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Distributing =

Controlled 1 =

Controlled 2 =

Sub =

Foreign Distributing =

Investment Banker =

Business A =

Business B =

Business C =

Country Z =

a =

b =

Dear

This letter responds to your October 12, 1998 request for rulings on certain federal income tax consequences of a series of proposed transactions.

Summary of Facts

Publicly traded Distributing is a domestic corporation engaged directly and through various domestic and foreign subsidiaries in Business A, Business B, and Business C. Distributing wholly owns domestic Sub, a holding company that directly and indirectly owns corporations engaged in Business A, Business B, and Business C. Sub wholly owns Foreign Distributing, a Country Z corporation directly engaged in Business A and Business C. Until recently, Distributing owed Sub a dollars of intercompany debt (the "Intercompany Debt"), which consisted of an intercompany account (the "Intercompany Account") and a note (the "Note").

Distributing has submitted financial information indicating that (a) Business A, Business B, and Business C, as directly conducted by Distributing, and (b) Business A and Business C, as directly conducted by Foreign Distributing, each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

The operation of Business A, Business B, and Business C within the same affiliated group creates managerial, systemic, competitive, and other problems. Management has determined, based on the advice of Investment Banker and on other information, that the separation of these businesses will eliminate or significantly alleviate these problems.

Proposed Transactions

To separate the businesses, Distributing has proposed the following series of transactions:

(i) Distributing and Foreign Distributing will restructure their foreign operations in a series of taxable and nontaxable transactions designed to separate the assets of the three businesses from one another and position the Business B and Business C assets for contribution by Distributing and Foreign Distributing (as the case may be) to newly

formed controlled corporations (the "Foreign Restructuring").

(ii) Sub will merge into Distributing (the "Merger"). In addition, Distributing may cause several subsidiaries with insubstantial assets to sell their assets or liquidate. In connection with the Merger, Sub recorded on its books of account a deemed dividend distribution to Distributing equal to the Intercompany Debt (the "Deemed Distribution"), and Distributing recorded on its books the deemed repayment of this debt (together with the Deemed Distribution, the "Debt Forgiveness").

(iii) Foreign Distributing will contribute its Business C assets to a newly formed Country Z subsidiary ("Foreign Controlled") in exchange for all of the Foreign Controlled stock and the assumption by Foreign Controlled of liabilities associated with the contributed property (the "Foreign Contribution").

(iv) Foreign Distributing will distribute the Foreign Controlled stock to Distributing (the "Foreign Distribution").

(v) Distributing will contribute (a) the assets of Business B (including the Business B assets received in the Merger) and (b) approximately b dollars in cash and cash equivalents to newly formed Controlled 1, a domestic corporation, in exchange for all of the Controlled 1 stock and the assumption by Controlled 1 of liabilities associated with the contributed property ("Contribution 1"). Also contributed by Distributing will be certain intellectual property in which Distributing will retain perpetual, royalty-free licenses (the "Retained License Property 1").

(vi) Distributing will contribute the assets of Business C (including Business C assets received in the Merger and the stock of Foreign Controlled) to newly formed Controlled 2, a domestic corporation, in exchange for all of the Controlled 2 stock and the assumption by Controlled 2 of liabilities associated with the contributed property ("Contribution 2"). Also contributed by Distributing will be certain intellectual property in which Distributing will retain perpetual, royalty-free licenses (the "Retained License Property 2").

(vii) Distributing will distribute to its shareholders pro rata the stock of Controlled 1 ("Distribution 1") and Controlled 2 ("Distribution 2") (together, the "Distributions").

(viii) It is expected that Controlled 1 and Controlled 2 each will adopt a shareholder rights plan effective before the date of the Distributions (the "Distribution Date") entitling its shareholders to acquire additional shares of its stock on the occurrence of certain events (generally involving changes in control). Before the occurrence of any such event, the rights will not be exercisable or transferable separately from the related Controlled 1 or Controlled 2 stock. Distributing has adopted a similar plan.

