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Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:4 - PLR-110775-00

Date:

November 15, 2000

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 5A =

Sub 5B =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Partnership =

N Corp =

Sub N-1 =

Sub N-2 =

Sub N-3 =

Sub N-4 =

Sub N-5 =

Sub N-6 =

Sub N-7 =

Distributing LLC =

Business M ' =

Business N =

AA Corp =

BB Corp =

BB =

CC Notes =

DD Corp =

Date EE =

Date KK =

Date LL =

FF =

GG =

HH =

JJ =

MM =

NN =

OO =

5-Percent
Shareholders =

We respond to your request dated May 22, 2000 for rulings as to certain federal income tax consequences of a series of proposed transactions. This letter summarizes information in that letter and subsequent correspondence.

The rulings contained in this letter are based upon the facts 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 material submitted in support of the request for a ruling. Verification of this material may be required as part of the audit process.

Distributing is the common parent of a consolidated group that directly and indirectly owns corporations that are engaged in Businesses M and N. Business M is conducted through certain members of Distributing's consolidated group, including Sub 1, Sub 2, Sub 3, and Sub 4, each of which are wholly owned by Distributing. Business N is conducted by subsidiaries of N Corp, which is indirectly owned by Distributing as follows. Distributing owns the stock of Sub 5 and Sub 6. Sub 5 owns the stock of Sub 5A. Prior to Date KK, Sub 5A and Sub 6 together owned all the partnership interests in Partnership. Prior to Date LL, Partnership owned all the stock of N Corp. Sub 5A and Sub 6 have held their interests in Partnership for more than five years. Sub 5 also owns all the stock of Sub 5B. Distributing also owns all the stock of three inactive subsidiaries, Sub 7, Sub 8, and Sub 9, as well as the stock of Sub 10, AA Corp, and BB Corp.

N Corp is a holding company and the common parent of a consolidated group that owns all the stock of Subs N-1, N-2, N-3, N-4, N-5, N-6, and N-7, all of which actively conduct activities related to Business N. Prior to Date LL, N Corp was not a part of Distributing's consolidated group.

We have received financial information indicating that Sub 1, Sub 2, Sub 3, Sub 4, Sub N-1, Sub N-2, Sub N-3, Sub N-4, Sub N-5, Sub N-6, and Sub N-7 have had gross income and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing has required that N Corp have a substantially lower level of debt than comparable companies engaged in Business N because corporations conducting Business M generally have substantially lower debt, for reasons relating to the conduct of Business M that are not applicable to Business N. The proposed transaction will separate Business N from Business M to alleviate management and systemic problems arising from conducting these two businesses under the common ownership of Distributing. The following transactions are proposed (or, as indicated, have been recently completed), as part of the plan of separation:

(i) Sub 1 and Sub 10 recently contributed land and structures to Partnership in exchange for partnership interests.

(ii) Partnership recently distributed the stock of N Corp to its partners, Subs 5A and 6, in reduction of their partnership interests in Partnership.

(iii) Sub 5A will merge into Sub 5, with Sub 5 surviving.

(iv) Sub 5B will merge into Sub 5, with Sub 5 surviving.

(v) Sub 5 will be merged into a new limited liability company wholly owned by Distributing (Distributing LLC). The taxpayer represents that Distributing LLC will not elect to be treated as a corporation for federal income tax purposes. See § 301.7701-3(b)(i)(ii) of the Income Tax Regulations.

(vi) Sub 6 will be merged into Distributing LLC.

(vii) Three inactive subsidiaries (Subs 7, 8, and 9) will merge into Distributing LLC.

(viii) N Corp will transfer assets, including intercompany receivables and the stock of subsidiaries of N Corp that do not meet the active trade or business requirement of § 355(b) of the Internal Revenue Code, to N-1, N-2, N-3, N-4, N-5, N-6, and N-7 in deemed exchange for stock and the assumption of liabilities. Distributing represents that to the best of its knowledge and belief, these transfers will qualify under § 351.

(ix) Distributing will transfer the stock of AA Corp and BB Corp to Distributing LLC.

(x) Distributing LLC will distribute to Distributing: (a) the stock of N Corp, (b) debt obligations owed by Distributing to now-dissolved Subs 5, 5A, 5B, 6, 7, and 8, and (c) the assets of Sub 9.

