option will receive an option for Controlled stock for a number of shares and exercise price to be determined under the Agreement.

With regard to the transactions set forth in Steps (3) and (4) above, Distributing has stated that:

(i) The distribution by Subsidiary C to Distributing in Step (3) above of (a) the stock of Subsidiary F is intended to qualify as a distribution under § 355 of the Internal Revenue Code; and (b) the stock of Subsidiary G is intended to be a dividend distribution.

(ii) The Merger transaction described in Step (7) above is intended to qualify as a reorganization under §§ 368(a)(1)(A) and (a)(2)(E).

The following representations have been made in connection with the proposed transaction in Steps (5) and (6) above:

(a) The indebtedness owed by Controlled to Distributing after the distribution of Controlled stock will not constitute stock or securities.

(b) No part of the consideration to be 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.

(c) The five years of financial information submitted on behalf of Distributing and Controlled is representative of each corporation's present operation, and with regard to each corporation there have been no substantial operational changes since the date of the last financial statements submitted.

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

(e) The distribution of the stock of Controlled is carried out for the following corporate business purpose: to facilitate the acquisition by Controlled of Target. The distribution of Controlled is motivated, in whole or in substantial part, by this corporate business purpose.

(f) There is no plan or intention by the shareholder who legally and beneficially owns 5 percent or more of the stock of Distributing, and the management of Distributing, to the best of its knowledge, is not aware of any plan or intention on the part of any particular remaining shareholder or security holder of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, either Distributing or Controlled after the transaction.

(g) 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 transaction, other than through stock purchases meeting the requirements of section 4.05(1)(b) of *Rev. Proc. 96-30*.

(h) Except for the acquisition of Target in the Merger described above in Step (7), there is no plan or intention to liquidate either Distributing or Controlled, to merge either corporation with any other corporation, or to sell the assets of either corporation after the transaction except in the ordinary course of business.

(i) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing each equals or exceeds the sum of the liabilities assumed by Controlled plus any liabilities to which the transferred assets are subject; and the liabilities assumed in the transaction and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and, with the exception of certain liabilities to employees of discontinued operations, are associated with the assets being transferred.

(j) 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 Treas. Reg. §§ 1.1502-13 and 1.1502-14 as in effect before the publication of *T.D. 8597, 1995-32 I.R.B. 6*, and as currently in effect; Treas. Reg. § 1.1502-13 as published by *T.D. 8597*). Further, Distributing's excess loss account, (if any), with respect to the stock of Controlled will be included in income immediately before the distribution (see Treas. Reg. § 1.1502-19).

(k) Payments made in connection with all continuing transactions, if any, other than as described in Step (8) above, 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.

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

(m) To the best knowledge of the management of Distributing and Controlled, the proposed distribution of Controlled is not part of a plan or a series of related transactions pursuant to which one or more persons would acquire, directly or indirectly, stock representing a 50 percent or greater interest in Distributing or Controlled. To the best knowledge of the management of Distributing and Controlled, there is no plan or intention on the part of one or more persons to enter into a plan or a series of related transactions pursuant to which such person or persons would acquire, directly or indirectly, a 50 percent or greater interest in Distributing or Controlled. For purposes of this representation, any acquisition of an interest in either Distributing or Controlled (including but not limited to the acquisition of Target in the proposed transaction, the issuance by Distributing of the class of preferred stock, and the issuance of stock of Distributing or Controlled pursuant to the exercise of stock options or stock awards initially issued by Distributing, Controlled or Target) by one or more persons during the 4-year period beginning 2 years (24 months) before a distribution to which § 355 applies and ending 2 years (24 months) after the date of the distribution will be presumed to be part of a plan or a series of related transactions and will count toward the acquisition of a 50 percent or greater interest in either Distributing or Controlled. §§ 355(e)(2)(A)(ii) and (3)(A)(ii).

(n) Subsidiary G is a controlled foreign corporation within the meaning of § 957(a) and will be a controlled foreign corporation at the time it is distributed from Subsidiary C to Distributing and after the time it is transferred to Controlled.

(o) Subsidiary G is a passive foreign investment company within the meaning of § 1297(a) (except as provided in § 1297(e) for certain periods after December 31, 1997) and will be a passive foreign investment company at the time it is distributed from Subsidiary C to Distributing and after the time it is transferred to Controlled.

(p) Subsidiary G is the only foreign corporation whose assets or stock are being transferred in connection with the distribution of the Controlled stock by Distributing to its shareholders.