(x) Various actions will be taken regarding Distributing's nonstatutory stock options and restricted stock.

Before the proposed transactions, Distributing, Controlled 1, and Controlled 2 (the "Parties") will have entered into agreements (a) governing the allocation of tax benefits and liabilities arising on or attributable to periods before the Distribution Date (the "Tax Sharing Agreement"), (b) providing for the allocation of contingent liabilities relating to environmental claims and legal actions attributable to periods before the Distribution Date (the "Contingent Liabilities Provision"), and (c) providing for adjustment payments to be made after the Distributions if, as of the Distribution Date, certain financial measurements for the three companies differ from previously agreed upon amounts (the "True-Up Provision"). The Parties will also have entered into agreements respecting the division and licensing of intellectual property, the allocation of responsibility for stock options and employee benefits, the leasing of real property, the sharing of proceeds from the disposition of a corporate aircraft and surplus real estate net of certain expenses, the sharing of assets and costs associated with self-insurance arrangements relating to periods before the Distributions, and the payment of transaction expenses (the "Miscellaneous Agreements"). A separate agreement will cover the temporary sharing of certain facilities and equipment, administrative services, and information services (the "Transition Services Agreement") These agreements are referred to collectively as the "Separation Agreements."

Merger Representations

The taxpayer has made the following representations concerning the Merger:

(a) Distributing, on the date of adoption of the plan of merger (the "Merger Plan" and the "Merger Plan Date"), and at all times until the Merger occurs, will be the owner of at least 80 percent of the single outstanding class of Sub stock.

(b) No Sub stock will have been redeemed during the three years preceding the Merger Plan Date.

(c) All distributions from Sub to Distributing under the Merger Plan will be made within a single taxable year of Sub.

(d) At the effective time of the Merger, Sub will cease to exist.

(e) Sub will retain no assets following the Merger.

(f) Sub will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years before the Merger Plan Date.

(g) No assets of Sub have been, or will be, disposed of by either Sub or

Distributing except for transfers to Controlled 1 and Controlled 2 pursuant to Distribution 1 and Distribution 2, dispositions in the ordinary course of business, and dispositions occurring more than three years before the Merger Plan Date.

(h) The liquidation of Sub will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation ("Recipient") of any of the businesses or assets of Sub if persons holding, directly or indirectly, more than 20 percent in value of the Sub stock also hold, directly or indirectly, more than 20 percent in value of the stock of Recipient. For this representation, ownership will be determined by applying the constructive ownership rules of § 318(a), as modified by § 304(c), and Distributing's direct ownership of Controlled 1 and Controlled 2 before the Distributions will be disregarded.

(i) Before the Merger Plan Date, no assets of Sub will have been distributed in kind, transferred, or sold to Distributing, except for (i) the Deemed Distribution, (ii) transactions occurring in the normal course of business, and (iii) transactions occurring more than three years before the Merger Plan Date.

(j) Sub will report all earned income represented by assets that will be distributed to Distributing, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

(k) The fair market value of the assets of Sub will exceed its liabilities, both at the Merger Plan Date and immediately before the time of the Merger.

(l) There is no intercorporate debt between Distributing and Sub and none has been canceled, forgiven, or discounted, except for the Debt Forgiveness and transactions that occurred more than three years before the Merger Plan Date. Sub's adjusted basis in the Intercompany Account and the Note is in each case equal to the adjusted issue price of the debt.

(m) Distributing is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.

(n) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the Merger have been fully disclosed.

Foreign Contribution and Distribution Representations

The taxpayer has made the following representations concerning the Foreign Contribution and Foreign Distribution:

(n) No part of the Foreign Controlled stock distributed by Foreign Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Foreign Distributing.

(o) The five years of financial information submitted on behalf of Foreign Distributing represents the present operations of Foreign Distributing and each of its businesses, and there have been no substantial operational changes since the date of the last financial statements submitted.