(xi) Distributing will transfer to recently formed Controlled (a) the stock of Subs

1, 2, 3, and 4 (all conducting business M), (b) various other assets related to Business M including the stock of certain first-tier subsidiaries of Distributing including Sub 10 (the "M Assets"), and (c) Distributing's interest in Distributing LLC in exchange for all of Controlled's outstanding stock and the assumption of all Distributing's liabilities other than certain commercial paper debt, the CC Notes, and Distributing's debt to DD Corp.

(xii) Controlled will transfer the M Assets to Subs 1, 3, and 4, who may, in turn, assume related liabilities.

(xiii) Distributing will distribute the stock of Controlled to its shareholders pro rata (the "Distribution").

After the Distribution, it is expected that Distributing will have six directors on its Board of Directors, while Controlled will have twelve. Distributing and Controlled will have two common directors, neither of which is or will be an employee of Distributing or Controlled.

In connection with the Distribution, Distributing and Controlled will enter into a tax sharing agreement (the "Tax Sharing Agreement"), that will set forth each party's rights and obligations with respect to tax matters for periods before and after the date of the Distribution. The Tax Sharing Agreement will detail Distributing's and Controlled's responsibilities relating to tax payments and refunds, the filing of returns, and the conduct of audits. The Tax Sharing Agreement will also provide for cooperation with respect to certain tax matters and for the exchange of information and retention of records that may affect the tax liability of either party. Certain payments might be made between Distributing, Controlled, or their respective subsidiaries pursuant to the Tax Sharing Agreement after the Distribution.

The following representations have been made concerning the merger of Sub 5A described in step (iii), the merger of Sub 5B described in step (iv), the merger of Sub 5 into Distributing LLC described in step (v), and the merger of Sub 6 into Distributing LLC described in step (vi). You request that each such merger be treated as a liquidation described in § 332. With regard to each such transaction, except where a specific corporation or other entity is referred to, (a) "Subsidiary" refers to Sub 5A in step (iii), Sub 5B in Step (iv), Sub 5 in step (v), and Sub 6 in step (vi), and (b) "Parent" refers to Sub 5 in steps (iii) and (iv), and Distributing (the sole owner of Distributing LLC) in steps (v) and (vi).

(a) Parent, on the adoption of the plan of liquidation, and at all times until the final liquidating distribution is completed, will be the owner of at least 80 percent of the single outstanding class of Subsidiary stock.

(b) No shares of Subsidiary stock will have been redeemed during the 3 years preceding the adoption of the plan of liquidation of Subsidiary.

(c) All distributions from Subsidiary to Parent pursuant to the plan of complete liquidation will be made within a single taxable year of Subsidiary.

(d) As soon as the first liquidation distribution has been made, Subsidiary will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and distributing its remaining assets to its shareholder.

(e) Subsidiary will retain no assets following the final liquidating distribution.

(f) Other than the distribution by Partnership of the stock of N Corp to Sub 5A and Sub 6 in step (ii), Sub 5A and Sub 6 will not have acquired assets in a nontaxable transaction at any time, except for acquisitions occurring more than 3 years before adoption of the plan of liquidation.

(g) Sub 5B did not acquire assets in a nontaxable transaction at any time, except for acquisitions occurring more than 3 years before adoption of the plan of liquidation.

(h) Other than the receipt of assets as a result of the liquidations of Sub 5A and Sub 5B, Sub 5 will not have acquired assets in a nontaxable transaction at any time, except for acquisitions occurring more than 3 years before adoption of the plan of liquidation.

(i) Other than the merger of Sub 5 into Distributing LLC and the transactions described in steps (x) and (xi) above, no assets of Sub 5, Sub 5A, Sub 5B, or Sub 6 have been, or will be, disposed of by either Sub 5, Sub 5A, Sub 5B, Sub 6, or Distributing LLC except for dispositions in the ordinary course of business and dispositions occurring more than 3 years before adoption of the plan of liquidation.

(j) Other than the merger of Sub 5 into Distributing LLC, and the subsequent transfer by Distributing of the interest in Distributing LLC to Controlled, the liquidation of Subs 5A and Sub 5B 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 each of Sub 5A and Sub 5B if persons holding, directly, or indirectly, more than 20 percent in value of Sub 5A or Sub 5B stock also hold more than 20 percent in value of the stock of Recipient. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of § 318(a), as modified by § 304(c)(3). The fair market value of the assets of each of Sub 5A and Sub 5B that will be retained by Distributing LLC when the interest in Distributing LLC is transferred to Controlled will be less than JJ percent of the fair market value of the total assets of each corporation immediately before the merger of Sub 5A and Sub 5B into Sub 5 LLC.

