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Date:

February 13, 2004

In Re:

Distributing =

Controlled 1 =

Controlled 2 =

New Parent =

Exchange A =

Exchange B =

Exchange C =

Business A =

Business B =

Business C =

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Business D =

Business E =

Business F =

A =B =C =D =E =F =G =H =I =J =K =N =

Investment Bank =

FSub1 =

FSub2 =

FSub3 =

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C1Sub1 =

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C2FSub6 =

FP1 =

FP2 =

FP3 =

FP4 =

FP5 =

Country A =

Country B =

Country D =

Country E =

State A =

Dear

This is in reply to a letter dated August 8, 2003, requesting rulings as to the federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated November 14, December 3, December 9, 2003, and February 13, 2004. The material submitted for consideration is summarized below.

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Distributing, a publicly traded Country A corporation, is the common parent of a multi-national group of affiliated corporations. Distributing is a holding company engaged through its direct and indirect subsidiaries in Business A, Business B, Business C, Business D, Business E, and Business F. Distributing is engaged in Business A through its ownership of A percent of the stock of FSub1, a Country A entity. FSub1 is directly engaged in Business A through its B percent interest in FP2, a Country A entity classified as a partnership for tax purposes. FP2 is directly engaged primarily in Business A. Distributing has a class of voting stock and a class of non-voting stock outstanding. Distributing's stock is traded on Exchange A, Exchange B, and Exchange C. The taxpayer has stated (and supported by documentation) that FSub1 performs active and substantial management functions for FP2.

Distributing owns directly approximately C percent of the stock of FSub1, which is the parent corporation of an affiliated group of entities. Distributing also owns directly and indirectly C percent of the stock of FSub2, a disregarded entity, which owns directly and indirectly N percent of the stock of Controlled 2, which owns C percent of the stock of C2FSub1. Controlled 2 owns directly or indirectly C2FSub2 through C2FSub6. Also, Distributing owns directly or indirectly C percent of the stock of Controlled 1. Controlled 1 owns directly or indirectly C percent of the stock (or membership interests) of C1Sub1 through C1Sub21 and C1FSub1 through C1FSub6. Distributing's ownership structure is further described below.

Controlled 1, a State A corporation, is a holding company and is engaged indirectly through C1Sub1 in Business C. Additionally, after certain steps in the internal restructuring described below, Controlled 1 will be engaged indirectly through C1Sub5 in Business D, Business E, and Business F. Controlled 1 has two classes of stock outstanding, common stock and redeemable common stock. Distributing owns C percent of the redeemable common stock and D percent of the common stock, E percent directly, and approximately E percent through Distributing's ownership of C percent of the stock of FSub2, a Country B entity that is classified as a disregarded entity for tax purposes. The remaining G percent of the common stock is owned by C1Sub2, a C corporation owned H percent by Controlled 1.

C1Sub1, a State A corporation, is a holding company that is engaged in Business C through its ownership of C percent of the membership interests in C1Sub3, a State A limited liability company that is classified as a corporation for tax purposes. C1Sub3 is directly engaged in Business C through its ownership of a B percent interest in FP4, a Country D entity that is classified as a partnership for tax purposes. C1Sub3 owns the FP4 partnership interest through its ownership of C percent of the stock of C1FSub1, a Country A entity that is classified as a disregarded entity for tax purposes, which in turn owns all the stock of C1FSub2, a Country D entity that is classified as a disregarded entity for tax purposes. C1FSub2 directly owns the B percent interest in FP4.

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FP4 is directly engaged in Business C through its ownership of C1FSub3, C1FSub4, C1FSub5, and C1FSub6, all disregarded entities for tax purposes. The taxpayer has stated (and supported by documentation) that C1Sub3 performs active and substantial management functions for FP4.