(p) Following the transaction, Foreign Distributing and Foreign Controlled will each continue the active conduct of its business, independently and with its separate employees, except for activities contemplated by the Separation Agreements.

(q) The Foreign Distribution will be carried out as a necessary precursor to the Distributions.

(r) There is no plan or intention by Distributing to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, Foreign Distributing or Foreign Controlled after the Foreign Distribution, except as required by Contribution 2.

(s) There is no plan or intention by Foreign Distributing or Foreign Controlled, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction.

(t) There is no plan or intention to liquidate Foreign Distributing or Foreign 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.

(u) The total adjusted basis and the fair market value of the assets transferred by Foreign Distributing to Foreign Controlled equals or exceeds the sum of the liabilities assumed by Foreign Controlled, plus any liabilities to which the transferred assets are subject. For purposes of this representation, the obligations of Foreign Controlled under the Contingent Liabilities Provision are not treated as assumed liabilities.

(v) Except for payments made under certain of the Miscellaneous Agreements and the Transition Services Agreement, payments made in all continuing transactions between Foreign Distributing and Foreign Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arms' length.

(w) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv) of the Internal Revenue Code.

(x) Except for obligations under the Separation Agreements, intercompany

payables existing on the date of the Foreign Distribution (the “Foreign Distribution Date”), obligations arising out of ongoing product sales, and certain obligations that will be settled within 60 days after the Foreign Distribution Date, no intercorporate debt will exist between Foreign Distributing and Foreign Controlled at the time of, or after, the Distributions. Any indebtedness owed by Foreign Controlled to Foreign Distributing after the Foreign Distribution will not constitute stock or securities.

(y) The Foreign 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 Foreign Distributing or Foreign Controlled stock entitled to vote or 50 percent or more of the total value of shares of all classes of Foreign Distributing or Foreign Controlled stock.

(z) Foreign Distributing has not been a United States real property holding company (as defined in § 897(c)(2)) at any time in the five-year period ending on the Foreign Distribution Date, and neither Foreign Distributing nor Foreign Controlled will be a United States real property holding company (as defined in § 897(c)(2)) immediately after the Foreign Distribution.

(aa) Immediately before and after the Foreign Distribution, Foreign Distributing and Foreign Controlled each will be a controlled foreign corporation (as defined in § 957), and neither is a passive foreign investment company under § 1296(a).

(bb) Foreign Distributing and Foreign Controlled are corporations (as defined in § 7701(a)(3)) and are foreign corporations.

(cc) The requirements of § 1.367(b)-1(c)(1) and §§ 7.367(b)-1(c)(2) and (d) will be met with respect to the Foreign Distribution.

(dd) Foreign Distributing and Foreign Controlled will comply with all of the conditions and requirements of § 7.367(b)-4 through 7.367(b)(12) with respect to the Foreign Distribution.

Contribution 1 and Distribution 1 Representations

The taxpayer has made the following representations concerning Contribution 1 and Distribution 1:

(ee) No part of the Controlled 1 stock 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.

(ff) The five years of financial information submitted on behalf of Distributing represents the present operations of Distributing and each of its businesses, and there have been no substantial operational changes since the date of the last financial statements submitted.

(gg) Following the transaction, Distributing and Controlled 1 each will continue the active conduct of its business, independently and with its separate employees, except for activities contemplated by the Separation Agreements.

(hh) Distribution 1 is being carried out to allow Distributing, Controlled 1, and Controlled 2 each to adopt and pursue independent financial and business strategies that are more appropriate to its business, markets, customers, and growth opportunities. Distribution 1 is motivated, in whole or substantial part, by this corporate business purpose.

(ii) 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 or security holder of Distributing, to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, Distributing or Controlled 1 after the transaction.

(jj) There is no plan or intention by Distributing or Controlled 1, 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, 1996-1 C.B. 696, 705.

(kk) There is no plan or intention to liquidate Distributing or Controlled 1, 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.