(k) Other than the transfer of the interest in Distributing LLC to Controlled, the liquidation of Sub 5 and Sub 6 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 each of Sub 5 and Sub 6 if persons holding, directly, or indirectly, more than 20 percent in value of Sub 5 or Sub 6 stock also hold more than 20 percent in value of the stock of Recipient. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of § 318(a), as modified by § 304(c)(3). The fair market value of the assets of each of Sub 5 and Sub 6 that will be retained by Distributing LLC when the interest in Distributing LLC is transferred to Controlled will be less than JJ percent of the fair market value of the total assets of each corporation immediately before the merger of Sub 5 and Sub 6 into Distributing LLC.

(l) Before adoption of the liquidation plan, no assets of Subsidiary have been distributed in kind, transferred, or sold to Parent, except for transfers in the ordinary course of business and transactions occurring more than 3 years before adoption of the liquidation plan.

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

(n) The fair market value of the assets of Subsidiary will exceed its liabilities both at the date of the adoption of the plan of liquidation and immediately before the time that the first liquidating distribution is made.

(o) There is no intercorporate debt between Sub 5 and Sub 5A, or between Sub 5 and Sub 5B, and none has been canceled, forgiven, or discounted, except for transactions that occurred more than two years before adoption of the liquidation plan (or alternatively if such date is later) except for transactions before the date Sub 5 initially acquired Sub 5A stock or Sub 5B stock, as the case may be.

(p) As of Date EE, Distributing owed approximately FF dollars to Sub 5, approximately GG dollars to Sub 5A and approximately HH dollars to Sub 5B. Sub 5 will succeed to Distributing's obligations to Sub 5A and Sub 5B as a result of the liquidation of those two subsidiaries. Other than those obligations, there is no intercorporate debt between Distributing and Sub 5, and none has been canceled, forgiven, or discounted, except for transactions that occurred more than two years before adoption of the liquidation plan (or alternatively if such date is later) except for transactions before the date Distributing initially acquired Sub 5 stock.

(q) As of Date EE, Distributing owed approximately MM dollars to Sub 6. Other than this obligation, there is no intercorporate debt between Distributing and Sub 6, and none has been canceled, forgiven, or discounted, except for transactions that occurred more than two years before adoption of the liquidation plan (or alternatively if such date is later) except for transactions before the date Distributing initially acquired Sub 6 stock.

(r) Parent is not an organization that is exempt from federal income tax under

§ 501 or any other section of the Code.

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

The following representations have been submitted with respect to the liquidations of Sub 7, Sub 8, and Sub 9 described in step (vii):

(a2) Distributing, on the adoption of the plan of liquidation, and at all times until the final liquidating distribution is completed, will be the owner of at least 80 percent of the single outstanding class of each of Sub 7, Sub 8, and Sub 9 stock.

(b2) No shares of Sub 7, Sub 8, or Sub 9 stock will have been redeemed during the 3 years preceding the adoption of the plan of liquidation of each corporation.

(c2) All distributions from Sub 7, Sub 8, and Sub 9 to Distributing pursuant to the plan of complete liquidation will be made within a single taxable year of each liquidating corporation.

(d2) As soon as the first liquidation distribution has been made, each of Sub 7, Sub 8, and Sub 9 will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and distributing its remaining assets to its shareholder.

(e2) Neither Sub 7, Sub 8, or Sub 9 will retain any assets following the final liquidating distribution.

(f2) No assets of either Sub 7, Sub 8, or Sub 9 will have been acquired in a nontaxable transaction at any time, except for acquisitions occurring more than 3 years before adoption of the plan of liquidation.

(g2) No assets of Sub 7, Sub 8, or Sub 9, will have been, or will be, disposed of by either Sub 7, Sub 8, Sub 9, or Distributing except for dispositions in the ordinary course of business and dispositions occurring more than 3 years before adoption of the plan of liquidation.

(h2) None of the liquidations of Sub 7, Sub 8, or Sub 9 will 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 each of Sub 7, Sub 8, and Sub 9 if persons holding, directly, or indirectly, more than 20 percent in value of each liquidating corporation also hold more than 20 percent in value of the stock of Recipient. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of § 318(a), as modified by § 304(c)(3).

(i2) Before adoption of the liquidation plan, no assets of Sub 7, Sub 8, or Sub 9 will have been distributed in kind, transferred, or sold to Distributing, except for transfers

in the ordinary course of business and transactions occurring more than 3 years before adoption of the liquidation plan.

