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Distributing =

Controlled =

Target =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Foreign A =

B =

C =

D =

E =

F =

Country G =

Business 1 =

Business 2 =

Business 3 =

a =

This letter responds to your January 26, 1999 request for rulings on certain federal income tax consequences of a proposed transaction.

Summary of Facts

Distributing is the common parent of a consolidated group and has outstanding Class A voting common stock ("Distributing Voting Common") and Class B nonvoting common stock ("Distributing Nonvoting Common"). The Distributing Voting Common is owned equally by Trust 1, Trust 2, and Trust 3. The Distributing Nonvoting Common is owned more than five percent each by Trust 1, Trust 2, Trust 3, and Trust 4 and the rest by more than 50 unrelated shareholders, including Foreign A.

Distributing engages in Business 1, Business 2, and Business 3 directly and through wholly owned subsidiaries. Financial information has been submitted indicating that each of these businesses has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing wishes to acquire unrelated Target, which conducts Business 3, but the Target shareholders will not agree to the acquisition unless Distributing first

separates its Business 3 operations from its Business 1 and Business 2 operations.

Proposed Transaction

To accommodate the Target shareholders, Distributing proposes the following transaction:

- (i) Distributing will transfer its Business 3 assets (including goodwill, certain intangibles, and the business assets of its Country G branch) to newly formed Controlled in exchange for Controlled Class A voting common stock ("Controlled Voting Common"), Class B nonvoting common stock ("Controlled Nonvoting Common"), and the assumption by Controlled of liabilities associated with the transferred assets (collectively, the "Contribution").
- (ii) Distributing will distribute the Controlled Voting Common, pro rata, to the Distributing Voting Common shareholders ("Distribution 1"). Distributing will distribute the Controlled Nonvoting Common, pro rata, to the Distributing Nonvoting Common shareholders, except for certain employees ("Distribution 2"). B, C, D, E, and F, who are employees only of Business 3 (the "Distributing Business 3 Shareholders"), will exchange all or part of their Distributing Nonvoting Common solely for Controlled Nonvoting Common (the "Exchange"). In each of Distribution 1, Distribution 2, and the Exchange (collectively, the "Distributions"), cash will be paid in lieu of fractional shares.
- (iii) The a Distributing Nonvoting Common shareholders who are employees only of Business 1, including Foreign A (the "Distributing Business 1 Shareholders") will receive additional Distributing Nonvoting Common ("New Distributing Nonvoting Common") instead of Controlled stock ("Distribution 3").
- (iv) Controlled will acquire Target in a transaction intended to qualify as a tax-free reorganization under § 368(a) of the Internal Revenue Code (the "Acquisition"). In the Acquisition, Target shareholders will receive Controlled Class C voting stock representing 31.25 percent of the total combined voting power of all classes of Controlled stock entitled to vote and 31.25 percent of the total value of all Controlled stock.

Distributing and Controlled will enter into an Administrative Services Transition Agreement, a Tax Separation Agreement, and an Employee Benefit Agreement as part of the proposed transaction.

Representations

Distributing has made the following representations concerning the Contribution

and the Distributions:

(a) No part of the consideration 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.

(b) The fair market value of the Controlled Nonvoting Common received by each Distributing Business 3 Shareholder will approximately equal the fair market value of the Distributing Nonvoting Common surrendered by that shareholder in the Exchange.

(c) The five years of financial information submitted on behalf of Business 1, Business 2, and Business 3 represents the present operations of each business, and there have been no substantial operational changes to any of these businesses since the date of the last submitted financial statements.

(d) Following the proposed transaction, Distributing and Controlled each will continue the active conduct of its business, independently and with its separate employees.

(e) The Distributions will facilitate the Acquisition. The Distributions are motivated in whole or substantial part by this and other corporate business purposes.

(f) There is no plan or intention by the shareholders of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any of their Distributing or Controlled stock after the proposed transaction. From time to time, however, the principal shareholders of Distributing and their families may make charitable contributions of Distributing Nonvoting Common or Controlled Nonvoting Common or both to non-private foundations. These contributions will be insignificant (generally less than .5 percent) in relation to each shareholder's total Distributing Nonvoting Common and Controlled Nonvoting Common holdings.

