

Internal Revenue Service

Department of the Treasury

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Date:

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Distributing =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Controlled =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

A =

Business C =

Business D =

State V =

W =

X =

State Y =

Z Stock Exchange =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

Dear:

This letter responds to your November 10, 2000 request for rulings on certain federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated February 22, 2001, February 27, 2001, March 9, 2001, and March 13, 2001. The information submitted for our review is substantially as set forth below.

Distributing is incorporated in State Y and is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Distributing has issued and outstanding one class of common stock ("Distributing Common Stock"), which is widely held and publicly traded, and one class of preferred stock, the shares of which are held by A in its various fiduciary capacities as co-trustee of Distributing's employee stock ownership and savings plans. Distributing wholly owns several domestic and foreign subsidiaries and, directly and indirectly through its subsidiaries, actively engages in Business C and Business D. Distributing indirectly owns 100 percent of the stock of Sub 1, a State V corporation. Prior to engaging in the transactions described below, Distributing directly owned 100 percent of the stock of Sub 2 and Sub 3, both of which are State V corporations, and indirectly owned 100 percent of the stock of Sub 4, a company organized under the laws of Country W, and Sub 5, a company organized under the laws of Country X. In connection with the transactions described below, Distributing purchased 100 percent of the stock of Sub 4 and Sub 5 from Distributing's indirect, wholly-owned subsidiaries that previously held such stock, making Sub 4 and Sub 5 direct, wholly-owned subsidiaries of Distributing.

We have received financial information indicating that Business C and Business D each has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

Distributing has proposed separating Business D from Business C pursuant to the transactions described below (collectively, the "Split-Off") in order to alleviate certain "fit and focus" problems that currently obstruct the optimal development and performance of both Business C and Business D. We have received information indicating that the separation of these businesses would therefore enhance their success.

Accordingly, the Split-Off has been proposed, some of the steps of which have already been completed:

(i) On Date 1, Distributing incorporated Controlled, State Y corporation, with one class of voting common stock ("Controlled Common Stock").

(ii) Distributing borrowed \$a (the "New Debt") from Sub 1 pursuant to a term promissory note dated as of Date 2 (the "Term Note"). The Term Note was due on Date 8 and was prepayable without penalty or premium. Distributing has used the proceeds from the New Debt to pay down third-party debt of Distributing.

(iii) Distributing and Controlled entered into a revolving credit facility dated as of Date 2 (the "Revolving Note") pursuant to which Controlled may borrow up to \$b. The Revolving Note is available to fund Controlled's general corporate purposes and will terminate when Distributing no longer owns more than c percent of Controlled's outstanding capital stock. Controlled is required to repay borrowings under the Revolving Note from cash flows from its operations, as reduced by capital expenditures.

All amounts due under the Revolving Note will be repaid prior to consummation of the Exchange Offer (as defined in step (viii) below).

(iv) On Date 4, Distributing contributed to Controlled the assets comprising Business D (including the stock of Sub 2, Sub 3, Sub 4 and Sub 5) and Controlled assumed certain liabilities (including Distributing's obligations with respect to the New Debt under the Term Note) related to Business D (collectively, the "Contribution"). Controlled began operating as a separate legal entity on Date 4.

(v) In connection with its assumption of the New Debt, Controlled issued a substitute promissory note to Sub 1 in the principal amount of \$a (the "Substitute Note"). Controlled repaid the Substitute Note in full on Date 7.

(vi) Also as part of the Contribution, as of Date 4, Controlled issued a debt obligation to Distributing in the principal amount of \$d pursuant to the Revolving Note (the "Initial Revolving Note Balance"). Distributing will use the proceeds from repayment of the Initial Revolving Note Balance to repay existing third-party debt of Distributing within j months after the Contribution.

(vii) On Date 5 (the "IPO Closing Date") Controlled was listed on the Z Stock Exchange and sold e shares of Controlled Common Stock (representing approximately f percent of its capital stock outstanding on that date) in an underwritten initial public offering (the "IPO"). On Date 6, Controlled sold an additional g shares of Controlled Common Stock to its underwriters pursuant to their exercise of an over-allotment option in connection with the IPO. Accordingly, in total Controlled sold h shares of Controlled Common Stock in connection with the IPO, representing approximately i percent of its outstanding capital stock.

