

Internal Revenue Service

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Refer Reply To:

CC:CORP:BO1 – PLR-102732-05

Date:

March 24, 2005

In Re:

Distributing =

Controlled =

Date 1 =

X =

State R =

Dear :

This letter responds to a letter dated January 11, 2005, requesting that we supplement our prior letter ruling dated May 24, 2001 (PLR-127310-00) (the "Prior Letter Ruling"). The information submitted with regard to the present supplemental ruling is summarized below.

The Prior Letter Ruling addresses the federal income tax consequences of a distribution to Distributing's shareholders of common stock of Controlled under section 355 of the Internal Revenue Code (the "Spin-Off"). Prior to the Spin-Off, which was consummated on Date 1, Controlled had a single class of common stock outstanding ("Controlled Common Stock") and recapitalized the shares of Controlled Common Stock that were held by Distributing into Class B common stock (the "Class B Controlled Common Stock"). Such recapitalization is hereinafter referred to as the "Initial Recapitalization." The Controlled Common Stock and the Class B Controlled Common

Stock are identical except that the holders of Class B Controlled Common Stock are entitled to elect at least 80 percent of Controlled's board of directors and the holders of Controlled Common Stock are entitled to elect the remaining directors.

The Prior Letter Ruling contains the following representation:

(c) The management of Controlled has no plan or intention to, and for a period of five years beginning on the date of the Distribution will not, propose or support any plan or recapitalization or amendment to Controlled's organic documents or other action providing for (i) the conversion of shares of any class of Controlled stock into a different class of Controlled stock; (ii) any change in the absolute or relative voting rights of any class of Controlled stock from the rights existing at the time of the Distribution; (iii) any change in the manner of election or duties and responsibilities of the Controlled board of directors from those existing at the time of the Distribution; or (iv) any action having an effect similar to (i), (ii), or (iii).

Controlled has experienced certain difficulties as a result of having two classes of publicly traded voting common stock outstanding. Controlled now seeks a supplemental ruling regarding the elimination of its dual-class voting structure in order to alleviate the substantial price differential that has developed between the two classes of stock, as well as to address the other problems associated with the dual-class voting structure. Since the Spin-Off, the high-vote Class B Controlled Common Stock has traded at significant discount to the low-vote Controlled Common Stock. At the time of the Initial Recapitalization and Spin-Off, Controlled submits, and it was and is represented, that there was no intent on the part of either Distributing or Controlled to alter the dual-class voting structure and that Controlled did not anticipate the market and business conditions that now give rise to the need to revise its capital structure.

Accordingly, Controlled proposes a transaction whereby a newly-formed corporate subsidiary of Controlled would be merged with and into Controlled, with Controlled surviving, in a transaction intended to constitute a reorganization under section 368(a) (the "Proposed Recapitalization"). In connection with the Proposed Recapitalization, all of the outstanding shares of Class B Controlled Common Stock and Controlled Common Stock will be exchanged for shares of a new single class of voting common stock of Controlled. Controlled will seek approval of the Proposed Recapitalization by holders of a majority of the outstanding shares of the Class B Controlled Common Stock and the Controlled Common Stock.

Pursuant to section 5.06(15) of Rev. Proc. 2003-48, 2003-29 I.R.B. 86, the Service will decline a request for a supplemental ruling unless the request presents a significant issue (as defined in section 3.01(29) of Rev. Proc. 2003-3). A change in circumstances arising after the transaction ordinarily does not present a significant issue. For instance, in a case where the original letter ruling contains a representation that there is no plan or intention to undertake a particular action, and a subsequent change in circumstances causes the action to be undertaken, the Service will ordinarily

decline a request for a supplemental ruling regarding the effects of the action on the original letter ruling.

However, in this case it was represented that the management of Controlled would not propose or support a recapitalization of Controlled for a specified time period (five years beginning on the date of the Spin-Off). Because the Proposed Recapitalization, which is motivated by a change in circumstances, would occur within 5 years of Date 1, the above representation will be expressly violated. We have therefore accepted your request for a supplemental ruling.

Thus, based solely on the information and representations submitted in connection with the Prior Letter Ruling and this supplemental ruling request, we rule as follows:

(1) The Proposed Recapitalization will not affect the rulings issued in the Prior Letter Ruling and will not prevent any of those rulings from having full force and effect.

No opinion is expressed about the tax treatment of the transaction under any other provisions of the Code or regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above ruling or those set forth in the Prior Letter Ruling.

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 and the Prior Letter Ruling should be attached to the federal income tax returns of the taxpayers involved for the taxable year in which the transaction covered by this 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.

Pursuant to the power of attorney on file in this office, a copy of this ruling letter will be forwarded to the taxpayer and another authorized representative.

In accordance with the power of attorney on file in this office, a copy of this ruling letter will be forwarded to your authorized representative.

Sincerely yours,
Associate Chief Counsel (Corporate)

Michael J. Wilder
Senior Technician Reviewer, Branch 1