(ll) The total adjusted basis and the fair market value of the assets transferred by Distributing to Controlled 1 equals or exceeds the sum of the liabilities assumed by Controlled 1, plus any liabilities to which the transferred assets are subject. The liabilities assumed in the transaction 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. For purposes of this representation, the obligations of Controlled 1 under the Contingent Liabilities Provision are not treated as assumed liabilities.

(mm) Immediately before Distribution 1, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany

transaction regulations (see § 1.1502-13 and § 1.1502-14 of the Income Tax Regulations as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, any excess loss account Distributing may have in the Controlled 1 stock will be included in income immediately before Distribution 1 (see § 1.1502-19.)

(nn) Except for payments made under certain of the Miscellaneous Agreements and the Transition Services Agreement, payments made in all continuing transactions between or among Distributing, Controlled 1, and Controlled 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arms' length.

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

(pp) Except for obligations under the Separation Agreements, intercompany payables existing on the Distribution Date, obligations arising out of ongoing product sales, and certain obligations that will be settled within 60 days after the Distribution Date, no intercorporate debt will exist between or among Distributing, Controlled 1, and Controlled 2 at the time of, or after, Distribution 1. Any indebtedness owed by Controlled 1 to Distributing after Distribution 1 will not constitute stock or securities.

(qq) Distribution 1 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 Distributing or Controlled 1 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing or Controlled 1 stock.

(rr) The share purchase rights to be attached to the Controlled 1 stock will not be traded apart from the Controlled 1 stock before the occurrence of certain triggering events. Before the occurrence of any such event, the share purchase rights may be redeemed by Controlled 1. At the time the rights are attached to the Controlled 1 stock, and at the time of Distribution 1, the likelihood that the rights would be exercised will be both remote and uncertain.

(ss) Distributing will qualify for the exception under § 1.367(e)-1T(c)(2) with respect to Distribution 1.

(tt) Distributing has not been a United States real property holding company (as defined in § 897(c)(2)) at any time in the five-year period ending on the Distribution Date. Neither Distributing, Controlled 1, nor Controlled 2 will be a United States real property holding company (as defined in § 897(c)(2)) immediately after Distribution 1.

Contribution 2 and Distribution 2 Representations

The taxpayer has made the following representations concerning Contribution 2 and Distribution 2:

(uu) No part of the Controlled 2 stock 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.

(vv) The five years of financial information submitted on behalf of Distributing represents the present operations of Distributing and each of its businesses, and there have been no substantial operational changes since the date of the last financial statements submitted.

(ww) Following the transaction, Distributing and Controlled 2 each will continue the active conduct of its business, independently and with its separate employees, except for activities contemplated by the Separation Agreements.

(xx) Distribution 2 is being carried out to allow Distributing, Controlled 1, and Controlled 2 each to adopt and pursue independent financial and business strategies that are more appropriate to its business, markets, customers, and growth opportunities. Distribution 2 is motivated, in whole or substantial part, by this corporate business purpose.

(yy) 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 or security holder of Distributing, to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, Distributing or Controlled 2 after the transaction.

(zz) There is no plan or intention by Distributing or Controlled 2, 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.

(aaa) There is no plan or intention to liquidate Distributing or Controlled 2 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.

(bbb) The total adjusted basis and the fair market value of the assets transferred by Distributing to Controlled 2 equals or exceeds the sum of the liabilities assumed by Controlled 2, plus any liabilities to which the transferred assets are subject. The liabilities assumed in the transaction 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. For purposes of this representation, the obligations of Controlled 2 under the Contingent Liabilities Provision are not treated as assumed liabilities.

(ccc) Immediately before Distribution 2, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, any excess loss account Distributing may have in the Controlled 2 stock will be included in income immediately before Distribution 2 (see § 1.1502-19.)

(ddd) Except for payments made under certain of the Miscellaneous Agreements and the Transition Services Agreement, payments made in all continuing transactions between or among Distributing, Controlled 1, and Controlled 2, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arms' length.