(viii) Within j months after the IPO Closing Date, Distributing will distribute all of its shares of Controlled Common Stock in an exchange offer (the "Exchange Offer") pursuant to which holders of Distributing Common Stock (the "Shareholders") will be given the opportunity to exchange shares of Distributing Common Stock for shares of Controlled Common Stock. If the number of shares of Controlled Common Stock to be distributed exceeds the number of shares subscribed for pursuant to the Exchange Offer (i.e., if the Exchange Offer is under-subscribed), then Distributing will distribute the balance of its shares of Controlled Common Stock to the remaining Shareholders on a pro rata basis. If the number of shares of Controlled Common Stock to be distributed is less than the number of shares subscribed for (i.e., if the Exchange Offer is over-subscribed), then Distributing will distribute its shares of Controlled Common Stock to all subscribing Shareholders in exchange for all or a portion of their Distributing Common Stock. Shareholders entitled to receive fractional shares of Controlled Common Stock will receive cash in lieu of such fractional shares. The cash will be provided through a sale by an exchange agent of aggregated fractional shares of Controlled Common Stock on behalf of the Shareholders entitled to receive such fractional shares. The transactions in this step (viii) are collectively referred to as the

“Distribution.”

Distributing and Controlled (and their respective subsidiaries) are parties to agreements providing for (i) certain tax responsibilities and indemnities as well as indemnities for other liabilities associated with their respective businesses, and (ii) certain transitional service arrangements for an interim period of time following the IPO Closing Date. All of the agreements referred to in clause (ii) will terminate upon consummation of the Distribution.

The following representations have been made regarding the Split-Off:

(a) Any indebtedness owed by Controlled to Distributing after the Distribution will not constitute stock or securities.

(b) Distributing and Controlled will each pay their respective expenses incurred in connection with the Split-Off and related transactions.

(c) No part of the consideration to be distributed by Distributing in the Distribution will be received by a Shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

(d) The fair market value of the Controlled Common Stock to be received by each Shareholder tendering Distributing Common Stock in the Exchange Offer will be approximately equal to the fair market value of the Distributing Common Stock surrendered in the Exchange Offer.

(e) The 5 years of financial information submitted on behalf of Distributing is representative of Distributing's operations with respect to Business C and Business D, and, with regard to such businesses, there have been no substantial operational changes since the date of the last financial statements submitted.

(f) Immediately after the Distribution, the gross assets of Distributing's Business C and Controlled's Business D, respectively, will have a fair market value equal to at least 5 percent of the total fair market value of the gross assets of Distributing and Controlled, respectively.

(g) Following the Distribution, Distributing and Controlled will continue the active conduct of their respective businesses, independently and with their separate employees.

(h) The Split-Off is being carried out in order to alleviate certain fit and focus problems that currently obstruct the optimal development and performance of both Business C and Business D. The Split-Off is motivated, in whole or substantial part, by this corporate business purpose.

(i) There is no plan or intention by any Shareholder that owns 5 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 or security holder of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, either Distributing or Controlled after the Distribution.

(j) 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 transaction, other than through stock purchases meeting the requirements of § 4.05(1)(b) of Rev. Proc. 96-30.

(k) 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.

(l) The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing each equals or exceeds the sum of the liabilities assumed by Controlled (within the meaning of § 357(d)).

(m) The liabilities assumed (within the meaning of § 357(d)) in the Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.

(n) The income tax liability for the taxable year in which any investment credit property (including any building to which § 47(d) applies) is transferred will be adjusted pursuant to §§ 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990)), if applicable, to reflect an early disposition of the property.

(o) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.

(p) No intercorporate debt will exist between Distributing (or any related party) and Controlled (or any related party) at the time of, or subsequent to, the Distribution, except for any indebtedness incurred in the ordinary course or for obligations resulting from agreements for shared services or facilities or pursuant to any indemnification rights.

(q) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction Treasury regulations. Further, Distributing's excess loss account, if any, with respect to Controlled stock or any direct or indirect subsidiaries of Controlled will be included in income immediately before the Distribution (see § 1.1502-19).

(r) 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.

(s) Neither Distributing nor Controlled is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).