(j2) Sub 7, Sub 8, and Sub 9 will report all earned income represented by assets that will be distributed to their respective shareholders such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

(k2) The fair market value of the assets of each of Sub 7, Sub 8, and Sub 9 will exceed its liabilities both at the date of the adoption of the plan of liquidation and immediately before the time that the first liquidating distribution is made.

(l2) As of date EE, Distributing owed approximately NN dollars to Sub 7 and approximately OO dollars to Sub 8. Other than these amounts, there is no intercorporate debt between Distributing and Sub 7, Sub 8, and Sub 9, and none has been canceled, forgiven, or discounted, except for transactions that occurred more than two years before adoption of the liquidation plan (or alternatively if such date is later) except for transactions before the date Distributing initially acquired Sub 7 stock, Sub 8 stock, or Sub 9 stock, as the case may be.

(m2) Distributing is not an organization that is exempt from federal income tax under § 501 or any other section of the Code.

(n2) All other transactions undertaken contemporaneously with, or in anticipation of, in conjunction with, or in any other way related to, the proposed liquidation of Sub 7, Sub 8, and Sub 9 have been fully disclosed.

The following representations have been made in connection with the transfer by Distributing of the stock of Subs 1, 2, 3, and 4, the M assets, and the interest in Distributing LLC to Controlled (step (xi)):

(a3) No stock or securities will be issued for services rendered to or for the benefit of Controlled in connection with the proposed transaction, and no stock or securities will be issued for indebtedness of Controlled that is not evidenced by a security or for interest on indebtedness of Controlled that accrued on or after the beginning of the holding period of the transferor for the debt.

(b3) None of the stock to be transferred is "section 306 stock" within the meaning of § 306(c).

(c3) The transfer is not the result of the solicitation by a promoter, broker, or investment house.

(d3) Distributing will not retain any rights in the property transferred to Controlled.

(e3) Any debt relating to the stock being transferred that is being assumed (or

to which such stock was subject) was incurred to acquire such stock and was incurred when such stock was acquired, and the transferor is transferring all of the stock for which the acquisition indebtedness being assumed (or to which such stock was subject) was incurred.

(f3) The adjusted basis and the fair market value of the assets transferred by Distributing to Controlled will, in each instance, be equal to or exceed the sum of the liabilities assumed by Controlled plus any liabilities to which the transferred assets are subject.

(g3) The liabilities of Distributing to be assumed by Controlled were incurred in the ordinary course of business and are associated with the assets to be transferred.

(h3) There is no indebtedness between Distributing and Controlled and there will be no indebtedness created in favor of Distributing as a result of the transaction.

(i3) The transfers and exchanges will occur under a plan agreed upon before the Exchange in which the rights of the parties are defined.

(j3) All exchanges will occur on approximately the same date.

(k3) There is no plan or intention on the part of Controlled to redeem or otherwise reacquire any stock or indebtedness issued in the proposed transaction.

(l3) Taking into account any issuance of additional shares of Controlled stock; any issuance of stock for services; the exercise of any Controlled stock rights, warrants, or subscriptions; a public offering of Controlled stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of Controlled to be received in the exchange, Distributing or its shareholders will be in "control" of Controlled under § 368(c).

(m3) Distributing will receive stock approximately equal to the fair market value of the property transferred to Controlled.

(n3) Controlled will remain in existence and retain and use the property transferred to it in a trade or business.

(o3) Other than the transfer of the M Assets to Sub 1, Sub 3, and Sub 4, as described above, there is no plan or intention by Controlled to dispose of the transferred property other than in the normal course of business operations.

(p3) Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the proposed transaction.

(q3) Controlled will not be an investment company within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii) of the Income Tax Regulations.

(r3) Distributing 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 the indebtedness of such debtor.

(s3) Controlled will not be a "personal service corporation" within the meaning of § 269A.

The following representations have been made in connection with the transfer of the M assets from Controlled to Sub 1, Sub 3, and Sub 4 (step (xii)). In each case, the term "Transferee" refers to Sub 1, Sub 3, or Sub 4, as appropriate:

(a4) No stock or securities will be issued for services rendered to or for the benefit of Transferee in connection with the proposed transaction, and no stock or securities will be issued for indebtedness of Transferee that is not evidenced by a security or for interest on indebtedness of the transferee that accrued on or after the beginning of the holding period of the transferor for the debt.

(b4) None of the stock to be transferred is "section 306 stock" within the meaning of § 306(c).

(c4) The transfer is not the result of the solicitation by a promoter, broker, or investment house.

(d4) Controlled will not retain any rights in the property transferred to Transferee.