Controlled 2, a Country B entity, has one class of voting stock outstanding. Distributing owns approximately I percent through its ownership of C percent of the stock of FSub2, a Country B entity, which is classified as a disregarded entity for tax purposes. The remaining J percent is owned by C1Sub4, a wholly-owned subsidiary of C1Sub5, a wholly-owned subsidiary of Controlled 1.

Controlled 2 is directly engaged in Business B through its B percent interest in FP5, a Country B entity classified as a partnership for tax purposes. Controlled 2 owns this partnership interest through its wholly-owned subsidiary, C2FSub1, a Country B entity that is classified as a disregarded entity for tax purposes, and C2FSub2, a Country B entity wholly-owned by C2FSub1 that is a disregarded entity for tax purposes, and that directly owns the B percent interest in FP5. FP5, in turn, owns all the stock of C2FSub3, C2FSub4, and C2FSub5, all Country B entities that are classified as disregarded entities for tax purposes. C2FSub5 owns all the stock of C2FSub6, also a Country B entity that is classified as a disregarded entity for tax purposes.

FP5 is directly engaged in Business B through its ownership of C2FSub3, C2FSub4, and C2FSub6, all disregarded entities for tax purposes. The taxpayer has stated (and supported by documentation) that Controlled 2 performs active and substantial management functions for FP5 (and C2FSub3, C2FSub4, and C2FSub6).

Distributing has submitted financial information which indicates that each of Business A, Business B, Business C, Business D, Business E, and Business F has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

Prior to consummating the proposed transaction described below, the current owners of Distributing's voting stock and non-voting stock will contribute their stock to FSub3, which will be a disregarded entity wholly-owned by New Parent, a State A corporation, solely in exchange for Class A and B common stock of New Parent (the "Domestication"). The newly issued New Parent shares will carry rights that are substantially similar to the current shares.

However, the benefits associated with the Domestication could be eroded by an inefficient and cumbersome structure that would result from having an intermediate Country A holding company. Over the past five years, Distributing has used its stock or rights to acquire its stock, to acquire several target corporations. As explained in a



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written letter submitted by Investment Bank, if Distributing were a Country E corporation, the value of Distributing's stock as a Country E company would be significantly enhanced in order to make acquisitions, raise funds, and retire debt.

Accordingly, the following transaction is proposed (the "Proposed Transaction"):

- (i) New Parent will form New Controlled 1, a corporation. New Controlled 1 in turn will form New C1Sub1 and New C1Sub1 will form New C1Sub3. New C1Sub3 will file an initial CTB election to be treated as a corporation for tax purposes.
- (ii) C1Sub3 will sell all of its interests in C1FSub1 to New C1Sub3 for a promissory note ("Note 1").
- (iii) Controlled 1 will redeem the approximately E percent of its shares held directly by Distributing for a newly issued note of approximately equal value ("Note 2").
- (iv) Distributing will distribute Note 2 to FSub3, who will in turn distribute Note 2 to New Parent.
- (v) New Parent will contribute Note 2 to New Controlled 1 as capital.
- (vi) (a) New Parent will merge New Controlled 1 into Controlled 1; (b) Controlled 1 will merge New C1Sub1 into C1Sub1; (c) C1Sub1 will contribute all of the interests in New C1Sub3 to C1Sub3, and New C1Sub3 will file a CTB election to be disregarded. In connection with steps (vi)(a) through (c), the receivable and payable positions with respect to Notes 1 and 2 will be owned by the same corporate entity, and will therefore be cancelled. (The deemed distribution of the stock of Controlled 1 hereinafter sometimes referred to as "Distribution 1").
- (vii) FSub2 will redeem a portion of its stock owned by Distributing in exchange for a Note ("FSub2 Note"). Distributing will sell all of its remaining stock in FSub2 and the FSub2 Note to FSub3 for a promissory note ("Note 3"). FSub3 will distribute FSub2 and the FSub2 Note to New Parent. Distributing will distribute Note 3 to FSub3, which will in turn distribute Note 3 to New Parent. (The deemed distribution of the stock of Controlled 2 hereinafter sometimes referred to as "Distribution 2" and together with Distribution 1 "the Distributions").