(t) The Split-Off 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 either Distributing or Controlled entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either Distributing or Controlled.

(u) Shareholders entitled to receive fractional shares of Controlled Common Stock will receive cash in lieu of such fractional shares. The sale of aggregated fractional shares through an exchange agent, if any such sale occurs, is merely a method of rounding off fractional share interests, will be undertaken solely for the purpose of saving the expense and inconvenience of issuing and transferring fractional shares, and does not represent separately bargained for consideration. The method used for handling fractional share interests is intended to limit the amount of cash received by any one Shareholder to less than the value of one full share of Controlled Common Stock.

Based solely on the information submitted and the representations set forth above, it is held as follows:

(1) The transfer by Distributing to Controlled of the assets of Business D in exchange for Controlled Common Stock, the transfer of the Initial Revolving Note Balance and Controlled's assumption of liabilities (including the New Debt) followed by the Distribution will qualify as 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) No gain or loss will be recognized by Distributing upon the transfer of the assets of Business D to Controlled in exchange for Controlled Common Stock, the transfer of the Initial Revolving Note Balance and Controlled's assumption of liabilities (including the New Debt) and the transfer of the proceeds from the New Debt and from the repayment of the Initial Revolving Note Balance to Distributing's creditors. (Sections 361(a), (b)(1)(A) and (b)(3) and 357(a)).

(3) No gain or loss will be recognized by Controlled on the issuance of stock in connection with the Contribution. (Section 1032(a)).

(4) The basis of the assets received by Controlled will be the same as the basis

of such assets in the hands of Distributing immediately prior to the transfer of the assets to Controlled. (Section 362(b)).

(5) The holding period of the assets received by Controlled will include the period during which such assets were held by Distributing. (Section 1223(2)).

(6) No gain or loss will be recognized by Distributing upon the distribution of all of the Controlled Common Stock held by Distributing to the Shareholders in exchange for or with respect to all or a portion of their Distributing Common Stock. (Section 361(c)).

(7) No gain or loss will be recognized by the Shareholders upon their receipt of Controlled Common Stock in exchange for, or as a distribution with respect to, all or a portion of their Distributing Common Stock. (Section 355(a)).

(8) The basis of the Controlled Common Stock in the hands of Shareholders that exchange all of their Distributing Common Stock for Controlled Common Stock will be the same as the basis in the Distributing Common Stock exchanged therefor pursuant to the Exchange Offer. (Section 358(a)(1)). In the case of Shareholders that do not exchange all of their Distributing Common Stock for Controlled Common Stock, the aggregate basis of the Controlled Common Stock received in the Distribution and Distributing Common Stock in the hands of the Shareholders immediately after the Distribution will be the same as the basis in the Distributing Common Stock held by such Shareholders immediately prior to the Distribution, allocated in proportion to the respective fair market values of the Controlled Common Stock and Distributing Common Stock in accordance with § 1.358-2(a)(2). (Sections 358(a)(1) and (b)).

(9) The holding period of the Controlled Common Stock received by the Shareholders will, in each instance, include the holding period of the Distributing Common Stock with respect to which the distribution of the Controlled Common Stock is made, provided that such Distributing Common Stock is held as a capital asset on the date of the Distribution. (Section 1223(1)).

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

(11) If a Shareholder receives cash as the result of an independent exchange agent sale of a fractional share of Controlled Common Stock on behalf of the Shareholder, the Shareholder will recognize gain or loss in an amount equal to the difference between the tax basis allocable to such fractional share interest and the amount of cash received. If the Controlled Common Stock qualifies as a capital asset in the hands of the Shareholder, the gain or loss will be capital gain or loss subject to the provisions and limitations of Subchapter P of Chapter 1. (Sections 1221 and 1222).

No opinion is expressed about the tax treatment of the transaction under other provisions of the Code and the 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 rulings. In particular, no opinion is expressed about the federal income tax effects of the transfer of the stock of Sub 4 and Sub 5 to Controlled on the above rulings.

This ruling has no effect on any earlier document and is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter should be attached to the federal income tax return of each affected taxpayer for the taxable year in which the transactions covered by this letter are completed.

In accordance with the powers of attorney on file in this office, a copy of this ruling letter is being sent to the taxpayer and to the second authorized representative.

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