(q) All of the earnings and profits of Corporation G for the period through the effective time of the distribution of the Controlled stock by Distributing to its shareholders have been or will be included in the income of Distributing's consolidated income tax return. Such income is included as it is "foreign personal holding company income" as defined in § 954(c)(1) and includible under § 951(a) as "subpart F income".

Based solely on the information submitted and on the representations set forth above, it is

held as follows:

- (1) For purposes of Subchapter C, the direct transfer by Subsidiary E of substantially all of its assets and liabilities to Controlled, as described in Step (2) above, will be treated as if (a) Subsidiary E first transferred the subject assets together with liabilities to Subsidiary A; and (2) such assets will then be transferred by Subsidiary to Distributing as part of the complete liquidation of Subsidiary A into Distributing resulting from Step (1) above.
- (2) The transfer by Distributing to Controlled of the stock of Subsidiary B, Subsidiary D and Subsidiary F and the assets and liabilities of Subsidiary E together with the constructive contribution of the stock of Subsidiary G (collectively the "Contributed Assets") followed by the pro rata distribution of the stock of Controlled to the Distributing shareholders will qualify as a reorganization under § 368(a)(1)(D), Distributing and Controlled will each be "a party to a reorganization".under § 368(b).
- (3) Distributing will not recognize gain or loss on the contribution of the Contributed Assets to Controlled. § 361(a).
- (4) Distributing will not recognize gain or loss upon the pro rata distribution of the Controlled stock to the holders of the Distributing common stock. § 361(c).
- (5) Controlled will not recognize gain or loss on the receipt of the Contributed Assets in exchange for shares of its common stock as described above. § 1032(a).
- (6) Controlled will have the same basis in the Contributed Assets that Distributing had in such assets immediately prior to the contribution. § 362(b).
- (7) Controlled's holding period in the Contributed Assets will include the period during which these assets were held by Distributing. §1223(2).
- (8) Proper allocation of the earnings and profits of Distributing will be made between Distributing and Controlled pursuant to §§ 1.312-10(a) and 1.1502-33(e)(3). § 312(h).
- (9) Each shareholder of Distributing common stock will recognize no gain or loss (and no amount will be included in income) upon the receipt of shares of Controlled stock pursuant to the proposed distribution described above § 355(a)(1).
- (10) Each shareholder's basis in the Distributing shares held before the Distribution will be allocated between such Distributing shares and the Controlled shares received in the proposed distribution in proportion to the fair market value of each. §§ 358((a)(1) and (c) and § 1.358-2(a)(2).
- (11) Each shareholder's holding period in the Controlled shares received will include the period

the shareholder held the Distributing shares, provided that such shares are held as a capital asset on the date of the proposed distribution. § 1223(1).

(12) The proposed transactions set forth in Steps (5), (6) and (7) above are not part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock possessing 50 percent or more of the total combine voting power of all classes of Distributing or Controlled stock entitled to vote or 50 percent or more of the total value of all classes of Distributing or Controlled stock. §§ 355(e) and (f) .

No rulings were requested and opinion is specifically reserved concerning the Subchapter C tax treatment of Steps (1) through (4), (7) and (8) described above. Furthermore and particularly, opinion is also reserved as to the tax consequences of: (a) Subsidiary C's distribution of all of the stock of Subsidiary G to Distributing under §§ 1248 and 1291; (b) Subsidiary G's distribution of certain assets and liabilities attributable to Business A to Distributing under §§ 951 and 1291; (c) the contribution of the stock of Subsidiary G to Controlled under §§ 1248 and 1291; and (d) the application of § 367(e)(1) with respect to the distribution by Distributing of the Controlled stock to its shareholders. A determination as to the proper tax treatment of these transactions will be made by the appropriate District Director's office having audit jurisdiction over the federal income tax return of Distributing or Controlled in which the particular transaction is reported. Further, no opinion is expressed regarding the federal income tax treatment of any of the transactions under other provisions of the Code and regulations existing at the time of, or effects resulting from, the transactions that are not specifically covered by the rulings above.

This ruling is directly only to the taxpayer who requested it. § 6610(j)(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 returns of the taxpayers involved for the taxable year(s) in which the transactions covered by this ruling letter are consummated.

Sincerely yours,

Assistant Chief Counsel (Corporate)

By _____
Howard W. Staiman
Assistant to the Branch Chief, Branch 1