

Internal Revenue Service

Department of the Treasury

Index Number: 83.08-00; 162.36-00;
162.36-04; 355.01-00;
367.40-00; 368.04-00
404.10-00

Washington, DC 20224

Number: **200017019**
Release Date: 4/28/2000

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:CORP:3-PLR-107127-99
Date:
January 27, 2000

Distributing =

Controlled =

Corporation X =

State Y =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

PLR-107127-99

Sub 12 =Sub 13 =Sub 14 =Sub 15 =Country 1 =Country 2 =Country 3 =Country 4 =Country 5 =Country 6 =Country 7 =Country 8 =Firm 1 =Firm 2 =Date 1 =Shareholder B =Business C =Unit D =Unit E =

PLR-107127-99

- Trust F =
- Trust G =
- Plan H =
- Plan J =
- Plan K =
- Plan L =
- Plan M =
- Plan N =
- Plan O =
- Plan P =
- a =
- b =
- c =
- d =
- e =
- f =
- g =
- h =
- i =
- j =
- k =

PLR-107127-99

m =n =o =p =

This letter responds to a request dated April 8, 1999 for rulings about the federal income tax treatment of a proposed transaction. We have received additional information in letters dated June 29, 1999, August 4, 1999, August 20, 1999, September 3, 1999, September 29, 1999, October 26, 1999, November 9, 1999, December 3, 1999, January 14, 2000, and January 24, 2000. The information submitted for consideration is summarized below.

Distributing is a publicly traded domestic corporation and common parent of an affiliated group of corporations that files a consolidated federal income tax return on a calendar year basis using an accrual method of accounting. Distributing has one class of common stock issued and outstanding. Distributing's common stock is widely held and publicly traded on the Nasdaq National Market. Distributing has one class of preferred stock with no outstanding shares. Distributing has one five percent shareholder, Shareholder B. Distributing wholly owns at least a domestic and foreign subsidiaries, and, directly and indirectly through its subsidiaries, actively engages in Business C. Business C consists of two principal business units: Unit D and Unit E.

Among Distributing's wholly owned domestic subsidiaries are: Sub 2, Sub 4, Sub 6, Sub 7, Sub 8, and Sub 9. Distributing also wholly owns Sub 5, a Country 1 corporation, and owns a b% interest in Sub 3, a Country 2 corporation, with Sub 2 owning the remaining c% interest in Sub 3.

As for Distributing's second-tier subsidiaries, Sub 6 has a Country 3 branch and wholly owns 5 foreign corporations: Sub 1, a Country 5 corporation, Sub 10, a Country 3 corporation, Sub 11, a Country 4 corporation, Sub 12, a Country 5 corporation, and Sub 13, a Country 6 corporation. Also, Sub 9 owns a d% interest in Sub 14, a Country 7 corporation, with Distributing, Sub 8, Sub 4, and Sub 3 owning a c%, e%, c%, and e% interest in Sub 14, respectively. Sub 2 wholly owns Sub 15, a Country 8 corporation that is treated as a Sub 2 branch for U.S. tax purposes because of a check-the-box election under § 301.7701-3.

Sub 1, Sub 2, Sub 5, Sub 6, Sub 7, Sub 10, Sub 11, Sub 12, Sub 13, and Sub 15 are involved in Unit D. Sub 3, Sub 4, Sub 8, Sub 9, and Sub 14 are involved in Unit E.

Distributing formed Controlled pursuant to the proposed transaction. At the time

PLR-107127-99

of the distribution, Controlled will have one class of common stock authorized and outstanding, and will have authorized but not outstanding a yet to be designated series of preferred stock. Controlled will use an accrual method of accounting.

Financial information has been received which indicates that Unit D and Unit E 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 concluded and information has been received indicating the existence of substantial differences in the managerial philosophies of Unit D and Unit E that have arisen in operating the two businesses under a single corporate umbrella. Information has been provided indicating that Unit D and Unit E are distinct and that the aforementioned differences require that each of the product lines be operated separately to enhance their success.

Information has also been received indicating the need for Controlled to obtain capital to meet the needs of the fast growing Unit D. In order to raise capital to effect its plans, Controlled proposes to undertake an equity offering of not more than 20 percent of Controlled's total outstanding stock. The proceeds will be used solely to fund the expansion of the Controlled business. The management of Distributing has concluded, based upon documentation provided by its investment banker and independent analysts, that an equity offering will be significantly more effective if Unit D is separated from Distributing.

