Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Number: **199935026**
Release Date: 9/3/1999

Date:
June 2, 1999

Re:

Distributing =

Controlled =

Sub 1 =

Sub 6 =

Sub 7 =

C2 =

D1 =

Sub 8 =

Date E =

L =

M =

N =

Dear :

This is in reply to a letter from your authorized representatives, dated October 6, 1998, requesting that we supplement our letter ruling dated August 12, 1997 (PLR-105126-97, the "Prior Letter Ruling"). Additional information was submitted in letters dated November 2, December 18, December 23, and December 28, 1998, and January 28, March 5, March 9, May 3, May 24, and May 28, 1999. The information submitted for consideration is summarized below. The legended terms used in the Prior Letter Ruling are used herein, where appropriate, and retain the meaning assigned to them in the Prior Letter Ruling.

On Date E, Distributing and Controlled completed the proposed restructuring and distribution transaction described in the Prior Letter Ruling. Controlled currently owns all of the stock of Sub 1 and C2. Sub 1 owns two subsidiaries (Sub 6 and Sub 7). Sub 7 has no assets other than the stock of an active subsidiary. C2 owns two subsidiaries (D1 and Sub 8). Sub 8 holds active business assets and the stock of an inactive subsidiary.

In connection with the proposed transactions described in the Prior Letter Ruling, Controlled borrowed approximately $L from financial institutions (the “Controlled Borrowing”). For state income tax purposes, Controlled is unable to consolidate its operations (including the interest expense on the Controlled Borrowing) with the operations of certain subsidiaries in certain jurisdictions. As a result, for state tax purposes, Controlled is unable to deduct the interest expense on the Controlled Borrowing in certain jurisdictions.

In order to realize the state tax benefit attributable to the interest expense on the Controlled Borrowing, Controlled proposes the following transaction in its request for a supplemental letter ruling:

1. Sub 1 will transfer the stock of Sub 6 to Sub 7. No additional shares of Sub 7 stock will be issued to Sub 1 in exchange for all of the stock of Sub 6. Sub 1 will

not transfer income items, patents or patent applications, copyrights, franchises, trademarks or trade names, or technical “know-how.”

2. Sub 6 will distribute a Sub 6 debt obligation with a stated principal amount of $M to Sub 7.

3. C2 will transfer the stock of D1 to Sub 8. No additional shares of Sub 8 stock will be issued to C2 in exchange for all of the stock of D1. C2 will not transfer income items, patents or patent applications, copyrights, franchises, trademarks or trade names, or technical “know-how.”

4. D1 will distribute a D1 debt obligation with a stated principal amount of $N to Sub 8.

The Service will construct a deemed issuance of Sub 7 stock by Sub 7 to Sub 1 in exchange for all of the stock of Sub 6 and a deemed issuance of Sub 8 stock by Sub 8 to C2 in exchange for all of the stock of D1 because an actual issuance of stock would constitute a meaningless gesture. Hereinafter, such constructive issuances of stock by Sub 7 and Sub 8 will be considered to be actual issuances for ruling purposes.

The following representations have been made with respect to step 1 of the proposed transaction:

(a) Consummation of steps 1 and 2 of the proposed transaction will not result in federal income tax savings for the Controlled consolidated group.

(b) Services have not been and will not be performed by Sub 1 for or on behalf of Sub 7 in connection with the transaction. No stock or securities will be issued for services rendered to or for the benefit of Sub 7 in connection with the proposed transaction. No stock or securities will be issued for indebtedness of Sub 7 that is not evidenced by a security or for interest on indebtedness of Sub 7 that accrued on or after the beginning of the holding period of Sub 1 for the debt.

(c) None of the assets to be transferred were received by Sub 1 as part of a plan of liquidation of another corporation.

(d) None of the stock to be transferred by Sub 1 to Sub 7 is "§ 306 stock" within the meaning of § 306(c) of the Internal Revenue Code.

(e) The transfer is not the result of the solicitation by a promoter, broker, or investment firm.

(f) Sub 1 will not retain any rights in the property transferred to Sub 7.

(g) No property transferred to Sub 7 will be leased back to Sub 1, other shareholders, or a related party.