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

(fff) Except for obligations under the Separation Agreements, intercompany payables existing on the Distribution Date, obligations arising out of ongoing product sales, and certain obligations that will be settled within 60 days after the Distribution Date, no intercorporate debt will exist between or among Distributing, Controlled 1, and Controlled 2 at the time of, or after, Distribution 2. Any indebtedness owed by Controlled 2 to Distributing after Distribution 2 will not constitute stock or securities.

(ggg) Distribution 2 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 Distributing or Controlled 2 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing or Controlled 2 stock.

(hhh) The share purchase rights to be attached to the Controlled 2 stock will not be traded apart from the Controlled 2 stock before the occurrence of certain triggering events. Before the occurrence of any such event, the share purchase rights may be redeemed by Controlled 2. At the time the rights are attached to the Controlled 2 stock, and at the time of Distribution 2, the likelihood that the rights would be exercised will be both remote and uncertain.

(iii) Distributing will qualify for the exception under § 1.367(e)-1T(c)(2) with respect to Distribution 2.

(jjj) Distributing has not been a United States real property holding company (as defined in § 897(c)(2)) at any time in the five-year period ending on the Distribution Date. Neither Distributing, Controlled 1, nor Controlled 2 will be a United States real property holding company (as defined in § 897(c)(2)) immediately after Distribution 2.

Merger Rulings

Based solely on the information submitted and the representations made, we rule as follows on the Merger and the Deemed Distribution (together, the "Liquidation"):

(1) The Liquidation will be treated as a distribution by Sub to Distributing in complete liquidation (§ 332 and § 1.332-2(d)).

(2) No gain or loss will be recognized by Distributing in the Liquidation (§ 332(a) and § 1.332-7).

(3) No gain or loss will be recognized by Sub in the Liquidation (§ 337(a)).

(4) The basis of each Sub asset received by Distributing in the Liquidation will equal the basis of that asset in the hands of Sub immediately before the Liquidation (§ 334(b)(1)).

(5) The holding period of each asset received by Distributing in the Liquidation will include the period during which Sub held the asset (§ 1223(2)).

(6) Distributing will succeed to and take into account the items of Sub described in § 381(c), subject to the conditions and limitations of §§ 381, 382, and 383 and the regulations thereunder (§ 381(a) and § 1.381(a)-1).

Foreign Contribution and Distribution Rulings

Based solely on the information submitted and the representations made, we rule as follows on the Foreign Contribution and Foreign Distribution:

(7) The Foreign Contribution, followed by the Foreign Distribution, will be a reorganization under § 368(a)(1)(D). Foreign Distributing and Foreign Controlled will each be a "party to a reorganization" under § 368(b).

(8) No gain or loss will be recognized by Foreign Distributing on the Foreign Contribution (§§ 361(a) and 357(a)).

(9) No gain or loss will be recognized by Foreign Controlled on the Foreign

Contribution (§ 1032(a)).

(10) The basis of each asset received by Foreign Controlled will equal the basis of that asset in the hands of Foreign Distributing immediately before the transfer (§ 362(b)).

(11) The holding period of each asset received by Foreign Controlled will include the period during which that asset was held by Foreign Distributing (§ 1223(2)).

(12) No gain or loss will be recognized by Foreign Distributing on the Foreign Distribution (§ 361(c)(1)).

(13) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing on its receipt of the Foreign Controlled stock (§ 355(a)(1)).

(14) The holding period of the Foreign Controlled stock received by Distributing will include the holding period of the Foreign Distributing stock on which the Foreign Distribution is made, provided the Foreign Distributing stock is held as a capital asset on the Foreign Distribution Date (§ 1223(1)).

(15) Payments made between Foreign Distributing and Foreign Controlled under the Contingent Liabilities Provision will be treated as occurring immediately before the Foreign Distribution.

