

Internal Revenue Service

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Distributing =

Controlled =

#a =

#b =

#c =

#d =

#e =

#f =

#g =

#h =

#i =

#j =

#k =

#l =

#m =

#n =

#p =

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CorpA =

CorpB =

CorpC =

CorpD =

CorpE =

CorpF =

CorpG =

SegmentA =

SegmentB =

SegmentC =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

o =

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p =q =r =s =t =u =v =w =x =

Country1 =

Years X =

Years Y =

Year1 =

Year2 =

Year3 =

Year4 =

Date 1 =

StateA =

Area 1 =

Area2 =

Business 1 =

Business2 =

Business3 =

This letter is in reply to your letter dated December 19, 2000, requesting rulings as to the federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated February 5, 2001, February 8, 2001, March 26, 2001, and April 20, 2001 and June 27, 2001. The information submitted for consideration is summarized below.

Distributing was formed in Year1. Distributing entered Business3 in Year1. Distributing's shares are widely held and publicly traded. The market capitalization of Distributing is approximately #a. On a consolidated basis, Distributing and its affiliates have approximately #b in debt outstanding, consisting of approximately #c of short-term debt and approximately #d of other long term debt.

Distributing is the common parent of an affiliated group of corporations that will include Controlled. Distributing files a consolidated federal income tax return on behalf of such group. CorpA, an indirectly majority-owned subsidiary, is the common parent of another consolidated group.

As of Date 1, Distributing's businesses are divided into three separate segments. The first is SegmentA which includes the historic core businesses of Distributing related to a and b products. The second segment is SegmentB which includes the business of supplying and servicing c and the d business. SegmentC, which provides a broad range of e to the commercial and industrial markets in Area1, comprises Distributing's third principal business segment. Business segments of Distributing have been partly restructured since Date I to reflect the separation of the Business of Controlled.

The SegmentA business, which Distributing conducts directly and indirectly through its subsidiaries, principally consists of the manufacturing and renting of f in Country1 and overseas markets. In its directly conducted SegmentA businesses, Distributing manufactures, sells and rents f's as well as other g equipment to customers in Country1. Distributing's line of a equipment includes software-based h and i, j including customized software applications, software-based k, l, and m, and related supplies and services.

Distributing's SegmentB business consists of two businesses: (i) Business1 which includes sales, distribution and servicing of c (including sales of related supplies), and (ii) Business2, which provides d including n, o, and other p management functions. Distributing intends to transfer Business1 to Controlled immediately prior to the distribution.

Business1 is conducted in Country1 as a division of Distributing and in Area2 as a division of CorpC, a Area2 corporation that is indirectly wholly owned by CorpA.

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Business1 was internally developed by Distributing in the Years X and Years Y, and it functions as a discrete business unit with its own management, finance, sales and service personnel.

Business1 historically consisted of two separate divisions: the q division, which began in the Years X, and the r division, which was started in Year2. In Year4 Distributing integrated the two divisions in an effort to bring together the two product lines in response to a perceived market shift toward more high-end s.

Business1 derives its revenues from sales and rentals of q and r equipment, as well as from servicing the equipment. Leasing is also used by Business1 to help facilitate the sales process. Neither Distributing nor any of its affiliates manufactures any of the equipment sold or leased by Business1, but rather the equipment is manufactured by several unrelated firms, in some cases in accordance with Distributing's specifications. Where leasing is involved, Business1 sells equipment to either Distributing's wholly owned subsidiary, CorpB, or to an unrelated finance company, which then structures lease contracts with customers. Currently, a majority of lease contracts are written by CorpB. CorpB finances leases of equipment sold both by Business1 and by unrelated vendors.

Historically, Business1 has distributed its products through its internally developed t and u organization. However, starting in Year3, Business1 began to expand its distribution channels in Country1 by acquiring the assets of a number of small independent dealers in taxable transactions (the "Acquisitions"). These Acquisitions expanded the existing t and u organizations in geographic markets in Country1 where Business1 did not already have a significant presence.

In certain geographic markets considered "non-focus" areas by Business1, Business1 has outsourced q service functions to the SegmentA division. The total q service hours currently being provided by SegmentA under this arrangement is approximately #e or #f of the total q service hours provided by Business1 under service contracts with its customers.