(e4) Any debt relating to the stock being transferred that is being assumed (or to which such stock is subject) was incurred to acquire such stock and was incurred when such stock was acquired, and Controlled is transferring all of the stock to which the acquisition indebtedness being assumed (or to which such stock was subject) was incurred.

(f4) The adjusted basis and the fair market value of the assets transferred by Controlled to Transferee will, in each instance, be equal to or exceed the sum of the liabilities assumed by Controlled plus any liabilities to which the transferred assets are subject.

(g4) The liabilities of Controlled to be assumed by Transferee were incurred in the ordinary course of business and are associated with the assets to be transferred.

(h4) There is no indebtedness between Controlled and Sub 1, except for Distributing's debt to Sub 1 which was assumed by Controlled pursuant to step (xi) above, and there will be no indebtedness created in favor of Controlled as a result of the transaction.

(i4) There is no indebtedness between Controlled and each of Sub 3 and Sub 4,

and there will be no indebtedness created in favor of Controlled as a result of the transaction.

(j4) The transfers and exchanges will occur under a plan agreed upon before the exchange in which the rights of the parties are defined.

(k4) All exchanges will occur on approximately the same date.

(l4) There is no plan or intention on the part of Transferee to redeem or otherwise reacquire any stock or indebtedness issued in the proposed transaction.

(m4) Taking into account any issuance of additional shares of Transferee stock; any issuance of stock for services; the exercise of any Transferee stock rights, warrants, or subscriptions; a public offering of Transferee stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of Transferee to be received in the exchange, Controlled will be in "control" of Transferee under § 368(c) immediately after the exchange.

(n4) Controlled will receive stock approximately equal to the fair market value of the property transferred to Transferee.

(o4) Transferee will remain in existence and retain and use the property transferred to it in a trade or business.

(p4) There is no plan or intention by Transferee to dispose of the transferred property other than in the normal course of business operations.

(q4) Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the proposed transaction.

(r4) Transferee will not be an investment company within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii) of the Income Tax Regulations.

(s4) Transferee 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 the indebtedness of such debtor.

(t4) Transferee will not be a "personal service corporation" within the meaning of § 269A.

The following representations have been made in connection with the distribution of Controlled stock by Distributing:

(a5) The indebtedness owed by Controlled to Distributing, if any, after the distribution of Controlled stock will not constitute stock or securities.

(b5) No part of the consideration distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than as a shareholder of the corporation.

(c5) The five years of financial information submitted on behalf of Distributing and its subsidiaries represents the corporations' present operations, and with regard to each corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(d5) Immediately after the distribution, the fair market value of the assets relied on by each of Sub N-1, Sub N-2, Sub N-3, Sub N-4, Sub N-5, Sub N-6, and Sub N-7 to satisfy the active trade or business requirement on behalf of N Corp and ultimately Distributing will constitute at least 5 percent of the fair market value of the gross assets of the corporation owning such assets. In addition, the fair market value of the assets relied on by each of Sub 1, Sub 2, Sub 3, and Sub 4 to satisfy the active trade or business requirement on behalf of Controlled will constitute at least 5 percent of the fair market value of the gross assets of the corporation owning such assets.

(e5) Immediately after the distribution, at least 90 percent of the fair market value of the gross assets of Distributing, N Corp, and Controlled will consist of the stock and securities of controlled corporations that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(f5) Following the transaction, Distributing and Controlled through their wholly owned subsidiaries will each continue the active conduct of its business, independently and with separate employees.

(g5) The Distribution of the stock of Controlled is carried out for the corporate business purpose of separating Business N from Business M to alleviate various management and systemic problems that are exacerbated by conducting two distinct business operations in a single group. The distribution of the stock of Controlled is motivated, in whole or substantial part, by this corporate business purpose.

(h5) There is no plan or intention by any shareholder who holds 5 percent or more of the stock of Distributing, and the management of Distributing, to its best knowledge, is not aware of any plan or intention on the part of any particular remaining shareholder of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any stock of either Distributing or Controlled after the transaction.

(i5) None of Distributing's 5 percent shareholders will have actively participated in the management and operation of Distributing (or a related entity) before Distributing's distribution of Controlled stock, and none of such shareholders will participate actively in the management or operation of Distributing (or a related entity) or Controlled (or a related entity) after the distribution of Controlled stock.

(j5) 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 transaction, other than through stock purchases meeting the requirements of § 4.05(1)(b) of Rev. Proc. 96-30.

(k5) Except for the merger of a newly created subsidiary into Distributing (with Distributing surviving) in order to effectuate the change of Distributing's name under state law, 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 transaction, except in the ordinary course of business.