To accomplish these objectives, the taxpayer has proposed the following transaction (the "Proposed Transaction"):

- (1) Sub 1 will liquidate in a transaction intended to qualify under § 332.
- (2) Sub 2 will transfer its c% interest in Sub 3 to Sub 4.
- (3) Distributing will transfer its ownership interest in Sub 5 to Sub 2 in a transaction intended to qualify under § 351.
- (4) Distributing has incorporated Controlled in State Y. Distributing will contribute \$f in cash in exchange for g shares of Controlled common stock.
- (5) The assets and liabilities of Unit D held by Distributing directly will be transferred by Distributing to Controlled in exchange for deemed Controlled stock. None of the assets being transferred are subject to investment credit recapture.
- (6) Distributing will transfer its ownership interest in Sub 2 to Controlled in exchange for deemed Controlled stock.

PLR-107127-99

- (7) Distributing will transfer its ownership interest in Sub 6 to Controlled in exchange for deemed Controlled stock.
- (8) Distributing will transfer its ownership interest in Sub 7 to Controlled in exchange for deemed Controlled stock. (Steps 4 through 8 may be referred to as the “Contribution”).
- (9) All employees employed in Unit D will cease their employment with Distributing and commence their employment with Controlled.
- (10) The names of Controlled’s subsidiaries will be changed to reflect Controlled’s new name.
- (11) Firm 1 and Firm 2, (the “Venture Capitalists”) have purchased h shares (approximately i%) of Controlled stock for \$j per share. The number of shares and the purchase price per share were based on Distributing owning g shares of Controlled common stock. The number of shares issued and the purchase price per share will be adjusted proportionately to the extent the number of shares owned by Distributing at the time the investment is funded by the Venture Capitalists does not equal g shares.
- (12) The Venture Capitalists also have purchased k shares of Distributing common stock at \$m per share. The k shares represent less than 5 percent of Distributing’s outstanding common stock.
- (13) As of Date 1, options to purchase n shares of Controlled stock have been granted to employees of Controlled, options to purchase o shares of Controlled stock have been granted to non-employee directors of Controlled and options to purchase p shares of Controlled stock have been granted to Distributing employees who will remain employees of Distributing after the Distribution (defined below).
- (14) Prior to the date of the Distribution (the “Distribution Date”), Distributing and Controlled will enter into certain agreements for purposes of shared services between the two corporations.
- (15) Prior to the Distribution Date, Distributing and Controlled will enter into a tax-sharing and disaffiliation agreement.
- (16) Prior to the Distribution Date, Distributing will direct the transfer of the account balances of Controlled employees under the Plan H to a similar 401(k) plan to be adopted by Controlled.
- (17) Prior to the Distribution Date, Distributing will direct the transfer of assets contributed by Distributing to a grantor trust in an amount sufficient for the

PLR-107127-99

payment of benefits accrued by Controlled employees under the Plan J to a similar grantor trust to be established by Controlled.

- (18) Prior to the Distribution Date, Controlled will assume all unpaid obligations under medical and other welfare benefit plans maintained by Distributing with respect to Controlled employees.
- (19) Prior to the Distribution Date, Controlled will increase the number of its shares outstanding (pursuant to a pro-rata stock distribution) to facilitate the Distribution.
- (20) Distributing will distribute all of its stock of Controlled pro rata to its shareholders, except Distributing will not distribute fractional share interests of Controlled common stock. Instead, cash in lieu of fractional shares will be paid to the shareholders entitled to fractional shares of Controlled stock. Distributing's distribution agent will aggregate fractional share interests into whole shares, and the agent will sell these shares on the open market. The agent will then remit the cash to the Distributing shareholders otherwise entitled to receive fractional share interests of Controlled common stock (the "Distribution").
- (21) Controlled will undertake an equity offering, which will occur within 12 months of the Distribution.

Presently, Distributing has several stock option plans in effect including the Plan L, the Plan M, the Plan N, the Plan O, and Plan P. Plan P was assumed by Distributing when Corporation X was merged into a wholly-owned subsidiary of Distributing, causing the options to be exercisable for Distributing stock. Collectively, these plans are referred to as "Option Plans", and outstanding, nonqualified options to purchase Distributing stock granted under any of the Option Plans are collectively referred to as "Current Distributing Options".