As of the date of distribution (the "Distribution Date"), Distributing will directly conduct the SegmentA businesses, which it currently conducts, and Controlled will be directly engaged in Business1 in Country1 and will indirectly conduct the business in Area2 through a newly-formed, wholly owned subsidiary.

Distributing's Board of Directors has approved the proposed distribution because it believes that the distribution will significantly benefit both Distributing and Controlled. Distributing will benefit by regaining its focus on its core business and concentrating its financial, managerial and marketing resources on the aggressive development of the areas in which it has the strongest market position, the best expertise and the highest growth

potential. Controlled will benefit by being positioned as a stand-alone company liberated from the financial and cultural constraints on its development currently imposed by reason of its inclusion in the Distributing group. Furthermore, Controlled will be able to provide more focused incentives to its management and workforce. More specifically, the distribution will permit Distributing to: improve its profitability; stabilize its earnings and growth and reduce its exposure to market fluctuations. From Controlled's perspective, the distribution will permit Controlled to: make substantial investments in systems, training and infrastructure; raise additional funds to pursue an acquisition strategy in a consolidating industry; provide more targeted compensation to its management and provide competitive benefits packages to its work force.

To achieve the business purposes described above, Distributing intends to effect the distribution of Business1 by means of the following steps:

1. On a date prior to the Distribution Date, Distributing will contribute to Controlled (a newly formed corporation) the assets necessary to conduct Business1 in Country1 in exchange for all of the Controlled common stock and Controlled's assumption of liabilities related to Business1 in Country1. It is also expected that Controlled will acquire the assets associated with Business1 in Area2 either by way of contribution from Distributing or in a taxable transaction.
2. Prior to the Distribution Date, Controlled currently plans to borrow approximately #g from third parties with the proceeds of this borrowing being used (i) to increase working capital, and (ii) to distribute approximately #h to Distributing in connection with the Contribution.
3. Distributing will grant Controlled a non-exclusive #m year royalty-free license to use the Distributing name. The license will be subject to geographic and use restrictions.
4. Controlled will enter into an agreement with Distributing (hereafter referred to as the "transitional services agreements") under which Distributing or one of its subsidiaries will agree to provide the following services at cost for a #n year period beginning with the date of the distribution:
 - (a) finance;
 - (b) information technology;
 - (c) benefits administration;
 - (d) legal;
 - (e) accounting and tax;
 - (f) service dispatch; and

(g) logistics and warehouse services.

5. Currently, there are #i facilities where Business1 operations shares space with SegmentA operations ("the Shared Facilities"). The Shared Facilities generally consist of local t offices or local u centers. Controlled will enter into sublease agreements with Distributing with respect to the Shared Facilities for terms that are not expected to extend longer than #1 years.
6. Controlled may enter into an agreement with CorpB under which CorpB will provide x services to Controlled's customers. It is expected that the agreement will reflect arm's length pricing and other terms and conditions.
7. Controlled will enter into an arm's length agreement with Distributing under which Distributing will service the q's of Controlled in certain remote locations.
8. Controlled will enter into a #m year supplies contracts with CorpE and with CorpD, a U.S. and a foreign subsidiary of Distributing respectively, to supply those companies with c on arms' length terms.
9. On the Distribution Date, Distributing will distribute all of the common stock of Controlled to its shareholders on a pro rata basis.
10. Within #p year from the distribution date, Distributing will use all of the proceeds of the cash distribution to pay down its existing debt, including commercial paper, and to buy back shares on the open market.

Distributing's Board of Directors approved the distribution and related transactions on Date 1 .

Immediately after the contribution, Distributing will own all the outstanding stock of Controlled.

For more than #1 years prior to the distribution, Distributing has been directly engaged in the SegmentA business and Business1. Distributing will continue to be directly engaged in the SegmentA business after the distribution. Controlled will be directly engaged in Business1 following the distribution. The operational and managerial activities devoted to these businesses over the past #1 years have been substantial.

The Distribution is not being used principally as a device for the distribution of earnings and profits of Distributing, Controlled or any other relevant corporation. Substantially all of the assets of Distributing and Controlled will be employed in the active conduct of a trade or business following the distribution within the meaning of Section

355(b), and the liquid assets of Distributing and Controlled will not exceed the amounts reasonably needed in the conduct of their respective trade or businesses after the distribution.