(h) No income items, such as accounts receivable or commissions due, are being transferred to Sub 7; therefore, no stock will be received in exchange for accounts receivable.

(i) The stock of Sub 6 is not being transferred subject to any liabilities and no liabilities of Sub 1 are being assumed in connection with the transfer of such stock.

(j) Except for intercompany receivables and payables arising in the ordinary course of business, there is no indebtedness between Sub 7 and Sub 1 and there will be no indebtedness created in favor of Sub 1 as a result of the transaction.

(k) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.

(l) All exchanges will occur on approximately the same date.

(m) There is no plan or intention on the part of Sub 7 to redeem or otherwise reacquire any stock or indebtedness to be issued in the proposed transaction. Sub 1 has no plan or intent to dispose of the stock to be received in the exchange.

(n) Taking into account any issuance of additional shares of Sub 7 stock; any issuance of stock for services; the exercise of any Sub 7 stock rights, warrants, or subscriptions; a public offering of Sub 7 stock; and the sale, exchange, transfer by gift, or other disposition of any stock of Sub 7 to be received in the exchange, Sub 1 will be in "control" of Sub 7 within the meaning of § 368(c).

(o) Sub 1 will receive stock, securities or other property approximately equal to the fair market value of the property transferred to Sub 7.

(p) Sub 7 will remain in existence and retain and use the property transferred to it in a trade or business.

(q) There is no plan or intention by Sub 7 to dispose of the transferred property other than in the normal course of business operations.

(r) No loans, sales, exchanges or any other transactions are contemplated or will occur between Sub 1 and Sub 7 other than those described herein and arm's length transactions that might occur in the normal course of Sub 7's business operations.

(s) Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the proposed transaction.

(t) Sub 7 will not be an investment company within the meaning of § 351(e)(1) of the Code and § 1.351-1(c)(1)(ii) of the Income Tax Regulations.

(u) Sub 1 is not under the jurisdiction of a court in a Title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy any indebtedness of such debtor.

(v) Sub 7 will not be a "personal service corporation" within the meaning of § 269A.

The following representations have been made with respect to step 3 of the proposed transaction:

(w) Consummation of steps 3 and 4 of the proposed transaction will not result in federal income tax savings for the Controlled consolidated group.

(x) Services have not been and will not be performed by C2 for or on behalf of Sub 8 in connection with the transaction. No stock or securities will be issued for services rendered to or for the benefit of Sub 8 in connection with the proposed transaction. No stock or securities will be issued for indebtedness of Sub 8 that is not evidenced by a security or for interest on indebtedness of Sub 8 that accrued on or after the beginning of the holding period of C2 for the debt.

(y) None of the assets to be transferred were received by C2 as part of a plan of liquidation of another corporation.

(z) None of the stock to be transferred by C2 to Sub 8 is "§ 306 stock" within the meaning of § 306(c).

(aa) The transfer is not the result of the solicitation by a promoter, broker, or investment firm.

(bb) C2 will not retain any rights in the property transferred to Sub 8.

(cc) No property transferred to Sub 8 will be leased back to C2, other shareholders, or a related party.

(dd) No income items, such as accounts receivable or commissions due, are being transferred to Sub 8; therefore, no stock will be received in exchange for accounts receivable.

(ee) The stock of D1 is not being transferred subject to any liabilities and no liabilities of C2 are being assumed in connection with the transfer of such stock.

(ff) There is no indebtedness between Sub 8 and C2 and there will be no indebtedness created in favor of C2 as a result of the transaction.

(gg) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.

(hh) All exchanges will occur on approximately the same date.

(ii) There is no plan or intention on the part of Sub 8 to redeem or otherwise reacquire any stock or indebtedness to be issued in the proposed transaction. C2 has no plan or intent to dispose of the stock to be received in the exchange.

(jj) Taking into account any issuance of additional shares of Sub 8 stock; any issuance of stock for services; the exercise of any Sub 8 stock rights, warrants, or subscriptions; a public offering of Sub 8 stock; and the sale, exchange, transfer by gift, or other disposition of any stock of Sub 8 to be received in the exchange, C2 will be in "control" of Sub 8 within the meaning of § 368(c).