Controlled's Board of Directors adopted a stock option plan (the "Controlled Plan") that is substantially similar to the Plan L. The Controlled Plan has been approved by Distributing, as the sole Controlled shareholder, and it is expected that the Controlled Plan will be approved by the shareholders prior to the first scheduled meeting of Controlled shareholders that occurs more than 12 months after the Distribution. Under the Controlled Plan, options will be granted by a compensation committee comprised solely of two or more outside directors within the meaning of § 162(m) and § 1.162-27(e)(3). The Controlled Plan indicates the maximum number of shares of Controlled stock with respect to which options may be granted during a specified period to any employee, and it is expected that the exercise price of each option will be equal to the fair market value of one share of Controlled stock as of the date of grant.

Current Distributing Options held by persons who either become employed by

PLR-107127-99

Controlled or become directors of Controlled (but do not remain directors of Distributing) immediately after the Distribution Date will be converted, as of the Distribution Date, into options to purchase Controlled stock (a "Substitute Controlled Option"). The number of shares of Controlled stock subject to a Substitute Controlled Option will be equal to the number of shares subject to the Current Distributing Option multiplied by a ratio, the numerator of which is the fair market value of a share of Distributing stock, including the value of Controlled stock, immediately prior to the Distribution Date, and the denominator of which is the fair market value of a share of Controlled stock on or around the Distribution Date. The exercise price of the Substitute Controlled Option will be equal to the exercise price of the Current Distributing Option divided by the same ratio.

Current Distributing Options granted on or before Date 1 and held by a person who will continue as an employee or director of Distributing after the Distribution or held by a person who will not be an employee or director of Distributing or Controlled after the Distribution will be converted, as of the Distribution Date, into an adjusted nonqualified option to purchase Distributing stock (an "Adjusted Distributing Option") and a Substitute Controlled Option. The number of shares of Distributing stock subject to each Adjusted Distributing Option will be the same as the number of shares subject to the Current Distributing Option. Distributing intends that the exercise price of each Adjusted Distributing Option will equal the exercise price of the Current Distributing Option multiplied by a fraction, the numerator of which is the fair market value of one share of Distributing stock, excluding the value of Controlled stock on or around the Distribution Date, and the denominator of which is the sum of (i) the fair market value of one share of Distributing stock on or around the Distribution Date and (ii) the fair market value of one share of Controlled stock on or around the Distribution Date multiplied by the number of shares of Controlled received in the Distribution with respect to each share of Distributing (the "Distribution ratio"). Each Adjusted Distributing Option granted under the Plan N and the Plan Q and granted to a nonemployee director under the Plan L will continue to be exercisable, pursuant to the terms of those plans, for 20 years after the date such option was granted. Thus, the exercise period will not be affected by the Distribution. Each Adjusted Distributing Option will be identical, in all other respects, to the Current Distributing Option being adjusted.

The number of shares of Controlled stock subject to each Substitute Controlled Option granted in substitution of a Current Distributing Option will equal the number of shares of Controlled stock that would have been received in the Distribution with respect to the number of shares of Distributing stock subject to the Current Distributing Option. The exercise price of each Substitute Controlled Option will equal the exercise price of the Current Distributing Option multiplied by a ratio, the numerator of which is the fair market value of one share of Controlled stock on or around the Distribution Date and the denominator of which is the sum of (i) the fair market value of one share of Distributing stock, excluding the value of Controlled stock on or around the Distribution Date, and (ii) the fair market value of one share of Controlled stock on or around the

PLR-107127-99

Distribution Date multiplied by the Distribution ratio. Each Substitute Controlled Option will provide that employment with Distributing will be treated as employment with Controlled in determining the optionee's vested right to exercise the Controlled option and the termination of the exercise period thereunder. Each Substitute Controlled Option will, in all other respects, be subject to substantially the same terms as the Current Distributing Option being substituted.

Each Current Distributing Option granted after Date 1 to a person who will continue as an employee or director of Distributing after the Distribution or who will not be an employee or director of either Distributing or Controlled after the Distribution will not be adjusted as described above. Instead, the Current Distributing Option will continue to be an option to purchase Distributing stock that will be adjusted (an "Adjusted Distributing Option") as of the Distribution Date by (i) multiplying the number of shares subject to such option by a ratio, the numerator of which is the fair market value of a share of Distributing stock including the value of Controlled immediately prior to the Distribution Date and the denominator of which is the fair market value of a share of Distributing stock excluding the value of Controlled stock on or around the Distribution Date, and (ii) by dividing the exercise price of such option by the same ratio.