Although two institutional investors, CorpF and CorpG, each hold more than #j of Distributing's stock, these investors hold the shares on behalf of numerous mutual funds. Based on the most currently available public information, no individual investor or fund owns more than 5% of Distributing's stock. Distributing, to its best knowledge, is not aware of any plan or intention on the part of any shareholder of Distributing to sell or otherwise dispose of any stock of Distributing or Controlled following the Distribution.

Neither CorpF nor CorpG has any representative on the Board of Directors of Distributing, nor will either have any representative on the board of directors of Controlled. Neither CorpF nor CorpG has otherwise participated in management or control of Distributing. In particular, neither CorpF nor CorpG has participated in any way in the decision to carry out the distribution, or in any of the particular agreements or arrangements related to the distribution.

The businesses of each of Distributing and Controlled will be continued in a substantially unchanged manner following the distribution.

The following representations have been made in connection with the proposed transactions:

- (a) Except to the extent that the receipt of Controlled Common stock by grantees of restricted Distributing common stock is considered compensation for federal income tax purposes, no stock of Controlled to be distributed by Distributing will be received by any of the Distributing shareholders as a creditor, employee or in any capacity other than that of a shareholder of Distributing. The amount of Controlled stock to be received by the grantees of restricted Distributing Common stock will constitute less than one percent of the Controlled Common stock outstanding.
- (b) The five years of financial information submitted on behalf of the SegmentA business and Business1 is representative of the present operations of each business, and there have been no substantial operational changes with respect to each business since the date of the last financial statements submitted.
- (c) Both before and after the distribution, Distributing and Controlled will each be directly engaged in the conduct of a business that constitutes an active trade or business pursuant to section 355, independently and with its separate employees.

- (d) The distribution of Controlled Common stock is carried out for the following corporate business purpose: (i) to allow the management of Distributing and Controlled to focus on their respective businesses, and (ii) to improve the Business1 management performance and employee retention by providing for more competitive compensation packages and stock incentives tied directly to Business1.
- (e) There is no plan or intention by any shareholder who owns 5% or more of the stock of Distributing, and the management of Distributing, to its best knowledge, is not aware of any plan or intention on the part of any particular remaining shareholder of Distributing, to sell, exchange, transfer by gift, or otherwise dispose of any stock in either Distributing or Controlled after the transaction.
- (f) There is no plan or intention by either Distributing and Controlled, directly or through any subsidiary corporation, to purchase any of its outstanding stock (other than a deemed purchase of the fractional shares by Controlled) after the distribution, other than through stock purchases meeting the requirements of Section 4.05(1)(b) of Revenue Procedure 96-30.
- (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 contributed assets each equals or exceeds the sum of the liabilities assumed (as determined under Section 357(d)) by Controlled and the liabilities to which the Controlled assets are subject. The liabilities assumed (as determined under Section 357(d)) in the transaction and the liabilities to which the contributed assets are subject were incurred in the ordinary course of business and are associated with the contributed assets.
- (i) The contributed assets do not include any property for which an investment tax credit was taken in prior years and with respect to which the recapture period, as provided in former Sections 47(a)(1) and (5) of the Code, has not expired.
- (j) Distributing neither accumulated its receivables nor made an extraordinary payment of its payables in anticipation of the distribution.

- (k) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the distribution, other than as may arise by reason of financing activities or the provision of goods and services in the ordinary course of business at arm's length terms or under certain transition service agreements at cost between the parties. Indebtedness owed by Controlled to Distributing immediately after the distribution, if any, will not constitute stock or securities.
- (l) 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. Distributing will not have an excess loss account with respect to the Controlled common stock.
- (m) Distributing and Controlled will enter into certain agreements as set forth in paragraphs 3-9 on pages 6 and 7 thereof. Except for agreements as set forth in paragraphs 4 and 5 on pages 6 and 7 thereof, payments made in connection with continuing transactions between Distributing and Controlled will be for fair market value based on the terms and conditions arrived at by the parties bargaining at arm's length.
- (n) No two parties to the transaction are investment companies as defined in Section 368(a)(2)(F)(iii) and (iv).
- (o) Distributing, Controlled and their respective shareholders will each pay their own expenses, if any, incurred in connection with the proposed transaction.
- (p) For purposes of Section 355(d), immediately after the distribution, no person (determined after applying Section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in Section 355(d)(5) and (8)) during the five-year period (determined after applying Section 355(d)(6)) ending on the Distribution Date.
- (q) For purposes of Section 355(d), immediately after the distribution, no person (determined after applying Section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in Section 355(d)(5) and (8)) during the five-year period (determined after applying Section 355(d)(6)) ending on the Distribution Date,

or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in Section 355(d)(5) and (8)) during the five-year period (determined after applying Section 355 (d)(6)) ending on the Distribution Date.

