

**Internal Revenue Service**

**Department of the Treasury**

Number: **200120015**  
Release Date: 5/18/2001  
Index Numbers: 355.01-00, 368.04-00

Washington, DC 20224

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CC:CORP:Br4 PLR-115364-00  
Date:  
February 09, 2001

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This letter responds to your August 7, 2000 request for a supplement to our prior letter ruling dated May 8, 2000 (the "Prior Letter Ruling"). The legend abbreviations, factual summary, and representations appearing in the Prior Letter Ruling are incorporated by reference, except as noted below.

The Prior Letter Ruling addressed certain federal income tax consequences of a series of transactions that led ultimately to the distribution of Controlled stock by Distributing pro rata to its shareholders (the "Transaction"). Because step (xxi) of the Transaction was completed in a manner different from that described in the Prior Letter Ruling, and because Distributing and Controlled, soon after issuance of the Prior Ruling Letter, undertook a transaction that had not been considered by this Office when it issued the Prior Letter Ruling, you have asked us to amend the Prior Letter Ruling by:

(A) Deleting step (xxi) and replacing it with the following:

On Date 17:

(xxi) Distributing transferred inventory to Controlled and agreed to pay Controlled r in exchange for Controlled's assumption of certain liabilities (together with the Stock Contribution in step (i) and the First Payment in step (v), the "Contribution"). Distributing also granted Controlled royalty-free, nonexclusive licenses to use certain intellectual property (the "Licenses"). Distributing has not and will not transfer any part of the First Payment to its creditors in connection with the reorganization. Distributing and Controlled have represented that (i) the aggregate fair market value of the assets transferred by Controlled to Distributing in the Contribution exceeded the aggregate fair market value of the assets transferred by Distributing to Controlled in the Contribution and (ii) the aggregate fair market value and aggregate basis of the assets transferred by Distributing to Controlled in the Contribution equaled or exceeded the aggregate liabilities assumed by Controlled in the Contribution.

(B) Changing the tense of step (xxxx) from future to past, and adding the following new step:

On Date 20:

(xxxxi) Following the Distribution, Controlled acquired s from Distributing in exchange for t dollars in cash (the "ST Transaction").

The Prior Letter Ruling is amended to include the above factual changes, and, based on these changes, is further amended as follows:

(1) Ruling (2) is revised to read as follows:

(2) The amount of gain recognized by Distributing on its transfer of assets to Controlled in constructive exchange for additional Controlled stock, the First Payment, and the assumption by Controlled of certain liabilities, is limited to the lesser of (i) the fair market value of the First Payment and (ii) the amount of gain realized by Distributing on such transfer (§§ 361(b)(1)(B) and 357(a)).

(2) The following new rulings are added:

(12) To the extent that the sum of the First Payment and the liabilities assumed by Controlled in the Contribution (the "Sum") exceeded the fair market value of the assets transferred by Distributing to Controlled in the Contribution, the Sum was a distribution to which § 301 applied (see § 1.301-1(j) and (l)).

(13) To the extent the § 301 distribution in ruling (12) above exceeded Distributing's basis in its Controlled stock, an excess loss account was created (or an existing excess loss account in such stock was increased) and was then included in income immediately before the Distribution (§ 1.1502-19(a) and (b); § 1.1502-32(b)(3)(v)).

We express no opinion about the tax treatment of the above factual changes under any other provisions of the Internal Revenue Code or Income Tax Regulations. In particular, we express no opinion on whether:

(a) The aggregate fair market value of the assets transferred by Controlled to Distributing in the Contribution (including liabilities assumed) exceeded the aggregate fair market value of the assets transferred by Distributing to Controlled in the Contribution;

(b) The aggregate fair market value and aggregate basis of the assets transferred by Distributing to Controlled in the Contribution equaled or exceeded the aggregate liabilities assumed by Controlled in the Contribution; and

(c) The ST Transaction should be viewed as part of the plan of reorganization that includes the Transaction (the "Plan"). If the ST Transaction were considered part of the Plan, the Contribution would be redefined to include the transfer of s to Controlled and the transfer of t to Distributing. As a result, the amount of gain recognized by Distributing in revised ruling (2) above would change, but in no event would it exceed the combined fair market value of the First Payment and t. Furthermore, the total fair market value of the assets transferred in ruling (12) above would be increased, and this, in turn, could affect the excess loss account amount taken into income by Distributing in ruling (13) above. However, even if the ST Transaction were viewed as part of the Plan, no gain or loss would be recognized by either Distributing or its shareholders in the Distribution, as indicated in rulings (6) and (7) of the Prior Letter Ruling.

All caveats contained in the Prior Letter Ruling continue to apply.

This supplemental letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it cannot be used or cited as precedent.

A copy of this supplemental letter and the Prior Letter Ruling should be attached to the federal income tax return of each taxpayer involved for the taxable year in which the Transaction was completed.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,  
Associate Chief Counsel (Corporate)  
By: Wayne T. Murray  
Senior Technician Reviewer  
Branch 4