(l5) The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing will each equal or exceed the amount of the liabilities assumed (as determined under § 357(d)) by Controlled.

(m5) The liabilities assumed (as determined under § 357(d)) in the transaction were incurred in the ordinary course of business and are associated with the assets being transferred.

(n5) 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 the amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect an early disposition of the property.

(o5) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.

(p5) Other than liabilities which might arise under the Tax Sharing Agreement or the agreement regarding the Distribution, no intercorporate debt will exist between Distributing and Controlled at the time of or after the distribution of Controlled stock.

(q5) 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 § 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, Distributing's excess loss account, if any, with respect to the Controlled stock will be included in income immediately before the distribution (see § 1.1502-19).

(r5) Payments made in connection with any 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.

(s5) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(t5) No person holds, and no person will hold as of the date of the distribution, disqualified stock as defined in § 355(d)(3)) that constitutes a 50 percent or greater interest in either Distributing or Controlled. Distributing is not aware of any persons acting in concert in connection with an acquisition of Distributing stock that would cause these persons to be treated as a single person under § 355(d)(7) that acquired a 50 percent or greater interest (as defined in § 355(d)(4)) in either Distributing or Controlled, nor is Distributing aware of any person entering into a put or call option, short sale, or other risk-limiting device or transaction involving Distributing stock that would cause § 355(d)(6) to apply to suspend the five-year period of § 355(d)(3) during the period such risk-limiting device or transaction limits risk of loss.

(u5) The Distribution 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 combined voting power of all classes of stock of Distributing or Controlled entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing or Controlled stock. Acquisitions described in § 355(e)(3) will not be taken into account for purposes of the preceding sentence.

Based solely on the information received and the representations set forth above, we rule as follows:

Liquidation Rulings

(1) The merger of Sub 5A into Sub 5 will be treated for federal income tax purposes as a complete liquidation of Sub 5A under § 332 (§ 1.332-2(d)).

(2) Sub 5 will recognize no gain or loss on the receipt of the assets of Sub 5A in complete liquidation (§ 332(a)).

(3) Sub 5A will recognize no gain or loss on the deemed distribution of its assets to Sub 5 (§ 337(a)).

(4) The basis of each asset received by Sub 5 in the liquidation of Sub 5A will equal the basis of that asset in the hands of Sub 5A immediately before its liquidation (§ 334(b)(1)).

(5) The holding period of each asset in the hands of Sub 5 will include the period during which the asset was held by Sub 5A (§ 1223(2)).

(6) Sub 5 will succeed to, and take into account, the items of Sub 5A described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383, and 384, if applicable, and the regulations thereunder (§ 381(a) and § 1.381(a)-1).

(7) Sub 5 will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Sub 5A as of the date of complete liquidation (§ 381(c)(2) and § 1.381(c)(2)-1). Any deficit in earnings and profits of Sub 5A or Sub 5

will be used only to offset earnings and profits accumulated after the date of complete liquidation (§ 381(c)(2)(B)).

(8) The merger of Sub 5B into Sub 5 will be treated for federal income tax purposes as a complete liquidation of Sub 5B under § 332. (§ 1.332-2(d)).

(9) Sub 5 will recognize no gain or loss on the receipt of the assets of Sub 5B in complete liquidation (§ 332(a)).

(10) Sub 5B will recognize no gain or loss on the deemed distribution of its assets to Sub 5 (§ 337(a)).

(11) The basis of each asset received by Sub 5 in the liquidation of Sub 5B will equal the basis of that asset in the hands of Sub 5B immediately before its liquidation (§ 334(b)(1)).

(12) The holding period of each asset in the hands of Sub 5 will include the period during which the asset was held by Sub 5B (§ 1223(2)).

(13) Sub 5 will succeed to, and take into account, the items of Sub 5B described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383, and 384, if applicable, and the regulations thereunder (§ 381(a) and § 1.381(a)-1).

(14) Sub 5 will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Sub 5B as of the date of complete liquidation (§ 381(c)(2) and § 1.381(c)(2)-1). Any deficit in earnings and profits of Sub 5B or Sub 5 will be used only to offset earnings and profits accumulated after the date of complete liquidation (§ 381(c)(2)(B)).

(15) The merger of Sub 5 into Distributing LLC, which is disregarded as an entity separate from its single owner, Distributing, will be treated for federal income tax purposes as a complete liquidation of Sub 5 under § 332. (§ 1.332-2(d) and § 301.7701-3(b)(1)(ii)).