- (r) The distribution is not part of a plan or series of related transactions (within the meaning of Section 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 Distributing or Controlled common stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing or Controlled common stock.
- (s) Immediately after the distribution, the fair market of the assets related to the active trade or business directly conducted by Controlled will constitute over 5 percent of the fair market value of the gross assets of Controlled.
- (t) Immediately after the distribution, the fair market value of the assets related to the active trade or business directly conducted by Distributing will constitute over 5 percent of the fair market value of the gross assets of Distributing.
- (u) No fractional shares of Controlled common stock will be issued in the transaction. Cash will be paid in lieu of fractional shares, if any, of Controlled common stock. The issuance of cash in lieu of fractional shares will merely represent the mechanical rounding off of the fractional share interests. It will be undertaken solely for the purpose of saving the expense and inconvenience of issuing and transferring fractional shares, and is not separately bargained for consideration.
- (v) Under the transitional services agreements, Distributing will provide on a cost reimbursement basis certain services to Controlled, including information technology, computing, telecommunications, benefits, accounting, payroll, and dispatch call services. Distributing will provide these services for no longer than the year ending December 31, 2002, subject in each case to an extension period not to exceed six months. Distributing and Controlled have no plan or intention to enter into any other agreements with respect to the above mentioned transitional services.
- (w) Distributing and Controlled will enter into an agreement covering continuing field service of Controlled's products in non-core remote geographic areas. The agreement will have arm's length-terms and will expire on December 31, 2002. The agreement will be renewable, but the terms of the renewed agreement, if any, will be negotiated by Distributing and Controlled at the time

when such renewal is considered. Annual expenses incurred by Controlled in connection with this agreement will not exceed one percent of Controlled's annual revenues

- (x) The trademark license with respect to Controlled's use of the Distributing name will have a term of two years, will extend to all geographic regions where the business of Controlled is currently conducted, will be non-exclusive, royalty-free and non-transferable as well as non-renewable. In addition, the agreement will provide for Controlled to license patents, patent applications, and all copyrighted material used in connection with its business on a non exclusive, royalty-free basis for the term of the relevant patents and copyrights. Controlled and Distributing have no plan or intention to enter into any other agreements with respect to Controlled's use of the Distributing name.
- (y) CorpE and Controlled will enter into a reseller agreement for a two year non-renewable term. The reseller agreement will provide that CorpE at its option, will continue to purchase c through Controlled with prices, warranties and additional terms that are at least as favorable as those provided by Controlled to other customers with similar purchase volumes. Consistent with industry practice, Controlled will likely continue to service c sold by CorpE pursuant to the reseller agreement throughout the useful life of the c The average useful life of the c subject to the agreement is three to five years. Controlled will also enter into a reseller agreement with CorpD for a two year term which is renewable for a maximum of one year. Other terms and conditions of this agreement will be similar to Controlled's agreements with CorpE. CorpE and CorpD have no plan or intention to enter into any additional reseller agreements with Controlled. However, if CorpE or CorpD were to seek in the future to enter into a similar agreement with a third party, it is possible that Controlled would bid for this business. If Controlled were to offer commercially attractive terms, CorpE or CorpD would consider entering into an agreement with Controlled.
- (z) Controlled may enter into a five year non-renewable arm's-length vendor financing agreement with CorpB. In this agreement, CorpB will provide vendor financing services to Controlled's customers. CorpB and Controlled have no plan or intention to enter into any other additional vendor financing agreements.
- (aa) Controlled will enter into sublease/license agreements with Distributing providing for Controlled to lease space from Distributing in facilities where

Controlled and Distributing currently share space. The rents under the subleases will be determined on an allocated cost basis that will reflect market rents paid by Distributing under its leases. These agreements will not last longer than the terms of the original leases and will be non-renewable. All material agreements will last no longer than five years. Controlled and Distributing have no plan or intention to enter into any other additional sublease/license agreements with respect to shared facilities.

