INTERNAL REVENUE SERVICE

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December 15, 2000

LEGEND:

Company =

Subsidiary =

LLC =

Option Plans =

This is in reply to a letter dated July 13, 2000, that was submitted on behalf of Company by its authorized representative, in which rulings are requested that, under the circumstances described below, Company will be a “parent corporation,” as that term is used in sections 421 through 424 of the Internal Revenue Code, with respect to options granted in its stock to employees of LLC; and that LLC will be treated as part of a "subsidiary corporation" of Company, as defined in section 424(f) of the Code. This letter responds to ruling requests number three and four in the submission. We understand that a separate office of the Internal Revenue Service is responding to requests number one and two.

The facts submitted are that Company, which is a member of a controlled group of corporations, owns 100 percent of Subsidiary, which, in turn, is the sole member of LLC, a limited liability company. It is represented that, under the rules of section 301.7701-3(a) of the Procedural Income Tax Regulations, L.L.C. will not make an election to be taxed as a corporation and, therefore, will be disregarded for federal tax purposes (its assets are considered to be owned by Subsidiary), pursuant to the default classification under section 301.7701-3(b).

As part of a restructuring of the corporate group, Company intends to transfer certain employees of Subsidiary to LLC. Some of those employees have outstanding

options for Company shares granted under one or more of Company's Option Plans. The transfer of the employees to LLC is not considered a termination of employment for purposes of Company's (a profit-sharing plan with an employee stock ownership feature), and new employees of LLC will be eligible to participate in the upon meeting its eligibility requirements.

In pertinent portion, section 421(a) of the Code provides that, if a share of stock is transferred to an individual in a transfer in which the requirements of section 422(a) or 423(a) are met, no income shall result to the individual at the time of the transfer, no deduction under section 162 shall be allowable at any time to the employer corporation with respect to the share transferred, and no amount other than the price paid under the option shall be considered as received by the employer corporation for the share transferred.

Sections 422(a) and 423(b) of the Code respectively provide that section 421 will apply to the transfer of a share of stock to an individual pursuant to the exercise of an option granted under an employee stock purchase plan if (1) no disposition of the stock is made by the individual within two years after the date of grant of the option nor within one year after the transfer of such share to him or her, and (2) at all times during the period beginning with the date that the option is granted and ending 3 months before the date of its exercise, the optionee remains an employee of the granting corporation, a parent or subsidiary corporation of such corporation, or a corporation (or parent or subsidiary corporation of such corporation) issuing or assuming a stock option in a transaction to which section 424(a) applies. Section 1.421-7(h) of the regulations provides that, for purposes of these determinations, the question of whether an individual is an "employee" of a particular entity is decided under the rules contained in section 3401(c) of the Code and the regulations thereunder.

For purposes of sections 421 through 424 of the Code, section 424(e) defines the term "parent corporation" as any corporation (other than the employer corporation) in an unbroken chain of corporations ending with the employer corporation if, at the time of the granting of the option, each of the corporations other than the employer corporation in the unbroken chain owns stock possessing 50 percent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. Additionally, section 424(f) defines the term "subsidiary corporation" as any corporation (other than the employer corporation) in an unbroken chain of corporations beginning with the employer corporation if, at the time of the granting of the option,each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50 percent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

Section 301.7701-2(b)(2) of the regulations defines a "corporation" as an association as determined under section 301.7701-3. Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under sections 301.7701-2(b)(1) and -2(b)(3) through (8) is an “eligible entity” that may elect its classification for federal tax purposes. An eligible entity with at least two members may elect to be classified as either an association or a partnership. An eligible entity with a single

member may elect to be classified as an association or to be disregarded as an entity separate from its owner.

Accordingly, based on the above information and Company's representations, we rule as follows:

1. Provided that Company qualifies as a "parent corporation" with respect to Subsidiary under the rules of section 424(e) of the Code, Company will be a "parent corporation," for purposes of sections 421 through 424 of the Code, with respect to options granted in its stock to employees of LLC; and

2. Provided that Subsidiary qualifies as a "subsidiary corporation" of Company under the rules of section 424(f) of the Code, LLC will be treated as part of a "subsidiary corporation" of Company for purposes of sections 421 through 424 of the Code.

Except as ruled above, no opinion is expressed regarding the federal tax consequences of the transaction described above under any provision of the Internal Revenue Code. In particular, we specifically note that no opinion is expressed regarding the treatment, under sections 421 through 424 of the Code, of either the the Option Plans, or any options granted under those programs; that no opinion is expressed regarding application of the rules of section 1.421-7(h) of the regulations to the circumstances described above; and that no opinion is expressed regarding the parties' federal employment tax obligations relative thereto.

A copy of this letter must be attached to any income tax return to which it is relevant. This ruling is directed only to the taxpayer(s) requesting it. Section 6110(j)(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.

Sincerely yours,
CHARLES T. DELIEE
Chief, Executive Compensation Branch
Office of the Division Counsel /
Associate Chief Counsel
(Tax Exempt and Government Entities)

Enclosures (2):
Copy of this letter
Copy for 6110 purposes