(16) Distributing will recognize no gain or loss on the receipt of the assets of Sub 5 in complete liquidation (§ 332(a)).

(17) Sub 5 will recognize no gain or loss on the deemed distribution of its assets to Distributing (§ 337(a)).

(18) The basis of each asset received by Distributing in the liquidation of Sub 5 will equal the basis of that asset in the hands of Sub 5 immediately before its liquidation (§ 334(b)(1)).

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

(20) Distributing will succeed to, and take into account, the items of Sub 5 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383, and 384, if applicable, and the regulations thereunder (§ 381(a) and § 1.381(a)-1).

(21) Distributing will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Sub 5 as of the date of complete liquidation (§ 381(c)(2) and § 1.381(c)(2)-1). Any deficit in earnings and profits of Sub 5 or Distributing will be used only to offset earnings and profits accumulated after the date of complete liquidation (§ 381(c)(2)(B)).

(22) The merger of Sub 6 into Distributing LLC, which is disregarded as an entity separate from its single owner, Distributing, will be treated for federal income tax purposes as a complete liquidation of Sub 6 under § 332 (§ 1.332-2(d) and § 301.7701-3(b)(1)(ii)).

(23) Distributing will recognize no gain or loss on the receipt of the assets of Sub 6 in complete liquidation (§ 332(a)).

(24) Sub 6 will recognize no gain or loss on the deemed distribution of its assets to Distributing (§ 337(a)).

(25) The basis of each asset received by Distributing in the liquidation of Sub 6 will equal the basis of that asset in the hands of Sub 6 immediately before its liquidation (§ 334(b)(1)).

(26) The holding period of each asset in the hands of Distributing will include the period during which the asset was held by Sub 6 (§ 1223(2)).

(27) Distributing will succeed to, and take into account, the items of Sub 6 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383, and 384, if applicable, and the regulations thereunder (§ 381(a) and § 1.381(a)-1).

(28) Distributing will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Sub 6 as of the date of complete liquidation (§ 381(c)(2) and § 1.381(c)(2)-1). Any deficit in earnings and profits of Sub 6 or Distributing will be used only to offset earnings and profits accumulated after the date of complete liquidation (§ 381(c)(2)(B)).

(29) The merger of Sub 7 into Distributing LLC, which is disregarded as an entity separate from its single owner, Distributing, will be treated for federal income tax purposes as a complete liquidation of Sub 7 under § 332 (§ 1.332-2(d) and § 301.7701-3(b)(1)(ii)).

(30) Distributing will recognize no gain or loss on the receipt of the assets of Sub 7 in complete liquidation (§ 332(a)).

(31) Sub 7 will recognize no gain or loss on the deemed distribution of its assets to Distributing (§ 337(a)).

(32) The basis of each asset received by Distributing in the liquidation of Sub 7 will equal the basis of that asset in the hands of Sub 7 immediately before its liquidation (§ 334(b)(1)).

(33) The holding period of each asset in the hands of Distributing will include the period during which the asset was held by Sub 7 (§ 1223(2)).

(34) Distributing will succeed to, and take into account, the items of Sub 7 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383, and 384, if applicable, and the regulations thereunder (§ 381(a) and § 1.381(a)-1).

(35) Distributing will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Sub 7 as of the date of complete liquidation (§ 381(c)(2) and § 1.381(c)(2)-1). Any deficit in earnings and profits of Sub 7 or Distributing will be used only to offset earnings and profits accumulated after the date of complete liquidation (§ 381(c)(2)(B)).

(36) The merger of Sub 8 into Distributing LLC, which is disregarded as an entity separate from its single owner, Distributing, will be treated for federal income tax purposes as a complete liquidation of Sub 8 under § 332. (§ 1.332-2(d) and § 301.7701-3(b)(1)(ii)).

(37) Distributing will recognize no gain or loss on the receipt of the assets of Sub 8 in complete liquidation (§ 332(a)).

(38) Sub 8 will recognize no gain or loss on the deemed distribution of its assets to Distributing (§ 337(a)).

(39) The basis of each asset received by Distributing in the liquidation of Sub 8 will equal the basis of that asset in the hands of Sub 8 immediately before its liquidation (§ 334(b)(1)).

(40) The holding period of each asset in the hands of Distributing will include the period during which the asset was held by Sub 8 (§ 1223(2)).

(41) Distributing will succeed to, and take into account, the items of Sub 8 described in § 381(a), subject to the conditions and limitations specified in §§ 381, 382, 383, and 384, if applicable, and the regulations thereunder (§ 381(a) and § 1.381(a)-1).

