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Date:

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LEGEND:

Distributing =

Controlled =

Sub 1 =

Sub 2 =

LLC =

Business A =

Business B =

Asset 1 =

a =

b =

c =

d =

e =

State X =

Entity =

Dear :

This letter responds to your August 10, 2007, letter requesting rulings on certain federal income tax consequences of the Proposed Transaction (described below). The information provided in that letter and in later correspondence is summarized below.

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. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Moreover, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Distribution (described below): (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) of the Internal Revenue Code (the "Code") and Treas. Reg. § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see section 355(e)(2)(a)(ii) and Treas. Reg. § 1.355-7).

FACTS

Privately held Distributing is the common parent of an affiliated group filing a consolidated federal income tax return (the "Distributing Group"). Distributing has outstanding both common and preferred stock.

The Distributing Group and its foreign subsidiaries (none of which are relevant to the Proposed Transaction) are engaged in Business A and Business B. Distributing and its direct and indirect subsidiaries conduct Business A and will continue to do so following the Proposed Transaction. Controlled will conduct Business B directly and through its wholly owned subsidiary, Sub 1. Other than the assets identified below as being owned by Sub 1 and Sub 2, Distributing currently owns and operates directly all the assets associated with Business B.

Distributing owns all the stock of Sub 1 and Sub 2, and is the sole member of LLC.

Sub 1 is engaged directly in Business B and owns certain Business B assets.

Sub 2 is engaged directly in Business A. Sub 2's assets include intercorporate debt of \$a, owed by Distributing to Sub 2 and acquired by Sub 2 in the ordinary course of business. The taxpayer has represented that the issue price and basis of the intercorporate debt equals the debt's fair market value. Sub 2's assets also include Asset 1, which is a Business B asset. Asset 1 makes up less than b% of the fair market value of Sub 2's gross assets and less than b% of the fair market value of its net assets.

LLC is a limited liability company that is disregarded as a separate entity for federal tax purposes pursuant to Treas. Reg. § 301.7701-3. LLC currently has no assets and is not engaged in any activities.

Controlled will be newly formed by Distributing with a nominal amount of cash. The issued and outstanding stock of Controlled will consist of the same classes (common and preferred) and the same number of shares in each class, as the Distributing stock.

Financial information has been received indicating that Business A and Business B 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 wishes to separate Business A from Business B by transferring Business B to Controlled and distributing the Controlled stock to Distributing's shareholders, pro rata. The purpose of the proposed transactions is: (i) to enhance the performance of the businesses in Distributing and Controlled by resolving problems that arise from, or are exacerbated by, the operation of different businesses within a single affiliated group by enabling more focused management attention to the particular characteristics and needs of these businesses; and (ii) to enhance the protection of Business A from the risks of Business B, which may require borrowing to realize its long-term potential (the "Corporate Business Purposes").

PROPOSED TRANSACTION

To achieve the Corporate Business Purposes, Distributing has proposed the following transactions (collectively, the “Proposed Transaction”).

- (i) Distributing and Sub 2 will adopt a plan of liquidation by merger. Sub 2 will merge under State X law into LLC (the “Merger”), with LLC surviving. After the Merger, Distributing will continue to own all of the ownership interests in the LLC, and LLC will continue to be a disregarded entity. As a result, for Federal tax purposes, Distributing will be treated as receiving and directly holding the assets of Sub 2 (including Asset 1), and the intercorporate debt owed to Sub 2 by Distributing will be extinguished.
- (ii) LLC will transfer Asset 1 to Distributing.
- (iii) Distributing will transfer to wholly owned Controlled: (a) all of the assets associated with Business B that are held directly by Distributing (including Asset 1) (the “Business B Direct Assets”); (b) all of the stock of Sub 1; (c) \$c of cash (the “Cash”); and (d) the Option (described below) (collectively, the “Contributed Assets”), and in exchange for such assets, Controlled will assume certain liabilities associated with Business B and will issue to Distributing all the outstanding stock of Controlled, consisting of common stock and preferred stock (the “Controlled Asset Exchange”). The number of shares of the Controlled common stock and the Controlled preferred stock issued will be equal to the number of shares of the Distributing common stock and the Distributing preferred stock, respectively, then outstanding.
- (iv) Distributing will distribute the Controlled common stock to the holders of the Distributing common stock and the Controlled preferred stock to the holders of the Distributing preferred stock, in each case pro rata (“the Distribution”).

The Option to be transferred to Controlled will give Controlled the right to purchase certain of Distributing’s retained Business B assets for a period of d days from the date Controlled receives notice that the asset has ceased to be useful in Distributing’s business. The Option will be exercisable for e years from the date of the Distribution. The exercise price of the Option will be equal to the fair market value of the Business B asset as of the date of Controlled’s exercise of the Option.