Distributing currently maintains the Plan J. The Plan J is an unfunded, nonqualified deferred compensation plan pursuant to which eligible employees may defer a portion of their base salary, bonuses, and bonus retention payments until termination of employment, or an earlier payment date, if elected, or in connection with an unforeseeable emergency. The amounts deferred are credited to a separate bookkeeping account on behalf of each participant, and the account is increased or decreased based on certain factors. Distributing has contributed assets to a grantor trust, the Trust E, to facilitate payment of benefits under the Plan J.

On or after the Contribution, Controlled will adopt the Plan K, a deferred compensation plan substantially similar to the Plan J, and Controlled will assume all liabilities accrued under the Plan J with respect to participants who become employed by Controlled on or after the date of the Contribution. Controlled will also establish a grantor trust, the Trust G, and Distributing and Controlled will effect a transfer of assets from the Trust E to the Trust G in an amount equal to the aggregate account balances of all the Plan J participants who become employed by Controlled.

With respect to the Proposed Transaction, the taxpayer has made the following representations:

- (a) The indebtedness owed by Controlled or subsidiaries of Controlled to Distributing after the Distribution will not constitute stock or securities.
- (b) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a

PLR-107127-99

shareholder of Distributing.

- (c) The 5 years of financial information submitted on behalf of Distributing is representative of Distributing's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) Following the Proposed Transaction, Distributing and Controlled will each continue the active conduct of its business, independently and with its separate employees.
- (e) The Distribution will be carried out for the following corporate business purposes:
 - (i) allowing Controlled to raise substantially more capital through a public offering and
 - (ii) enhancing the success of Unit D and Unit E by enabling the companies to resolve certain managerial problems that have arisen in operating the two businesses under a single corporate umbrella. The Distribution is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (f) There is no plan or intention by any shareholder who owns 5 percent or more of the stock of Distributing, and management of Distributing, to its best knowledge, is not aware of any plan or intention on the part of any particular remaining shareholder of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any stock in either Distributing or Controlled after the Proposed Transaction.
- (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 § 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696.
- (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.
- (i) The total adjusted bases and the fair market value of the assets to be transferred to Controlled by Distributing each equals or exceeds the sum of the liabilities assumed by Controlled plus any liabilities to which the transferred assets are subject.
- (j) The liabilities assumed by Controlled in the Proposed 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.

PLR-107127-99

- (k) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution, except for trade account indebtedness created in the ordinary course of business through continuing transactions at terms comparable to those which could be obtained in an arm's-length transaction.
- (l) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations. Further, Distributing's excess loss account, if any, with respect to the Controlled stock and the excess loss account(s), if any, with respect to the stock of the subsidiaries of Controlled will be included in income immediately before the Distribution.
- (m) Payments made in connection with all continuing transactions, if any, between Distributing (or its subsidiaries) and Controlled (or its subsidiaries), will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's-length.
- (n) Neither Distributing nor Controlled is an investment company as defined in §§ 368(a)(2)(F)(iii) and (iv).
- (o) The Distribution is not part of a plan or a 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 combined voting power of all classes of stock of either Distributing or Controlled, or stock possessing 50 percent or more of the total value of all classes of stock of either Distributing or Controlled.
- (p) The payment of cash in lieu of fractional share interests of Controlled, if any, is solely to avoid the expense and inconvenience of issuing fractional share interests, and does not represent separately bargained-for consideration. The total cash received in lieu of fractional share interests of Controlled stock will be less than 1 percent of the total fair market value of the Controlled stock distributed by Distributing. No Distributing shareholder will receive cash for more than one full share of Controlled stock.
- (q) Distributing, Controlled and shareholders of Distributing will each pay their own expenses, if any, incurred in connection with the Proposed Transaction.
- (r) None of the Current Distributing Options have a readily ascertainable fair market value, within the meaning of § 1.83-7(b).
- (s) Except for certain options granted under Option Plans with an exercise price less than the fair market value of a share of Distributing stock at the time of grant,

PLR-107127-99

each Current Distributing Option satisfies the requirements for performance-based compensation as defined in § 1.162-27(e).