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Prior to the Proposed Transaction, members of the Distributing affiliated group will take steps to reorganize certain of its subsidiaries ("Internal Restructuring"). The following transactions may occur prior to the Proposed Transaction:

- A. FSub1 will cause FP1, a Country A entity owned B percent by FSub1 to change its status to be an eligible entity under Treas. Reg. section 301.7701. Then an election will be made for FP1 to be treated as a partnership for tax purposes. FP1 will cause FP3, a Country A entity owned approximately D percent by FP1 to change its status to be an eligible entity under Treas. Reg. section 301.7701. Then an election will be made for FP3 to be treated as a partnership for tax purposes. The taxpayer has stated (and supported by documentation) that FSub1 will perform active and substantial management functions for FP1 and Business A conducted directly by FP3 and other entities owned by FP1, which are treated as disregarded for tax purposes.
- B. Controlled 1 will contribute its stock interests in the following corporations to C1Sub5, which is wholly owned by Controlled 1, solely in exchange for actual or constructive shares of C1Sub5 stock: (1) approximately K percent of the C1Sub6 common stock and C percent of the outstanding C1Sub6 preferred stock, (2) C percent of the stock of C1Sub7, (3) C percent of the outstanding preferred stock of C1Sub8, and (4) H percent of the C1Sub2 common stock.
- C. The following entities will merge or convert (or by other form) under state law to become single-member limited liabilities companies ("SMLLCs"), which are disregarded as separate from their corporate shareholder for tax purposes: C1Sub6, a wholly-owned subsidiary of C1Sub5; C1Sub7, a wholly-owned subsidiary of C1Sub5; C1Sub9, a wholly-owned subsidiary of C1Sub5; C1Sub10, a wholly-owned subsidiary of C1Sub6; C1Sub11, a wholly-owned subsidiary of C1Sub10; C1Sub12, a wholly-owned subsidiary of C1Sub7; C1Sub13, a wholly-owned subsidiary of C1Sub12; C1Sub14, C1Sub15, C1Sub16, C1Sub17, and C1Sub18, all wholly-owned subsidiaries of C1Sub13. The following entities will merge upstream into C1Sub5: C1Sub19, C1Sub20, C1Sub21, and C1Sub8, all of which will be wholly-owned subsidiaries of C1Sub5 at the time of the upstream merger.

Within one year following the Distributions, New Parent intends to issue at least of equity in acquisitions or for cash.

The following representations have been made in connection with the Proposed Transaction:

- a. All transfers of property made in connection with the Proposed

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Transaction were made in exchange for stock or property with a fair market value approximately equal to the property exchanged therefor.

- b. Any indebtedness owed by either Controlled 1 or Controlled 2 to Distributing after the Proposed Transaction will not constitute stock or securities.
- c. No part of the consideration to be distributed by Distributing will be received by New Parent as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- d. The five years of financial information submitted on behalf of Business A, Business B, Business C, and Business D, Business E, and Business F is representative of each business' present operations and there have been no substantial operational changes since the date of the last financial statements submitted.
- e. Immediately after the Distributions, at least 90 percent of the fair market value of the gross assets of Distributing will consist of the stock and securities of FSub1, which is a controlled corporation directly engaged in the active conduct of Business A.
- f. Immediately after the Distributions, FSub1 will be directly engaged in Business A through its ownership of a B percent partnership interest in FP2. The value of the B percent partnership interest will satisfy the active trade or business requirements of section 355(b) and, have a fair market value that is not less than five percent of the total fair market value of the gross assets of FSub1.
- g. Immediately after Distribution 1, over 90 percent of the gross assets of Controlled 1 will consist of the stock of C1Sub5 and C1Sub1. C1Sub5 will be directly engaged in Business D, Business E, and Business F, and not less than five percent of the total fair market value of the gross assets of C1Sub5 will be used in the conduct of Business D, Business E, and Business F. C1Sub1 will be indirectly engaged in Business C through its ownership of all of the interests in C1Sub3, the value of which represents over 90 percent of the total fair market value of the assets of C1Sub1. C1Sub3 will be directly engaged in Business C through its B percent ownership interest in FP4, a partnership for tax purposes, and not less than five percent of the total fair market value of the gross assets of C1Sub3 will consist of its partnership interest in FP4.