(g) 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 proposed transaction, other than through stock purchases meeting the requirements of section 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696, 705.

(h) 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 proposed transaction, except in the ordinary course of business and in the Acquisition.

(i) The total adjusted basis and fair market value of the assets being transferred by Distributing to Controlled each equals or exceeds the sum of the liabilities being assumed by Controlled plus any liabilities to which the transferred assets are subject.

(j) The liabilities being assumed in the proposed transaction, and the liabilities to which the transferred assets will be subject, were incurred in the ordinary course of business and are associated with the assets being transferred.

(k) The income tax liability for the taxable year in which 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 property.

(l) Except for possible claims under the Administrative Services Transition Agreement, the Tax Separation Agreement, or the Employee Benefit Agreement, no intercorporate debt will exist between Distributing and Controlled at the time of, or after, the proposed transaction.

(m) Any indebtedness owed by Controlled to Distributing after the proposed transaction will not constitute stock or securities.

(n) Immediately before the Distributions, 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 Controlled stock will be included in income immediately before the Distributions to the extent required by applicable regulations (see § 1.1502-19).

(o) Payments made in all continuing transactions 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.

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

(q) The proposed transaction is not part of a plan (or series of related transactions) 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 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing or Controlled stock, within the meaning of § 355(e).

(r) Distributing is not an S corporation (under § 1361(a)), and neither Distributing nor Controlled expects or plans to make an S corporation election under

§ 1362(a) in the near future.

(s) Any payment of cash for fractional shares of Controlled stock, as described in step (ii) above, will be made solely for the purpose of avoiding the expense and inconvenience of issuing fractional shares and will not represent separately bargained-for consideration. The total cash consideration that will be paid in the transaction to the Distributing shareholders instead of issuing fractional shares of Controlled stock will not exceed one percent of the total consideration that will be issued to Distributing shareholders in the Distributions. The fractional share interests of each Distributing shareholder will be aggregated and no Distributing shareholder will receive cash in an amount equal to or greater than the value of one full share of Controlled stock.

International Representations

(t) Neither Distributing nor Controlled currently is, or will be immediately following the proposed transaction, a United States real property holding corporation ("USRPHC") as defined in § 897(c)(2).

(u) Neither Distributing nor Controlled has been a USRPHC at any time during the five-year period ending on the distribution date.

(v) No foreign person will own five percent or more of either the Distributing Voting Common or the Distributing Nonvoting Common before or after the Distributions.

(w) No foreign person will own five percent or more of either the Controlled Voting Common or the Controlled Nonvoting Common before or after the Distributions.

(x) Foreign A, a Distributing Nonvoting Common shareholder, is Distributing's only shareholder who is a foreign person under § 1.367(e)-1T(b)(1) and § 7701(b).

(y) Foreign A is a qualified foreign distributee as defined in § 1.367(e)-1T(c)(3).

(z) Distributing will not transfer any stock of its foreign subsidiaries to Controlled in the Contribution.

(aa) Distributing has received a representation from Foreign A that Foreign A does not intend to exchange the New Distributing Nonvoting Common for Controlled stock.

Contribution and Distributions Rulings

Based solely on the facts submitted and representations made, we rule as follows on the Contribution and the Distributions:

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

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

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

(4) The basis of each Distributing asset in the hands of Controlled will equal the basis of that asset in the hands of Distributing immediately before its transfer (§ 362(b)).

(5) The holding period of each Distributing asset in the hands of Controlled will include the period during which Distributing held that asset (§ 1223(2)).

(6) Provided that Foreign A receives only additional Distributing stock in the proposed transaction, no gain or loss will be recognized by Distributing on the Distributions (§ 361(c)(1)).

(7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the Distributing shareholders who receive Controlled Voting Common and Controlled Nonvoting Common in Distribution 1 and Distribution 2 (§ 355(a)(1)).

(8) The aggregate basis of the Distributing Voting Common and the Controlled Voting Common in the hands of each Distributing shareholder involved in Distribution 1 will equal the aggregate basis of the Distributing Voting Common held by that shareholder immediately before Distribution 1, allocated between the Distributing Voting Common and the Controlled Voting Common in proportion to the fair market value of each in accordance with §1.358-2(a) (§ 358(a)(1), (b), and (c)).