- (t) None of the liabilities accrued under the Plan J which will be assumed by Controlled, and therefore taken into account for tax purposes by Controlled when paid, have been or will be taken into account for tax purposes by Distributing.
- (u) Neither Distributing nor Controlled are foreign corporations.
- (v) None of Distributing, Controlled, Sub 2, Sub 4, Sub 6, Sub 7, Sub 8, or Sub 9 have been a United States real property holding corporation as defined in § 897(c)(2) at any time in the five-year period ending on the date of the Proposed Transaction, and none of such corporations will be a United States real property holding corporation immediately after the Proposed Transaction.
- (w) No United States real property interest, as defined in § 897(c), will be sold or exchanged as part of the Proposed Transaction.
- (x) Sub 1, Sub 3, Sub 5, Sub 10, Sub 11, Sub 12, Sub 13, and Sub 15 are corporations as defined in § 7701(a)(3) and are foreign corporations.
- (y) Prior to the Proposed Transaction, Sub 1, Sub 3, Sub 5, Sub 10, Sub 11, Sub 12, and Sub 13 are controlled foreign corporations (“CFCs”) under § 957(a).
- (z) Sub 1, Sub 3, Sub 5, Sub 10, Sub 11, Sub 12, and Sub 13 will continue to be CFCs immediately after the Proposed Transaction.
- (aa) Amounts includible in the gross income of an optionee upon the exercise of an Adjusted Distributing Option or a Substitute Controlled Option will not be deducted by the corporation that is not the optionee’s employer at the time of exercise (or was not the more recent employer in the case of an optionee whose employment terminated prior to such exercise).

Based solely on the information submitted and on the representations set forth above, we hold as follows (for purposes of the following rulings, a reference to the Unit D assets includes the stock of Sub 2, Sub 6, Sub 7, and the \$f cash):

- (1) The transfer by Distributing of the Unit D assets to Controlled solely in exchange for the stock of Controlled (actual or deemed) and the assumption by Controlled of liabilities followed by the pro rata distribution by Distributing of all the Controlled stock constitutes a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled will each be a “party to the reorganization” within the meaning of § 368(b).

PLR-107127-99

- (2) Distributing will recognize no gain or loss upon the transfer of the Unit D assets to Controlled in exchange for Controlled stock (actual or deemed) and the assumption by Controlled of related liabilities. Sections 361(a) and 357(a).
- (3) Controlled will recognize no gain or loss upon the receipt of the Unit D assets in exchange for the Controlled stock (actual or deemed) described above. Section 1032(a).
- (4) The basis of the Unit D assets to be received by Controlled will be equal to the basis of such assets in the hands of Distributing immediately before the transaction. Section 362(b).
- (5) The holding period for each Unit D asset received by Controlled will include the period during which such asset was held by Distributing. Section 1223(2).
- (6) Distributing will recognize no gain or loss upon the distribution of the Controlled common stock (including any fractional share interest of Controlled) to the shareholders of Distributing. Section 361(c). Distributing will recognize no gain or loss under § 367(e)(1) on its distribution of Controlled stock to its shareholders. Section 1.367(e)-1(c).
- (7) No gain or loss will be recognized by (and no amount will be included in the income of) the shareholders of Distributing upon the receipt of the Controlled common stock distributed to them (including any fractional share interest of Controlled to which they may be entitled) in the Distribution. Section 355(a)(1).
- (8) The aggregate basis of Distributing and Controlled stock in the hands of each Distributing shareholder (including any fractional share interest of Controlled to which they may be entitled) after the distribution will, in each instance, equal the basis of the Distributing stock held by such shareholder immediately before the distribution, allocated between the Distributing stock and Controlled stock in proportion to the relative fair market value of each in accordance with § 1.358-2(a)(2). Sections 358(a), (b) and (c).
- (9) The holding period of the Controlled stock that each Distributing shareholder receives (including any fractional share interest of Controlled to which they may be entitled) will include the holding period of the Distributing common stock with respect to which the Distribution will be made, provided the Distributing stock is held as a capital asset by such shareholder on the Distribution Date. Section 1223(1).
- (10) Proper allocation of earnings and profits among Distributing and Controlled will be made in accordance with §§ 1.312-10(a) and 1.1502-33.