(16) Provided that Distributing complies with the notice requirements of § 1.367(b)-1(c), the Foreign Distribution is an exchange to which paragraphs (a) and (c) of § 7.367(b)-10 apply; thus, Foreign Distributing and Foreign Controlled are corporations for purposes of the Foreign Distribution.

Contribution 1 and Distribution 1 Rulings

Based solely on the information submitted and the representations made, we rule as follows on Contribution 1 and Distribution 1:

(17) Contribution 1, followed by Distribution 1, will be a reorganization under § 368(a)(1)(D). Distributing and Controlled 1 will each be a “party to a reorganization” under § 368(b).

(18) No gain or loss will be recognized by Distributing on Contribution 1 (§§ 361(a) and 357(a)).

(19) No gain or loss will be recognized by Controlled 1 on Contribution 1 (§ 1032(a)).

(20) The basis of each asset received by Controlled 1 will equal the basis of that asset in the hands of Distributing immediately before the transfer (§ 362(b)).

(21) The holding period of each asset received by Controlled 1 will include the period during which that asset was held by Distributing (§ 1223(2)).

(22) No gain or loss will be recognized by Distributing on Distribution 1 (§ 361(c)(1)).

(23) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) any shareholder of Distributing on the receipt of Controlled 1 stock in Distribution 1 (§ 355(a)(1)). Section 355(a)(3)(B) will not treat as “other property” that part of the Controlled 1 stock issued by Controlled 1 to Distributing in exchange for the Retained License Property 1.

(24) The holding period of the Controlled 1 stock received by each shareholder of Distributing will include the holding period of the Distributing stock on which Distribution 1 is made, provided the Distributing stock is held as a capital asset on the Distribution Date (§ 1223(1)).

(25) Provided that, at the time of Distribution 1, the share purchase rights attached to the Controlled 1 stock remain contingent, non-exercisable, and subject to redemption if issued, the receipt of these rights by shareholders of Distributing will not be a distribution or receipt of property, an exchange of stock or property (either taxable or nontaxable), or any other event giving rise to the realization of gross income by Distributing, Controlled 1, or the shareholders of Distributing (Rev. Rul. 90-11, 1990-1 C.B. 10).

(26) Provided that Distribution 1 satisfies the requirements of § 1.367(e)-1T(c)(2), including the reporting requirement of § 1.367(e)-1T(c)(2)(iii), Distributing will not recognize gain or loss under § 367(e)(1) on Distribution 1.

Contribution 2 and Distribution 2 Rulings

Based solely on the information submitted and the representations made, we rule as follows on Contribution 2 and Distribution 2:

(27) Contribution 2, followed by Distribution 2, will be a reorganization under § 368(a)(1)(D). Distributing and Controlled 2 will each be a “party to a reorganization” under § 368(b).

(28) No gain or loss will be recognized by Distributing on Contribution 2 (§§ 361(a) and 357(a)).

(29) No gain or loss will be recognized by Controlled 2 on Contribution 2 (§ 1032(a)).

(30) The basis of each asset received by Controlled 2 will equal the basis of that asset in the hands of Distributing immediately before the transfer (§ 362(b)).

(31) The holding period of each asset received by Controlled 2 will include the period during which that asset was held by Distributing (§ 1223(2)).

(32) No gain or loss will be recognized by Distributing on Distribution 2 (§ 361(c)(1)).

(33) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) any shareholder of Distributing on the receipt of Controlled 2 stock in Distribution 2 (§ 355(a)(1)). Section 355(a)(3)(B) will not treat as "other property" that part of the Controlled 2 stock issued by Controlled 2 to Distributing in exchange for the Retained License Property 2.

(34) The aggregate basis of the Distributing stock, the Controlled 1 stock, and the Controlled 2 stock in the hands of each shareholder of Distributing after the Distributions will equal the aggregate basis of the Distributing stock in the hands of the Distributing shareholder immediately before the Distributions (§ 358(a) and § 1.358-1(a)). This basis will be allocated among the Distributing stock, the Controlled 1 stock, and the Controlled 2 stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(b)(2) and (c)).

