

INTERNAL REVENUE SERVICE

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27 March 2001

Distributing =

Controlled =

Stock Exchange =

Dear:

This letter responds to a letter dated September 29, 2000, requesting a supplement to our prior letter ruling dated May 8, 1998 (PLR-119797-97) issued to your company and to Distributing under its former name (the "Prior Letter Ruling"). The Prior Letter Ruling, including the legend abbreviations, is incorporated herein by reference. The information submitted with regard to the present supplemental ruling is summarized below.

The Prior Letter Ruling addresses a distribution of Controlled stock by Distributing under § 355 of the Internal Revenue Code (the "Spin-Off"). The distribution of Controlled stock by Distributing was undertaken in order to create a public market for Controlled stock prior to a public offering of Controlled stock. Prior to the Spin-Off, Distributing had held less than 80 percent of the voting stock in Controlled. Shortly prior to the Spin-Off, however, Controlled created a tiered voting structure for its common stock and engaged in a recapitalization ("First Recapitalization") in which Distributing exchanged shares it held of Controlled common stock (one vote per share) for shares of Controlled Class B Common Stock (fff votes per share which was more than one vote per share). As a result of this First Recapitalization, Controlled had two classes of voting common stock outstanding with Distributing increasing its vote to over 80 percent of the total combined vote. Distributing's holding of an 80 percent or greater vote in Controlled was necessary in order to meet the § 355 "control" requirement.

Prior Representation

To obtain the Prior Letter Ruling, (in addition to other representations) Controlled and Distributing represented that:

(a) There is no plan, intention, or formal or informal understanding to change the Controlled capital structure to eliminate the tiered voting structure, or to vote within five years to change the voting structure after five years.

Present Situation

Subsequent to the Spin-Off, Controlled's two classes of common stock have both been continuously publicly traded on Stock Exchange. At times, the trading price for Controlled's stock has been highly volatile, resulting in periods during which one class of the common stock has had difficulty maintaining the minimum market value of public float ("MVPF") required by Stock Exchange. Recently, Stock Exchange sent Controlled a formal written notification of its intent to delist this class of Controlled's common stock because of this MVPF requirement. At present, market conditions have improved somewhat so that this stock is not currently scheduled to be delisted. Delisting, however, does remain a distinct possibility given the volatility of the low number of shares available for trading. As a result of having received formal written delisting notification, Controlled views this as potentially a significant problem ("Delisting Problem"). Controlled now wishes to eliminate its present tiered voting structure and combine its Class A Common Stock and Class B Common Stock into a single class that will have less difficulty meeting Stock Exchange's MVPF requirement. Accordingly, Controlled and Distributing have requested that Controlled be allowed to recapitalize its Class A Common Stock and its Class B Common Stock into a single class of common stock ("Second Recapitalization").

Present Representations

In connection with this present supplemental ruling request each of Distributing and Controlled now represents that:

- (A) The representation (a) (set forth above) in the Prior Letter Ruling was true when made.
- (B) Subsequent to the Spin-Off, there has been a significant change in stock market and/or business conditions that has resulted in the Delisting Problem.
- (C) At the time the Spin-Off was consummated, it did not

appear likely that there would be a Stock Exchange Delisting Problem and the Delisting Problem was unanticipated by both Controlled and Distributing.

- (D) At the time of the Spin-Off, neither Distributing, Controlled, their officers, nor directors had participated in any understanding, arrangement, agreement, or substantial negotiation as to any change in the First Recapitalization.
- (E) More than 3 years will have elapsed between consummation of the Spin-Off and consummation of the proposed Second Recapitalization.
- (F) The Second Recapitalization will only be undertaken if it is approved by each of the two classes of shareholders, with each class (Class A and Class B) voting separately.
- (G) If delisting were to occur it would constitute a significant problem for Controlled.
- (H) There is no alternative way to solve the Delisting Problem that would be as convenient and inexpensive as the proposed Second Recapitalization.

Supplemental Ruling

Based solely on the information submitted with regard to both the original and supplemental ruling requests, we rule as follows:

- (1) The Second Recapitalization will not affect the rulings contained in the Prior Letter Ruling and will not prevent those rulings from having full force and effect.

Caveats

We express no opinion as to the tax treatment of the Second Recapitalization. See Rev. Proc. 2001-3, 2001-1 I.R.B. 111, 114, section 3.01(29) which provides that, generally, the Internal Revenue Service will not issue rulings under sections 368(a)(1)(E) and 1036. Nor is any opinion expressed on the federal income tax treatment of the proposed transaction under any other provisions of the Code or Income Tax Regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction not specifically covered by the above ruling.

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

It is important that a copy of this letter be attached to the federal income tax returns of the taxpayers involved for the taxable year in which the transaction covered by this letter is consummated.

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

Sincerely yours,
Associate Chief Counsel (Corporate)
By: Christopher Schoen
Assistant Branch Chief, Branch 1