(9) The aggregate basis of the Distributing Nonvoting Common and the Controlled Nonvoting Common in the hands of each Distributing shareholder involved in Distribution 2 will equal the aggregate basis of the Distributing Nonvoting Common held by that shareholder immediately before Distribution 2, allocated between the Distributing Nonvoting Common and the Controlled Nonvoting Common in proportion to the fair market value of each in accordance with §1.358-2(a) (§ 358(a)(1), (b), and (c)).

(10) The holding period of the Controlled stock received by the Distributing shareholders in Distribution 1 and Distribution 2 will include the holding period of the Distributing stock on which the distribution is made, provided the Distributing stock is held as a capital asset on the date of distribution (§ 1223(1) and (1)(B)).

(11) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the Distributing Business 3 Shareholders in the Exchange (§ 355(a)(1)).

(12) The basis of the Controlled Nonvoting Common received by the Distributing Business 3 Shareholders who surrender all of their Distributing Nonvoting Common in the Exchange will equal the basis of the Distributing Nonvoting Common surrendered (§ 358(a)(1)).

(13) The aggregate basis of the Distributing Nonvoting Common and the Controlled Nonvoting Common in the hands of each Distributing Business 3 Shareholder who surrenders part of his or her Distributing Nonvoting Common will equal the aggregate basis of the Distributing Nonvoting Common held by that shareholder immediately before the Exchange, allocated between the Distributing Nonvoting Common and the Controlled Nonvoting Common in proportion to the fair market value of each in accordance with §1.358-2(a) (§ 358(a)(1) and (b)).

(14) The holding period of the Controlled Nonvoting Common received by each Distributing Business 3 Shareholder will include the holding period of the Distributing Nonvoting Common surrendered in the Exchange, provided the Distributing Nonvoting Common is held as a capital asset on the date of the Exchange (§ 1223(1)).

(15) Earnings and profits will be allocated between Distributing and Controlled in accordance with §§ 312(h), 1.312-10(a), and 1.1502-33(e)(3).

Distribution 3 Rulings

Based solely on the facts submitted and representations made, we rule as follows on Distribution 3:

(16) No amount of gain or loss will be included in the income of the Distributing Business 1 Shareholders as a result of Distribution 3 (§ 305(a)).

(17) The aggregate basis of the Distributing Nonvoting Common and New Distributing Nonvoting Common held by each Distributing Business 1 Shareholder immediately after Distribution 3 will equal the aggregate basis of the Distributing Nonvoting Common held before Distribution 3 by each of these shareholders, allocated between the two in proportion to the fair market value of each (§ 307(a) and § 1.307-

1(a)).

(18) The holding period of the New Distributing Nonvoting Common received by each Distributing Business 1 Shareholder in Distribution 3 will include the period during which each of these shareholders held the Distributing Nonvoting Common on which the New Distributing Nonvoting Common is distributed (§ 1223(5)).

Caveats

No opinion is expressed about the tax treatment of the proposed transaction under other provisions of the Code or regulations, or 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. In particular, no opinion is expressed concerning (i) whether the Acquisition will qualify as a reorganization under § 368(a), and (ii) the tax effects of any payments made under the Administrative Services Transition Agreement, the Tax Separation Agreement, and the Employee Benefit Agreement.

Temporary or final regulations pertaining to one or more issues addressed in this ruling letter have yet to be adopted. Therefore, this ruling letter may be revoked or modified, in whole or in part, by the issuance of such temporary or final regulations (or a notice with respect to their future issuance). See section 12.04 of Rev. Proc. 99-1, 1999-1 I.R.B. 6, which discusses the revocation or modification of ruling letters. However, when the criteria in section 12.05 of Rev. Proc. 99-1 are satisfied, a ruling will not be revoked or modified retroactively except in rare or unusual circumstances.

Procedural Statements

This ruling letter 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 affected by the proposed transaction should attach a copy of this ruling letter to its, his, or her federal tax return for the taxable year in which the transaction is completed.

Under a power of attorney on file in this office, a copy of this letter is being sent to the taxpayer and the taxpayer's second-named representative.

Sincerely,

Assistant Chief Counsel (Corporate)

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