The transfer of a limited number of Business B Direct Assets (the “Delayed Transfer Assets”) may be delayed briefly due to the resolution of legal impediments that may not be completed by the date of the Controlled Asset Exchange. Distributing will transfer such assets to Controlled as soon as Distributing obtains the approvals and consents that are necessary to remove such impediments. At all times subsequent to the Controlled Asset Exchange, Controlled will have the right to receive the Delayed Transfer Assets.

In connection with the Proposed Transaction, Distributing and Controlled will enter into a Master Separation Agreement and certain ancillary agreements relating to administrative and other services and office facility leasing, and a Tax Sharing Agreement that will set forth each party's rights and obligations regarding tax matters for periods before and after the date of the Distribution (collectively, the "Separation Agreements"). Payments made between Distributing and Controlled (or their respective subsidiaries) pursuant to the Separation Agreements will reflect arm's length rates.

REPRESENTATIONS

The Merger

The following representations are made with respect to the Merger:

- (a) Distributing and Sub 2 will adopt a plan of liquidation by merger (the "Plan of Liquidation"), and the Merger will occur pursuant to such plan.
- (b) Distributing, on the date of adoption of the Plan of Liquidation, and at all times until the effective date of the Merger, will be the owner of at least 80 percent of the single outstanding class of Sub 2 stock.
- (c) No shares of Sub 2 stock will have been redeemed during the three years preceding the adoption of the Plan of Liquidation of Sub 2.
- (d) By operation of State X law, all transfers from Sub 2 to LLC pursuant to the Plan of Liquidation will occur on the effective date of the Merger.
- (e) All of the stock of Sub 2 will be redeemed and cancelled, and Sub 2 will cease to exist for federal income tax purposes at the effective time of the Merger.
- (f) Sub 2 will retain no assets following the Merger.
- (g) Sub 2 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years prior to the date of adoption of the Plan of Liquidation.
- (h) Other than the transfer of Asset 1 described in Step (iii) of the Proposed Transaction, no assets of Sub 2 have been, or will be, disposed of by either Sub 2 or Distributing except for dispositions in the ordinary course of business and dispositions occurring more than three years prior to adoption of the Plan of Liquidation.
- (i) Other than the transfer of Asset 1 described in Step (iii) of the Proposed Transaction, the Merger of Sub 2 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 2, if persons holding, directly or indirectly, more than 20 percent in value of the Sub 2 stock also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient. For purposes of this representation, ownership will be determined immediately after the Distribution and by application of the constructive ownership rules of section 318(a) of the Code as modified by section 304(c)(3).

- (j) Prior to adoption of the Plan of Liquidation, no assets of Sub 2 will have been distributed in kind, transferred, or sold to Distributing, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years prior to adoption of the Plan of Liquidation.
- (k) Sub 2 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.
- (l) The fair market value of the assets of Sub 2 will exceed its liabilities both at the date of the adoption of the Plan of Liquidation and immediately before the Merger.
- (m) Other than the intercorporate debt owed by Distributing to Sub 2 created in the ordinary course of business, there is no intercorporate debt existing between Distributing and Sub 2 and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years prior to the date of the adoption of the Plan of Liquidation.
- (n) Distributing is not an organization that is exempt from federal income tax under section 501 or any other provision of the Code.
- (o) All other transactions that will be undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the proposed liquidation of Sub 2 have been fully disclosed.
- (p) No election will be made under the Treasury Regulations promulgated under section 7701 that would cause LLC to be classified as other than an entity disregarded as separate from its owner for Federal income tax purposes.

The Controlled Asset Exchange and the Distribution

The following representations are made with respect to the Controlled Asset Exchange and the Distribution:

- (q) Any indebtedness owed by Controlled to Distributing after the Distribution will not constitute stock or securities.
- (r) 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 shareholder of the corporation.
- (s) The five years of financial information submitted on behalf of Business A, conducted by Distributing's separate affiliated group (as defined in section 355(b)(3)) (the "Distributing SAG") is representative of the Distributing SAG's present operation of Business A, and with regard to Business A, there have been no substantial operational changes since the date of the last financial statements submitted.
- (t) The five years of financial information submitted on behalf of Business B is representative of the present operation of Business B, and with regard to Business B, there have been no substantial operational changes since the date of the last financial statements submitted.
- (u) Following the Proposed Transaction, the Distributing SAG will continue the active conduct of Business A, and Controlled and members of its separate affiliated group (the "Controlled SAG") will continue the active conduct of Business B, in each case independently and with their separate employees.
- (v) The Distribution is carried out for the Corporate Business Purposes. The Distribution is motivated, in whole or substantial part, by one or more of these Corporate Business Purposes.
- (w) The Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled, or both.
- (x) The total adjusted bases and fair market value of the assets transferred to Controlled by Distributing will each equal or exceed the sum of the total liabilities (if any) assumed (within the meaning of section 357(d)) by Controlled plus any liabilities to which the transferred assets are subject.
- (y) The liabilities assumed in the transaction (as determined under section 357(d)), if any, and the liabilities to which the transferred assets are subject, if any, were incurred in the ordinary course of business and are associated with the assets being transferred.
- (z) The income tax liability for the taxable year in which investment credit property (including any building to which section 47(d) applies), if any, is transferred will be adjusted pursuant to section 50(a)(1) or (a)(2) (or section 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.

- (aa) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution of the Controlled stock, other than (i) that arising in the ordinary course of business, (ii) pursuant to certain service agreements and office facility lease agreements between Distributing and Controlled or (iii) pursuant to indemnity or similar obligations arising under the Separation Agreements.
- (bb) 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 (see Treas. Reg. §§ 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; Treas. Reg. § 1.1502-13 as published by T.D. 8597). Further, Distributing's excess loss account, if any, with respect to the Controlled stock will be included in income immediately before the Distribution (see Treas. Reg. § 1.1502-19).
- (cc) 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.
- (dd) No two parties to the transaction are investment companies as defined in sections 368(a)(2)(F)(iii) and (iv).
- (ee) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50-percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50-percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the 5-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (ff) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50-percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50-percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the 5-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution, or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the 5-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.

- (gg) The Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (hh) Immediately after the transaction (as defined in section 355(g)(4)), no person will hold a 50 percent or greater interest (as defined in section 355(g)(3)) in Distributing or Controlled.
- (ii) Neither the Distributing preferred stock nor the Controlled preferred stock is nonqualified preferred stock (as defined in section 351(g)(2)).
- (jj) Distributing and Controlled, and their respective shareholders, will each pay their own expenses, if any, incurred in connection with the Distribution.
- (kk) Controlled will not elect to be an Entity within three years after the effective date of the Proposed Transaction.
- (ll) Controlled will not be liquidated (within the meaning of sections 331 through 337 of the Code) within three years after the effective date of the Proposed Transaction.
- (mm) Except for intra-family gifts and transfers by reason of death, no more than 5-percent of the stock of Controlled will be sold, redeemed for property (within the meaning of section 317 of the Code), or otherwise transferred, during the three-year period after the effective date of the Proposed Transaction. (For purposes of this representation, each share of Controlled Preferred Stock is equivalent to 2.5 shares of Controlled Common Stock.)

RULINGS

The Merger

Based solely on the information and representations submitted, we rule as follows on the Merger:

- (1) The Merger will be treated as a complete liquidation of Sub 2 within the meaning of section 332. Section 332(b) and Treas. Reg. § 1.332-2(d).
- (2) No gain or loss will be recognized by Sub 2 in the Merger. Sections 336(d)(3) and 337(a).
- (3) No gain or loss will be recognized by Distributing in the Merger. Section 332(a).

- (4) Distributing's basis in each asset deemed received from Sub 2 in the Merger will equal the basis of that asset in the hands of Sub 2 immediately before the Merger. Section 334(b)(1).
- (5) Distributing's holding period in each asset deemed received from Sub 2 in the Merger will include the period during which that asset was held by Sub 2. Section 1223(2).
- (6) Distributing will succeed to and take into account the items of Sub 2 described in section 381(c), subject to the conditions and limitations specified in sections 381, 382, 383, and 384 and the regulations thereunder. Section 381(a)(1) and Treas. Reg. § 1.381(a)-1).
- (7) Except to the extent Sub 2's earnings and profits are reflected in Distributing's earnings and profits, Distributing will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Sub 2 as of the date of the Merger. Section 381(c)(2)(A); Treas. Reg. §§ 1.381(c)(2)-1 and 1.1502-33(a)(2)). Any deficit in earnings and profits of Sub 2 or Distributing will be used only to offset earnings and profits accumulated after the date of the Merger. Section 381(c)(2)(B).
- (8) No income, gain, deduction, or loss will be recognized by Sub 2 or Distributing upon the extinguishment of the intercorporate debt in the Merger.