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- h. Immediately after Distribution 2, Controlled 2 will be directly engaged in Business B through its B percent partnership interest in FP5. Not less than five percent of the total fair market value of the gross assets of Controlled 2 will consist of its partnership interest in FP5.
- i. Following the Distributions, Distributing, Controlled 1, and Controlled 2 will each continue the active conduct of its business, independently and with its separate employees.
- j. The Distributions (coupled with the Domestication) will significantly enhance the stock value of New Parent to make continued acquisitions, raise funds, and retire debt. The Distributions are motivated, in whole or substantial part, by this corporate business purposes.
- k. There is no plan or intention by New Parent to sell, exchange, transfer by gift, or otherwise dispose of their stock in, or securities of, either Distributing, Controlled 1 or Controlled 2 after the Distributions.
- l. There is no plan or intention by Distributing, Controlled 1 or Controlled 2, directly or through a subsidiary corporation, to purchase any of its outstanding stock after the Distributions.
- m. There is no plan or intention to liquidate Distributing, Controlled 1, or Controlled 2, to merge Distributing, Controlled 1 or Controlled 2 with any other corporation, or to sell or otherwise dispose of the assets of Distributing, Controlled 1 or Controlled 2 after the Distributions, except in the ordinary course of business.
- n. The total adjusted basis and the fair market value of the assets transferred to Controlled 2 by Distributing (if any), each equals or exceeds the sum of the liabilities assumed by Controlled 2 respectively, plus any liabilities to which the transferred assets are subject. The liabilities assumed in the Proposed Transaction and the liabilities to which the transferred assets are subject (if any) were incurred in the ordinary course of business and are associated with the assets being transferred.
- o. No assets will be transferred by Distributing to Controlled 1 or Controlled 2 in connection with the Proposed Transaction.
- p. Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Proposed Transaction.

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- q. Distributing, Controlled 1, and Controlled 2 each uses the accrual method of accounting for tax purposes.
- r. Payments made in connection with all continuing transactions, if any, between Distributing, Controlled 1 and/or Controlled 2, will be on terms and conditions believed by the relevant parties to be comparable to terms and conditions obtainable in similar transactions with unaffiliated third-parties bargaining at arm's-length.
- s. No parties to the Proposed Transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- t. Distributing is not an S corporation (within the meaning of section 1361(a)), and there is no plan or intention by Distributing, Controlled 1, or Controlled 2 to make an S corporation election pursuant to section 1362(a).
- u. At all times during the five-year period preceding the Distributions, greater than five-percent shareholders have not purchased at least 50 percent of the aggregate combined voting power and aggregate value of outstanding Distributing stock, within the meaning of Treas. Reg. section 1.355-6(f)(4). Management of Distributing has no actual or deemed knowledge that any less-than-five-percent shareholder acquired stock or securities in Distributing by purchase during the five-year period preceding the Distribution, within the meaning of section 355(d)(5) and (8).
- v. The transfer by Distributing's shareholders of all of the stock of Distributing to New Parent, solely in exchange for stock of New Parent, will qualify as a tax-free transaction under Section 351 for federal income tax purposes.
- w. For purposes of section 355(d), immediately after the Distributions, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power 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 date of the Distributions.
- x. For purposes of section 355(d), immediately after the Distributions, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power or 50 percent or more of the total value of shares of all classes of Controlled 1 or Controlled 2 stock, that was either (i) acquired by purchase (as defined

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in section 355(d)(5) or (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distributions, 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 date of the Distributions.

- y. The Distributions are 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 stock entitled to vote or stock possessing 50 percent or more of the total value of all classes of stock of Distributing, Controlled 1, or Controlled 2.
- z. Neither Distributing, FSub1, nor Controlled 2 is a passive foreign investment company as defined in section 1297(a). Distributing, FSub1, and Controlled 2 will each become a CFC (as defined in section 957) as a result of the Domestication.
- aa. Immediately before Distribution 1, items of income, gain, loss, deduction, and credit (if any) will be taken into account as required by the applicable intercompany transaction regulations.
- bb. The transfer by Controlled 1 to C1Sub5 of approximately K percent of the common stock and all of the preferred stock of C1Sub6, and all of the stock of C1Sub7, solely in exchange for actual or constructive shares of C1Sub5 stock, followed by the conversions under State A law of C1Sub7 and C1Sub6 to SMLLCs disregarded as separate from C1Sub5 for tax purposes, will qualify as tax-free reorganizations defined in section 368(a)(1)(D) in which no gain or loss will be recognized.
- cc. The conversions under state law (or mergers (or other transformation) into SMLLCs) of C1Sub9, C1Sub10, C1Sub11, C1Sub12, C1Sub13, C1Sub14, and C1Sub18, will qualify as tax-free liquidations under Sections 332 and 337 in which no gain or loss will be recognized.
- dd. The upstream mergers of C1Sub19, C1Sub20, C1Sub21, and C1Sub8 into C1Sub5, will qualify as tax-free liquidations under Sections 332 and 337 in which no gain or loss will be recognized.
- ee. Controlled 1 is not a United States real property holding corporation (as defined in section 897(c)(2)) and has not been a United States real

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property holding corporation during the five-year period ending on the date of Distribution 1.

- ff. Distributing and Controlled 2 are, and will be, corporations within the meaning of section 7701(a)(3) after the Distributions.
- gg. New Parent will be a section 1248 shareholder with respect to each of Distributing and Controlled 2, within the meaning of Treas. Reg. section 1.367(b)-2(b), immediately before and immediately after the Distributions.
- hh. The notice requirements of Treas. Reg. section 1.367(b)-1(c)(1) will be met for the Distributions.
- ii. Following Distribution 1, each shareholder of Distributing who is a United States shareholder, as defined in section 951(b), will compute its predistribution and postdistribution amount with respect to Distributing and Controlled 1, as defined under Treas. Reg. sections 1.367(b)-5(e)(1) and (2). To the extent the predistribution amount exceeds the postdistribution amount with respect to either Distributing or Controlled 1, the United States shareholder will make basis adjustments and recognize income (if any), as required under the applicable Treasury regulations.
- jj. Following Distribution 2, each shareholder of Distributing who is a United States shareholder, as defined in section 951(b), will compute its predistribution and postdistribution amount with respect to Distributing and Controlled 2, as defined under Treas. Reg. sections 1.367(b)-5(e)(1) and (2). To the extent the predistribution amount exceeds the postdistribution amount with respect to either Distributing or Controlled 2, the United States shareholder will make basis adjustments and recognize income (if any), as required under the applicable Treasury regulations.

Based on the information submitted and representations made, we rule as follows on the Proposed Transaction:

1. Steps (i) through (vi) (Distribution 1) will be treated as if Distributing distributed all of its Controlled 1 common stock to New Parent. Step (vii) (Distribution 2) is treated for federal income tax purposes as if Distributing distributed all of its Controlled 2 common stock to New Parent.
2. No gain or loss will be recognized by Distributing upon the Distributions (section 355(c)(1)).