(42) Distributing will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Sub 8 as of the date of complete liquidation (§ 381(c)(2) and § 1.381(c)(2)-1). Any deficit in earnings and profits of Sub 8 or Distributing will be used only to offset earnings and profits accumulated after the date of

complete liquidation (§ 381(c)(2)(B)).

(43) The merger of Sub 9 into Distributing LLC, which is disregarded as an entity separate from its single owner, Distributing, will be treated for federal income tax purposes as a complete liquidation of Sub 9 under § 332. (§ 1.332-2(d) and § 301.7701-3(b)(1)(ii)).

(44) Distributing will recognize no gain or loss on the receipt of the assets of Sub 9 in complete liquidation (§ 332(a)).

(45) Sub 9 will recognize no gain or loss on the deemed distribution of its assets to Distributing (§ 337(a)).

(46) The basis of each asset received by Distributing in the liquidation of Sub 9 will equal the basis of that asset in the hands of Sub 9 immediately before its liquidation (§ 334(b)(1)).

(47) The holding period of each asset in the hands of Distributing will include the period during which the asset was held by Sub 9 (§ 1223(2)).

(48) Distributing will succeed to, and take into account, the items of Sub 9 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383, and 384, if applicable, and the regulations thereunder (§ 381(a) and § 1.381(a)-1).

(49) Distributing will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Sub 9 as of the date of complete liquidation (§ 381(c)(2) and § 1.381(c)(2)-1). Any deficit in earnings and profits of Sub 9 or Distributing will be used only to offset earnings and profits accumulated after the date of complete liquidation (§ 381(c)(2)(B)).

Contribution Rulings

(50) No gain or loss will be recognized on the transfer of the stock of Subs 1, 2, 3, and 4, the M Assets, and the assets within Distributing LLC from Distributing to Controlled in exchange for Controlled stock and the assumption of liabilities (the "First Contribution") (§ 351(a) and (c); § 357(a); Rev. Rul. 77-449, 1977-2 C.B. 110).

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

(52) The basis of each asset received by Controlled in the First Contribution will equal the basis of that asset in the hands of Distributing immediately before the exchange (§ 362(a)).

(53) The holding period of each asset received by Controlled in the First Contribution will include the period during which the transferor held the asset

(§ 1223(2)).

(54) The basis of the Controlled stock received by Distributing in the First Contribution will equal the basis of the transferred assets immediately before the transfer, reduced by any assumed liabilities (§ 358(a) and (d)).

(55) No gain or loss will be recognized on the transfer of the M Assets from Controlled to Sub 1, Sub 3, and Sub 4, respectively, in exchange for stock of each respective corporation (the "Second Contribution") (§ 351(a) and (c) and Rev. Rul. 77-449).

(56) No gain or loss will be recognized by Sub 1, Sub 3, and Sub 4 on the Second Contribution (§ 1032(a)).

(57) The basis of each asset received by Sub 1, Sub 3, and Sub 4 in the Second Contribution will equal the basis of that asset in the hands of Controlled immediately before the exchange (§ 362(a)).

(58) The holding period of each asset received by Sub 1, Sub 3, and Sub 4 in the Second Contribution will include the period during which the transferor held the asset (§ 1223(2)).

(59) The respective bases of the stock of Sub 1, Sub 3, and Sub 4 owned by Controlled will be increased by the basis of the assets transferred by Controlled to such corporation in the Second Contribution immediately before that transfer (§ 358(a)).

Spin-off Rulings

(60) No gain or loss will be recognized by Distributing on the distribution of the stock of Controlled to Distributing's shareholders pro rata (§ 355(c)(1)).

(61) No gain or loss will be recognized by (and no amount will be included in the income of) a Distributing shareholder on the distribution of Controlled stock (§ 355(a)(1)).

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

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

(64) Earnings and profits will be allocated between Distributing and Controlled in accordance with §§ 312(h) and 1.312-10(a).

(65) Payments made between any of Distributing, Controlled, or their respective subsidiaries under the Tax Sharing Agreement regarding tax liabilities 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 or ascertainable until after the Distribution, will be treated as occurring immediately before the Distribution.

Caveats

We express no opinion on the federal income tax treatment of the proposed transaction under other provisions of the Code or regulations (including the consolidated return 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.

Procedural Statements

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

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

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

Sincerely,
Associate Chief Counsel (Corporate)
By: Stephen P. Fattman
Assistant to the Chief
Branch 4