Based solely on the information submitted and on the representations set fourth above, we hold as follows:

- (1) The contribution followed by the distribution will qualify as a reorganization within the meaning of Section 368(a)(1)(D). Distributing and Controlled will each be a "party to a reorganization" within the meaning of Section 368(b).
- (2) No gain or loss will be recognized by Distributing upon the transfer of the contributed assets to Controlled in exchange for Controlled common stock and the assumption of liabilities pursuant to the contribution. Section 361 (a) and 357(a).
- (3) No gain or loss will be recognized by Distributing upon the cash distribution followed by the transfer of the proceeds of the cash distribution to creditors or shareholders of Distributing. Section 361 (b).
- (4) No gain or loss will be recognized by Controlled upon the receipt of the contributed assets from Distributing in exchange for Controlled stock and cash and the assumption of liabilities pursuant to the contribution. Section 1032(a).
- (5) The basis of the contributed assets received from Distributing pursuant to the contribution in the hands of Controlled immediately after the proposed transaction will be the same as the basis of such assets in the hands of Distributing immediately before the proposed transaction. Section 362(b).
- (6) The holding period of the contributed assets received from Distributing pursuant to the contribution in the hands of Controlled will include the period during which Distributing held the contributed assets. Section 1223(2).
- (7) The distribution will qualify as a transaction described in Section 355(a)(1) and will not constitute a "disqualified distribution" described in Section 355(d). No gain or loss will be recognized by Distributing upon the distribution of all of its stock in Controlled. Section 361 (c)(1).

- (8) As provided in Section 312(h), proper allocation of earnings and profits between Distributing and Controlled will be made in accordance with Section 1.312-1O(a) of the Regulations.
- (9) No gain or loss will be recognized by (and no amount will be included in the income of) the Distributing shareholders upon their receipt of Controlled stock in the Distribution. Section 355(a)(1).
- (10) The aggregate basis of the Controlled stock and the Distributing stock in the hands of the Distributing shareholders after the distribution will be the same as the aggregate basis of the Distributing stock held by them immediately before the distribution and will be allocated among the shares of Distributing and Controlled stock in proportion to their relative fair market value in accordance with Section 358(a), (b)(2) and (c) and Section 1.358-2(a)(2) of the regulations.
- (11) The holding period of the Controlled stock received by each Distributing shareholder in the Distribution will include the period during which the shareholder held its shares in Distributing stock, provided that such shares of Distributing stock are held as a capital asset on the date of distribution. Section 1223(1).
- (12) Any payments in lieu of fractional share interest in Controlled will be treated for federal income tax purposes as if the fractional shares were issued in the distribution and then were redeemed by Controlled. The cash payments will be treated as having been received as distributions in full payment in exchange for the stock redeemed as provided in Section 302(a). Provided the fractional share interest is a capital asset in the hands of the recipient shareholder, the gain will constitute capital gain or loss.

We express no opinion concerning the tax treatment of the transitional services agreements between Distributing and Controlled, as set forth in paragraph 4 on pages 6 and 7 thereof, in which Distributing will continue to provide certain services to Controlled at cost, for a period of time after the spin off of Controlled to the Distributing shareholders.

We express no opinion concerning the tax treatment of the shared facilities sublease agreement between Distributing and Controlled, as set forth in paragraph 6 on page 7 thereof, in which Controlled will lease space from Distributing at cost, in facilities where Controlled and Distributing currently share space.

No opinion is expressed about the tax treatment of the proposed transaction under other provisions of the Code and regulations or about the tax treatment of any conditions

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existing at the time of, or effects resulting from, the proposed transaction that are not directly covered by the above rulings.

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code 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 in which the transaction covered by this ruling letter is consummated.

The rulings contained in this letter are predicated upon the facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as part of the audit process.

Pursuant to the power of attorney on file in this office, a copy of this letter has been sent to your authorized representative.

Sincerely,
Associate Chief Counsel (Corporate)
By: Alfred C. Bishop, Jr.
Branch Chief, Corporate Branch 6