(35) The holding period of the Controlled 2 stock received by each shareholder of Distributing will include the holding period of the Distributing stock on which Distribution 2 is made, provided the Distributing stock is held as a capital asset on the Distribution Date (§ 1223(1)).

(36) As provided in § 312(h), proper allocation of earnings and profits among Distributing, Controlled 1, and Controlled 2 will be made under § 1.312-10(a).

(37) Provided that, at the time of Distribution 2, the share purchase rights attached to the Controlled 2 stock remain contingent, non-exercisable, and subject to redemption if issued, the receipt of these rights by shareholders of Distributing will not be a distribution or receipt of property, an exchange of stock or property (either taxable or nontaxable), or any other event giving rise to the realization of gross income by Distributing, Controlled 2, or the shareholders of Distributing (Rev. Rul. 90-11).

(38) Provided that Distribution 2 satisfies the requirements of § 1.367(e)-1T(c)(2), including the reporting requirement of § 1.367(e)-1T(c)(2)(iii), Distributing will not recognize gain or loss under § 367(e)(1) on Distribution 2.

Relation Back Rulings

(39) Payments made between any of Distributing, Controlled 1, and Controlled 2 and their respective subsidiaries under the Contingent Liabilities Provision for liabilities that are (a) attributable to events occurring before the Distributions and (b) will not become fixed and ascertainable until after the Distributions, will be treated as occurring immediately before the Distributions.

(40) Payments made between any of Distributing, Controlled 1, and Controlled 2, and their respective subsidiaries (a) under the True-Up Agreement or (b) under the Tax Sharing Agreement regarding tax liabilities that (i) have arisen or will arise for a taxable period ending on or before the Distributions or for a taxable period beginning before and ending after the Distributions and (ii) will not become fixed or ascertainable until after the Distributions, will be treated as occurring immediately before the Distributions.

Caveats

No opinion is expressed about the tax treatment of the proposed transactions 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. In particular, no opinion is expressed about the tax consequences of:

- (a) The Foreign Restructuring described above in step (i);
- (b) The allocation of stock basis under § 358 in the Foreign Distribution;
- (c) The transfer of Retained License Property by Distributing to Controlled 1 and Controlled 2, as described above in steps (v) and (vi), including whether the items transferred are “property” (see Rev. Rul. 69-156, 1969-1 C.B. 101);
- (d) Any actions taken regarding Distributing’s nonstatutory stock options and restricted stock; or
- (e) Any payments made pursuant to any of the Separation Agreements.

In addition, no opinion is expressed on whether any or all of the foreign corporations involved in the proposed transactions are passive foreign investment companies under § 1297(a). If it is determined that any of the above-described foreign corporations are passive foreign investment companies, no opinion is expressed relating to the application of §§ 1291 through 1298 to the proposed transactions. In particular, in a transaction in which gain is not recognized, regulations under § 1291(f)

may require gain recognition notwithstanding any other provision of the Code.

Temporary or final regulations pertaining to one or more issues addressed in this ruling letter (including regulations under § 358(g)) have yet to be adopted. Therefore, this ruling letter may be revoked or modified if adopted temporary or final regulations are inconsistent with any conclusions reached herein. See section 12.04 of Rev. Proc. 99-1, 1999-1 I.R.B. 6, 47, which addresses, in greater detail, when a ruling will be revoked or modified. However, when the criteria in section 12.05 of Rev. Proc. 99-1 are satisfied, a ruling is seldom revoked or modified retroactively, except in rare or unusual circumstances.

Procedural Matters

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

Each taxpayer involved in the transaction must attach a copy of this ruling letter to the taxpayer's federal income tax return for the taxable year in which the transaction is completed.

In accordance with the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely yours,

Assistant Chief Counsel (Corporate)

By: _____
Wayne T. Murray
Senior Technician/Reviewer
Branch 4