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3. No gain or loss will be recognized by (and no amount is included in the income of) New Parent upon the receipt of the stock of Controlled 1 and Controlled 2 (section 355(a)(1)), except as stated in Rulings 7 and 8.
4. The aggregate basis of the Distributing, Controlled 1, and Controlled 2 shares in the hands of New Parent immediately after the Distributions will be the same as the aggregate basis of the Distributing stock in the hands of New Parent immediately before the Distributions, allocated between the Distributing, Controlled 1, and Controlled 2 stock in proportion to the fair market value of each in accordance with Treas. Reg. section 1.358-2(a)(2) (section 358(a), (b) and (c)).
5. The holding period of the Controlled 1 and Controlled 2 stock in the hands of New Parent will include the holding period of the Distributing shares with respect to which the Distributions will be made, provided the Distributing shares are held as a capital asset by New Parent on the date of the Distributions (section 1223(1)).
6. Distribution 1 will be a distribution to which sections 1.367(b)-1(c), 1.367(b)-5(a), 1.367(b)-5(c), and 1.367(b)-5(f) apply. If New Parent's postdistribution amounts, as defined in section 1.367(b)-5(e)(2), with respect to Distributing or Controlled 1 is less than New Parent's predistribution amounts, respectively, as defined in section 1.367(b)-5(e)(1), with respect to Distributing or Controlled 1, New Parent's basis in such stock immediately after Distribution 1 must be reduced by the amount of the difference. However, New Parent's basis in its stock must not be reduced below zero, and to the extent the foregoing reduction would have reduced basis below zero, New Parent must instead include such amount in income as a deemed dividend from such corporation. If New Parent reduces its basis in the stock of Distributing or Controlled 1 (or has an inclusion with respect to such stock), New Parent shall increase its basis in the stock of the other corporation to the extent provided in section 1.367(b)-5(c)(4).
7. Distribution 2 will be a distribution to which sections 1.367(b)-1(c), 1.367(b)-5(a), 1.367(b)-5(c) and 1.367(b)-5(f) apply. If New Parent's postdistribution amounts, as defined in section 1.367(b)-5(e)(2), with respect to Distributing or Controlled 2 is less than New Parent's predistribution amounts, respectively, as defined in section 1.367(b)-5(e)(1), with respect to Distributing or Controlled 2, New Parent's basis in such stock immediately after Distribution 2 must be reduced by the amount of the difference. However, New Parent's basis in its stock must not be reduced below zero, and to the extent the foregoing reduction would have reduced basis below zero, New Parent must instead include such amount in income as a deemed dividend from such corporation. If New Parent reduces its basis in the stock of Distributing or Controlled 2 (or has an inclusion with respect to such stock), New Parent shall increase its basis in the stock of the other corporation to the extent provided in section 1.367(b)-5(c)(4).



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Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of the proposed transactions under any 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.

Specifically, no opinion is expressed concerning whether any or all of the above referenced foreign corporations are passive foreign investment companies (within the meaning of section 1297(a)). If it is determined that any of the foreign corporations are passive foreign investment corporations, no opinion is expressed with respect to the application of section 1291 through § 1298 to the proposed transaction. In particular, in a transaction in which gain is not otherwise recognized, regulations under section 1291(f) may require gain recognition notwithstanding any other provision of the Code.

Additionally, no rulings were requested and no opinion is expressed regarding the tax consequences of the following: the Domestication transaction, the Internal Restructuring transactions (A through C), and New Parent's issuance of equity instruments, as described above.

The rulings contained in this letter are predicated upon the facts and representations submitted by the taxpayers and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for a ruling. Verification of the information, representations, and other data may be required as part of the audit process. See sections 11.04 and 11.05 of Rev. Proc. 2004-1, which discuss in greater detail the revocation or modification of ruling letters. However, when the criteria in section 11.06 of Rev. Proc. 2004-1, are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant.

In accordance with 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.

Sincerely,  
Associate Chief Counsel (Corporate)

By: Victor L. Penico  
Victor L. Penico  
Senior Counsel, Branch 1  
Office of Chief Counsel