PLR-107127-99

- (11) Following the Distribution, Controlled and its direct and indirect subsidiaries that are “includible corporations” (under § 1504(b)) and satisfy the ownership requirements of § 1504(a)(2) will be an affiliated group of corporations entitled to file consolidated federal income tax returns with Controlled as the common parent.
- (12) Where cash is received by a Distributing shareholder in lieu of fractional share interests of Controlled common stock, Distributing will be treated as distributing the fractional share to the shareholder and such fractional share will be treated as having been disposed of by such shareholder for the amount of such cash in a sale or exchange. The gain (or loss), if any, will be treated as a capital gain (or loss), provided such stock was held as a capital asset by the selling Distributing shareholder. Section 1001.
- (13) The holders of Current Distributing Options will not realize any income upon the receipt of Adjusted Distributing Options or Substitute Controlled Options, or both Adjusted Distributing Options and Substitute Controlled Options pursuant to the Distribution.
- (14) Amounts includible in the gross income of an optionee upon the exercise of an Adjusted Distributing Option or a Substitute Controlled Option may be deducted by the corporation that is the optionee’s employer at the time of exercise (or was the more recent employer in the case of an optionee whose employment terminated prior to exercise) provided income is clearly reflected under § 482.
- (15) Distributing will recognize no gain or loss upon the transfer of Controlled stock to an employee of Distributing who exercises a Substitute Controlled Option.
- (16) Neither the adjustment of Current Distributing Options to constitute Adjusted Distributing Options nor the substitution of Substitute Controlled Options for Current Distributing Options pursuant to the Distribution will cause any such options to fail to satisfy the performance-based goal requirements of § 162(m) and § 1.162-27(e)(2).
- (17) Neither the adjustment of Current Distributing Options to constitute Adjusted Distributing Options nor the substitution of Substitute Controlled Options for Current Distributing Options pursuant to the Distribution will constitute a material modification of the Current Distributing Options within the meaning of § 1.162-27(h)(1)(iii).
- (18) The deferred compensation liabilities accrued under the Plan J that are assumed by Controlled will be deductible by Controlled in accordance with the provisions of §§ 162 and 404(a)(5) to the extent that such liabilities would have been deductible by Distributing had they not been assumed by Controlled.

PLR-107127-99

- (19) The earnings and profits of Sub 5 transferred from Distributing to Sub 2 to the extent attributable to such stock under § 1.1248-2 or § 1.1248-3 (whichever is applicable) which were accumulated in taxable years of Sub 5 beginning after December 31, 1962, during the period Distributing held Sub 5's stock (or was considered as holding such stock by application of § 1223) while Sub 5 was a CFC will be attributable to such stock held by Sub 2. Section 1.1248-1(a).
- (20) The earnings and profits of Sub 3 transferred from Sub 2 to Sub 4 to the extent attributable to such stock under § 1.1248-2 or § 1.1248-3 (whichever is applicable) which were accumulated in taxable years of Sub 3 beginning after December 31, 1962, during the period Sub 2 held Sub 3's stock (or was considered as holding such stock by application of § 1223) while Sub 3 was a CFC will be attributable to such stock held by Sub 4. Section 1.1248-1(a).

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. Specifically:

- (1) No opinion is expressed regarding options issued under Option Plans other than the nonqualified options discussed above.
- (2) No opinion is expressed on whether any or all of the above-described foreign corporations are passive foreign investment companies within the meaning of § 1297(a) and the related regulations to be promulgated. If it is determined that any of the above-described foreign corporations are passive foreign investment companies, no opinion is expressed related to the application of §§ 1291 through 1298 to the Proposed Transaction. 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.
- (3) No opinion is expressed on: (a) whether Sub 1's liquidation into Sub 6 qualifies as a § 332 liquidation; (b) whether Distributing's transfer of its interest in Sub 5 to Sub 2, or Sub 2's transfer of its interest in Sub 3 to Sub 4 qualify under § 351; (c) the extent to which § 367(b) and the § 367(b) reporting obligations apply to Sub 1's liquidation into Sub 6; (d) the application of § 304 to Sub 2's transfer of its interest in Sub 3 to Sub 4.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

PLR-107127-99

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

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

A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely yours,
Assistant Chief Counsel (Corporate)

By *Ken Cohen*
Senior Technical Reviewer, Branch 3