The Controlled Asset Exchange and the Distribution

Based solely on the information and representations submitted, we rule as follows on the Controlled Asset Exchange and the Distribution:

- (9) The Controlled Asset Exchange, together with the Distribution, will qualify as a reorganization within the meaning of section 368(a)(1)(D). Distributing and Controlled each will be "a party to a reorganization" within the meaning of section 368(b).
- (10) No gain or loss will be recognized by Distributing upon the transfer of the Contributed Assets to Controlled in exchange for the Controlled common stock and Controlled preferred stock and the assumption by Controlled of liabilities of Distributing in the Controlled Asset Exchange. Sections 357(a) and 361(a).
- (11) The aggregate basis of the Controlled common stock and the Controlled preferred stock in the hands of Distributing, immediately after the Controlled Asset Exchange, will be equal to Distributing's aggregate basis in the Contributed Assets immediately before the Controlled Asset Exchange, reduced by the

amount of any liabilities (other than liabilities excluded under section 357(c)) assumed by Controlled. Sections 358(a) and (d). Such aggregate basis will be allocated between the Controlled common stock and the Controlled preferred stock in proportion to the fair market value of each, in accordance with Treas. Reg. § 1.358-2(b)(2). Section 358(b).

- (12) No gain or loss will be recognized by Controlled upon the receipt of the Contributed Assets in exchange for the Controlled common stock and Controlled preferred stock. Section 1032(a).
- (13) The basis of each asset received by Controlled in the Controlled Asset Exchange will equal the basis of that asset in the hands of Distributing immediately prior to its transfer. Section 362(b).
- (14) The holding period of each asset received by Controlled in the Controlled Asset Exchange will include the period during which Distributing held that asset. Section 1223(2).
- (15) No gain or loss will be recognized by Distributing in connection with the Distribution. Section 361(c)(1).
- (16) No gain or loss will be recognized by (and no amount will be included in the income of) any shareholder of Distributing on the receipt solely of Controlled stock in the Distribution. Section 355(a)(1).
- (17) Each Distributing shareholder's basis in a share of Distributing stock (as adjusted under Treas. Reg. § 1.358-1) shall be allocated between the share of Distributing stock with respect to which the Distribution is made and the share of Controlled stock received with respect to the share of Distributing stock in proportion to their fair market values. If a Distributing shareholder that purchased or acquired shares of Distributing stock on different dates or at different prices is not able to identify which particular share of Controlled stock is received with respect to a particular share of Distributing stock, the shareholder may designate which particular share of Controlled stock is received with respect to a particular share of Distributing stock, provided the designation is consistent with the terms of the Distribution. Sections 358(a), (b), and (c), and Treas. Reg. § 1.358-2(a)(2).
- (18) The holding period of the Controlled stock received by a Distributing shareholder in the Distribution will include the holding period of the Distributing stock with respect to which the Distribution is made, provided the Distributing stock is held as a capital asset in the hands of the Distributing shareholder on the date of the Distribution. Section 1223(1).

- (19) Earnings and profits of Distributing (if any) will be allocated between Distributing and Controlled in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33(e)(3).
- (20) Distributing's transfer of the Delayed Transfer Assets to Controlled will occur pursuant to the plan of reorganization that includes the transfer of the other Contributed Assets to Controlled and the Distribution. Treas. Reg. § 1.368-2(g).
- (21) Payments made between any of Distributing and Controlled and their respective affiliates under the Separation Agreements regarding liabilities, indemnities or other obligations that (i) have arisen or will arise for a taxable period ending on or before the Distribution or for a taxable period beginning before and ending after the Distribution, and (ii) will not become fixed and ascertainable until after the Distribution, will be treated as occurring immediately before the Distribution. See Arrowsmith v. Commissioner, 344 U.S. 6, 73 S. Ct. 71, 97 L. Ed. 6, 1952-2 C.B. 136 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.
- (22) A transfer of property by Distributing to Controlled pursuant to an exercise of the Option will not be treated as part of the plan of reorganization but will be taxable to Distributing as a separate transaction.

CAVEATS

We express no opinion about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or the tax treatment of any condition 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 regarding:

- (i) Whether LLC qualifies as a disregarded entity under Treas. Reg. § 301.7701-3;
- (ii) Whether the Distribution satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b);
- (iii) Whether the Distribution is being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled (see section 355(a)(1)(B) and Treas. Reg. §1.355-2(d));
- (iv) Whether the Distribution is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in Distributing or Controlled (see section 355(e) and Treas. Reg. § 1.355-7; or

- (vi) The federal income tax consequences of any payments made in continuing transactions between Distributing and any member of its consolidated group and Controlled or any member of its consolidated group.

PROCEDURAL STATEMENTS

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

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter ruling.

Sincerely,

Frances Kelly
Assistant to the Branch Chief, Branch 2
Office of Associate Chief Counsel
(Corporate)

cc: