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Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

November 1, 2001

Distributing =

Controlled =

Business A =

Business B =

Date A =

Date Y =

p =

Shareholder A =

Shareholder B =

Shareholder C =

State X =

This letter responds to your letter dated May 7, 2001, in which rulings were requested as to the federal income tax consequences of a proposed transaction. Additional information was received in letters dated July 27, August 16, and October 31, 2001. The information submitted for consideration is summarized below.

Distributing is an accrual basis State X corporation and the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Distributing is directly and indirectly (through its subsidiaries) engaged in Business A and Business B. As of Date A, Distributing had outstanding p shares of a single class of common stock, which is widely held and publicly traded. Each share of Distributing stock also evidences one preferred share purchase right to purchase Distributing stock on the occurrence of certain events involving a change in control of Distributing (the "Distributing Purchase Rights"). Shareholders A, B, and C each own more than five percent of the Distributing Stock.

Controlled, a newly-formed State X corporation, is a wholly-owned subsidiary of Distributing. As described below, Controlled will acquire Business B from Distributing and will thereafter directly and indirectly engage in Business B. Each share of Controlled stock will evidence a purchase right similar to the Distributing Purchase Rights (the “Controlled Purchase Rights”).

Financial information has been received which indicates that Distributing's Business A and Controlled's Business B have each had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

Business A and Business B cannot achieve their full potential as part of the Distributing affiliated group due to systemic problems arising from the fundamental differences in Business A's and Business B's business cycles, management approaches, growth rates, risk management needs, capital requirements, cash flow profiles, strategic goals, and opportunities.

To resolve these management and systemic problems, Distributing proposes the following series of transactions:

- (i) Distributing will contribute all of its Business B assets to Controlled, including real and personal property as well as stock of subsidiaries which engage in Business B, in exchange for all of the issued and outstanding shares of Controlled's single class of common stock and the assumption by Controlled of certain liabilities associated with Business B (the “Contribution”).
- (ii) Distributing will distribute, pro rata, all of the issued and outstanding shares of Controlled stock to Distributing's shareholders (the “Distribution”).

In connection with the Contribution and Distribution, Distributing and Controlled will enter into certain ancillary agreements relating to, among other things, the provision of products and services. In anticipation of the Contribution and Distribution, various restructuring transactions were undertaken involving lower tier foreign and domestic entities.

The following representations have been made with respect to the Contribution and Distribution:

- (a) Any indebtedness owed by Controlled to Distributing after the Distribution 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 Business A and Business B is representative of the present operations of Business A and Business B, and, with regard to such businesses, there have been no substantial operational changes since

the date of the last financial statements submitted.

(d) The fair market value of the gross assets of Controlled's directly-conducted Business B and Distributing's directly-conducted Business A immediately after the Distribution will be, respectively, greater than five percent of the fair market value of all of the assets of Distributing and Controlled, respectively.

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

(f) The Distribution is carried out for the following corporate business purposes: to enhance the success of Business A and Business B by enabling Distributing and Controlled to resolve management, systemic, and other problems which result from or are exacerbated by the current conduct of the business of Distributing and Controlled within a single corporate and affiliated group. The Distribution is motivated, in whole or substantial part, by this corporate business purpose.

(g) There is no plan or intention by any shareholder who owns five percent 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 Distribution.

(h) 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, other than through stock purchases meeting the requirements of section 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696.

(i) 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 transaction, except in the ordinary course of business.

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

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

(l) Although investment tax credits were claimed with respect to certain of the properties being transferred to Controlled, the recapture periods for such credits have expired.

(m) The Distributing Purchase Rights are (and the Controlled Purchased Rights, when issued in connection with the Distribution, will be) each of the type described in Rev. Rul. 90-11, 1990-1 C.B. 10.

(n) No material intercorporate debt will exist between Distributing and Controlled at the time of or subsequent to the distribution of Controlled common stock, except for indebtedness incurred for obligations resulting from an installment note and a long-term lease agreement, and for intercompany payables and receivables arising in the normal course of the businesses and under the transactional agreements.

(o) Immediately before the Distribution, any items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations. There is no excess loss account with respect to the Controlled stock or the stock of any direct or indirect subsidiary of Controlled.

(p) Payments made in connection with all continuing transactions, if any, 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.

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

(r) 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 Distributing or Controlled or stock possessing 50 percent or more of the total value of all classes of stock of Distributing or Controlled.

Based solely upon the information submitted and the representations made, we rule as follows:

(1) The transfer by Distributing to Controlled of the assets of Business B in exchange for all of the stock of Controlled and the assumption by Controlled of certain liabilities of Distributing, followed by the distribution of the Controlled stock to Distributing's shareholders, will constitute a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled will each be "a party to a reorganization" within the meaning of § 368(b).

(2) Distributing will recognize no gain or loss upon the transfer of the assets of Business B to Controlled in exchange for Controlled stock and the assumption of liabilities (§§ 357(a) and 361(a)).

(3) Controlled will recognize no gain or loss on the receipt of the assets of Business B in exchange for Controlled stock and the assumption of liabilities (§ 1032(a)).

(4) Controlled's basis in each asset received from Distributing will be equal to the basis of such asset in the hands of Distributing immediately prior to the transfer of assets to Controlled (§ 362(b)).

(5) Controlled's holding period for each asset received from Distributing will include the period during which Distributing held such asset (§ 1223(2)).

(6) Distributing will recognize no gain or loss upon the distribution of the Controlled stock to the Distributing shareholders (§ 361(c)).

(7) Distributing shareholders will recognize no gain or loss (and no amount will be included in the income of the Distributing shareholders) upon receipt of the Controlled stock (§ 355(a)).

(8) The aggregate basis of the Distributing stock and the Controlled stock held by each Distributing shareholder will equal the aggregate basis of such shareholder's Distributing stock immediately before the Distribution, allocated between the Distributing stock and the Controlled stock in proportion to the fair market values of each in accordance with Treas. Reg. § 1.358-2(a)(2) (§ 358(a)(1) and (b)).

(9) The holding period of the Controlled stock received by Distributing's shareholders will include the holding period of the Distributing stock on which the distribution is made, provided that such Distributing stock is held as a capital asset on the date of the distribution (§ 1223(1)).

(10) As provided in § 312(h), proper allocation of earnings and profits between Distributing and Controlled will be made in accordance with Treas. Reg. §§ 1.312-10(a) and 1.1502-33(e)(3).

No opinion is expressed about the tax treatment of the transactions described above 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 transactions that are not specifically covered by the above rulings.

This ruling 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 facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by the 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.

Sincerely,

Associate Chief Counsel (Corporate)
By: Michael J. Wilder
Senior Technician Reviewer, Branch 1