

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Refer Reply To:

CC:DOM:CORP:1-PLR-118111-99

Date:

March 10, 2000

Distributing =

Controlled =

Subsidiary =

aaa =

bbb =

ccc =

ddd =

eee =

fff =

Date A =

Date B =

Date C =

ESOP =

Exchange =

Dear :

This is in response to your request dated November 10, 1999, for a supplemental ruling to PLR-108908-98 ("Prior Ruling") issued by our office on March 11, 1999. Additional

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information for consideration in the present ruling request was submitted on December 15, 1999, February 8, 2000 and March 7, 2000. Specifically, you have requested a ruling stating that a stock repurchase plan will have no adverse effect on the rulings granted in the Prior Ruling.

On Date A, you submitted a request for rulings ("Prior Ruling Request") relating, in part, to the distribution of Controlled stock. In the Prior Ruling Request and in accordance with § 4.05(1)(b) of Revenue Procedure 96-30, 1996-1 C.B. 696, 705, it was represented that Controlled had no plan or intention to repurchase shares following the Distribution other than through stock purchases meeting the requirements of § 4.05(1)(b) of Revenue Procedure 96-30. Distributing effected the transactions described in the Prior Ruling on Date B, including the spinoff of Controlled. Since the spinoff, Controlled has been a public company traded on a national exchange.

Before the transactions described in the Prior Ruling, Distributing's Board of Directors adopted a resolution authorizing a stock repurchase plan (the "Distributing Repurchase Plan") allowing the repurchase of up to aaa shares of the capital stock of Distributing. Before the transactions described in the prior ruling, but after the issuance of the Prior Ruling, Controlled's Board of Directors determined by resolution that the Distributing Repurchase Plan would be carried forward to Controlled, as adjusted for repurchases already made and for a Distributing stock split (the "Controlled Repurchase Plan"). The Controlled Repurchase Plan allowed the repurchase of up to bbb shares, which represents approximately ccc% (a percentage less than 5%) of the ddd shares outstanding as of Date C. In addition to the Controlled Repurchase Plan, Controlled proposes that management of Controlled ("Management") will, from time to time, recommend to the Controlled Board of Directors additional share repurchases. A subcommittee of the Controlled Board of Directors is authorized to use its discretion in determining whether it is in the best interest of Controlled and Controlled's shareholders to repurchase shares (within the limitations previously imposed by the Board as a whole).

As of the date of the transactions described in the Prior Ruling, Controlled had two shareholders owning more than 5% of its outstanding shares. ESOP owns the greatest portion of Controlled stock, holding eee% of the shares. Chairman owns fff% (greater than 5%) of the shares outstanding. ESOP is administered and managed by an administrative committee (the "Committee") appointed by Controlled's board of directors. An independent trustee implements investment directives, including sales of stock, pursuant to written authority from the Committee. The Committee is composed of executives and officers of Controlled who, as named fiduciaries, have the sole authority to direct the trustee to sell Controlled stock held by the ESOP. Chairman is required by internal business practices to notify Controlled in the event he plans to sell Controlled shares.

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Controlled intends to hire its wholly owned subsidiary ("Subsidiary"), which is engaged in the brokerage business, to act as its broker for the Controlled Repurchase Plan. Stock repurchases made by Subsidiary would be made in compliance with and subject to Securities and Exchange Commission rules including price limits (e.g., a price lower than a pre-determined ceiling) and volume limits (e.g., no more than a pre-determined percentage of the trading volume on a particular day). Additionally, Controlled will be in regular contact with Subsidiary (daily or even more frequent) to monitor the Controlled Repurchase Program and to be responsive to specific market conditions. Trades executed under this program will be executed on Exchange, be reported on the consolidated tape and included in Controlled's daily trading volume.

Only members of Exchange are permitted to execute trades on the floor of Exchange. As Subsidiary is not a member of Exchange, Subsidiary retains the services of a member firm as its "floor broker." In trades involving Controlled, the floor broker will be independent and not affiliated with Controlled or Distributing.

As part of the brokerage business, Subsidiary attempts to match up customers selling a particular security with another customer interested in purchasing that security. As such, it is possible that a representative of Subsidiary would approach Controlled as a potential purchaser of Controlled shares that were available for sale from another client of Subsidiary ("Client"). It is further possible that Controlled will be aware of the identity of the Client.

Finally, Controlled may receive unsolicited telephone inquiries from brokers other than Subsidiary offering to sell a block of Controlled stock for a set price (a "Block Trade"). Securities and Exchange Commission guidelines allow Controlled to entertain such offers, even if Subsidiary is buying shares on its behalf on the same day. Block Trades are executed on a national exchange, reported on the tape and included in Controlled's daily trading volume.

In connection with the Repurchase Plan, it has been represented that:

- (i) Controlled will not repurchase shares from ESOP, Chairman or customers of Subsidiary;
- (ii) at any time that a Client is selling Controlled shares on Exchange, Controlled will instruct Subsidiary not to place a buy order on behalf of Controlled on the exchange at the same time that Subsidiary has a sell order pending on the exchange on behalf of Client;
- (iii) at any time that ESOP or Chairman are selling Controlled shares on Exchange, Controlled will instruct Subsidiary not to place a buy order on behalf of Controlled on the exchange at the same time that Subsidiary has a sell order pending on the exchange on behalf of ESOP or Chairman; and
- (iv) that Controlled will not purchase its shares as part of a Block Trade if the identity of the prospective seller is known to Controlled prior to the execution of

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the Block Trade.

Based solely on the information submitted and the representations made, we rule that the Controlled Repurchase Plan discussed above have no effect on the rulings provided in the Prior Ruling and those rulings remain in full force and effect.

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

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

This letter supplements the Prior Ruling. A copy of this letter and the Prior Ruling must be attached to all Federal income tax returns to which it is relevant.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

Sincerely,

Assistant Chief Counsel
(Corporate)

By: _____
Christopher W. Schoen
Assistant to the Chief, Branch 1