(kk) C2 will receive stock, securities or other property approximately equal to the fair market value of the property transferred to Sub 8.

(ll) Sub 8 will remain in existence and retain and use the property transferred to it in a trade or business.

(mm) There is no plan or intention by Sub 8 to dispose of the transferred property other than in the normal course of business operations.

(nn) No loans, sales, exchanges or any other transactions are

contemplated or will occur between C2 and Sub 8 other than those described herein and arm's length transactions that might occur in the normal course of Sub 8's business operations.

(oo) Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the proposed transaction.

(pp) Sub 8 will not be an investment company within the meaning of § 351(e)(1) of the Code and § 1.351-1(c)(1)(ii) of the Income Tax Regulations.

(qq) C2 is not under the jurisdiction of a court in a Title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy any indebtedness of such debtor.

(rr) Sub 8 will not be a "personal service corporation" within the meaning of § 269A.

Based upon the information and representations submitted with the original and supplemental ruling requests, we hold as follows with respect to step 1 of the proposed transaction:

(1) No gain or loss will be recognized to Sub 1 upon the transfer of the Sub 6 stock to Sub 7 solely in exchange for Sub 7 stock (§ 351(a)).

(2) Sub 1's basis in the Sub 7 stock to be received will equal the basis of the Sub 6 stock transferred in exchange therefor (§ 358(a)(1)).

(3) Sub 1's holding period for the Sub 7 stock to be received will include the period for which Sub 1 held the Sub 6 stock exchanged in the transaction, provided such stock was a capital asset in the hands of Sub 1 at the time of the exchange (§ 1223(1)).

(4) No gain or loss will be recognized to Sub 7 upon the receipt of the stock of Sub 6 solely in exchange for the issuance of Sub 7 stock (§ 1032(a)).

(5) Sub 7's basis in the stock of Sub 6 to be received from Sub 1 will be the same as Sub 1's basis in such stock immediately before the proposed transaction (§ 362(a)).

(6) Sub 7's holding period for the stock of Sub 6 will include the period for which Sub 1 held such stock (§ 1223(2)).

Based upon the information and representations submitted with the original and supplemental ruling requests, we hold as follows with respect to step 3 of the proposed transaction:

(7) No gain or loss will be recognized to C2 upon the transfer of the stock of D1 to Sub 8 solely in exchange for Sub 8 stock (§ 351(a)).

(8) C2's basis in the Sub 8 stock to be received will equal the basis of the D1 stock transferred in exchange therefor (§ 358(a)(1)).

(9) C2's holding period for the Sub 8 stock to be received will include the period for which C2 held the D1 stock exchanged in the transaction, provided such stock was a capital asset in the hands of C2 at the time of the exchange (§ 1223(1)).

(10) No gain or loss will be recognized to Sub 8 upon the receipt of the stock of D1 solely in exchange for the issuance of Sub 8 stock (§ 1032(a)).

(11) Sub 8's basis in the stock of D1 to be received from C2 will be the same as C2's basis in such stock immediately before the proposed transaction (§ 362(a)).

(12) Sub 8's holding period for the stock of D1 will include the period for which C2 held such stock (§ 1223(2)).

Furthermore, we hold that the consummation of steps 1 through 4 of the proposed transaction will not have an adverse effect on the rulings contained in the Prior Letter Ruling and such rulings will remain in full force and effect.

No opinion is expressed concerning whether the obligations distributed in steps 2 and 4 of the proposed transaction constitute debt or equity. Furthermore, no opinion is expressed whether steps 2 and 4 constitute excess distributions pursuant to § 172(h)(3)(C) of the Code. In addition, no opinion is expressed concerning the federal income tax treatment of the proposed transactions under other provisions of the Code or 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.

This supplemental letter ruling 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 should be attached to the federal income tax returns of the taxpayers involved for the taxable year in which the transaction covered by this

supplemental letter ruling is consummated.

In accordance with the power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely yours,
Assistant Chief Counsel (Corporate)

By:_____
Filiz A. Serbes
Assistant to the Chief, Branch 5