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Dear :

This letter responds to your request dated April 23, 2004, for rulings concerning the federal income tax consequences of a proposed transaction (the "Proposed Transaction"). Additional information was provided in submissions dated June 25, 2004; June 29, 2004; July 6, 2004; July 30, 2004; August 6, 2004, August 10, 2004, August 8, 2004, and September 30, 2004. The relevant facts submitted are summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. Moreover, no information provided by the taxpayer has been reviewed and no determination has been made regarding whether the proposed transaction: (i) satisfies the business purpose requirement of section 1.355-2(b) of the Income Tax Regulations, (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) of the Internal Revenue Code and section 1.355-2(d)), and (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see section 355(e)(2)(A)(ii) and section 1.355-7T).

## Summary Statement of Facts

Parent is a publicly traded company and the common parent of an affiliated group of corporations that file a consolidated return for federal income tax purposes. Parent is directly engaged in Business A which has been actively conducted by Parent for each of the last five years. Parent has three classes of stock outstanding: Parent Class A voting common stock, Parent Class B nonvoting common stock, and Parent Class D nonvoting preferred stock. Except for voting rights, the two classes of Parent common stock are identical, and both classes of Parent common stock are publicly traded. The Parent Class D nonvoting preferred stock is substantially identical to the Parent Class B nonvoting common stock except (a) it receives cash in lieu of any non-cash distributions and (b) it has a liquidation preference of aa per share. All of the shares of Parent Class D nonvoting preferred stock are held by Third Tier Subsidiary.

As of Date 1, there were approximately bb shares of Parent Class A voting stock, cc shares of Parent Class B nonvoting common stock outstanding, and dd shares of Parent Class D nonvoting preferred stock outstanding. As of Date 1, approximately ee shares of Parent Class A voting stock, representing ff percent of the outstanding Parent Class A voting common stock, and approximately gg shares of Parent Class B nonvoting common stock, representing hh percent of the outstanding Parent Class B nonvoting common stock, were owned by Corporation D. As of Date 1, ii shares of Parent Class A voting common stock and jj shares of Parent Class B nonvoting common stock are owned by Individual F, who is the Chief Executive Officer and Chairman of the Board of Directors of Parent. Individual F and members of his family indirectly own all of the stock of Corporation D through their ownership and control of Corporation E.

There are also kk institutional shareholders that through various funds and entities own more than 5 percent of either the Parent Class A common stock or the Parent Class B common stock. To the best knowledge of Parent, the remainder of the Parent Class A common stock and Parent Class B common stock is held by less than 5-percent shareholders.

Prior to Date 2, Third Tier Subsidiary of Parent owned mm shares of Parent Class B nonvoting common stock. On Date 2, the shares of Parent held by Third Tier Subsidiary were exchanged for mm shares of Parent Class D nonvoting preferred stock.

Distributing is a wholly owned, first-tier subsidiary of Parent. Distributing is directly engaged in Business B which has been actively conducted by Distributing for each of the last five years.

Controlled is a publicly traded company and a third tier subsidiary of Parent. Controlled is a member of the affiliated group of corporations that file a consolidated return for federal income tax purposes with Parent as the common parent. Controlled is directly engaged in Business C which has been actively conducted by Controlled for each of the

last five years. Controlled has two classes of stock outstanding: Controlled Class A common stock and Controlled Class B common stock (together, the "Controlled Common Stock"). The Controlled Class A common stock is publicly traded; all shares of Controlled Class B common stock are held by Distributing. Each share of Controlled Class A common stock is entitled to nn vote per share and is publicly traded; each share of Controlled Class B common stock is currently entitled to pp votes per share.

As of Date 1, there were approximately qq shares of Controlled Class A common stock outstanding and approximately rr shares of Controlled Class B common stock outstanding. As of Date 1, approximately ss shares of Controlled Class A common stock were held by Parent, and approximately tt shares of Controlled Class A common stock were held by Distributing. The Controlled Class A common stock held by Parent and Distributing was purchased in open market transactions in taxable transactions within the last five years and are described in Section 355(a)(3)(B) of the Internal Revenue Code of 1986, as amended (the "Code"), and is referred to as the "Hot Stock".

There are also pp institutional shareholders that through various funds and entities own more than 5 percent of the Controlled Class A common stock. To the best knowledge of Parent, the remainder of the Controlled Class A common stock (other than the shares held by Parent and Distributing) is held by less than 5-percent shareholders.

Parent acquired ownership of Controlled on Date 3. On Date 2, Controlled entered into term and revolving credit agreements with unrelated third-party lenders in the aggregate of vv (the "New Borrowing Facility") and also sold ww aggregate principal amount of xx percent senior subordinated notes due yy (the "New Notes").

Parent, Distributing, and Controlled have determined that Controlled should be separated from the Parent consolidated group, and the following transaction has been proposed:

1. On Date 2, Controlled declared a pro rata special cash distribution of zz per share to each holder of Controlled Class A Stock and Controlled Class B Stock (the "Special Distribution") payable to shareholders of record as of Date 5 and payable Date 4. The Special Distribution will total approximately aaa based on the number of shares currently outstanding. As owners of approximately bbb percent of Controlled's outstanding shares, Parent and Distributing anticipate receiving \$ccc in the Special Distribution. The Special Distribution will be in addition to the current quarterly dividend of ddd per share of Controlled Common Stock. The Special Distribution is expected to be in excess of Controlled's current and accumulated earnings and profits as determined for federal income tax purposes. The Special Distribution will not create an excess loss account with respect to the Controlled Common Stock held by Parent and Distributing.
2. Prior to the Internal Spinoff (defined below), Parent and Distributing will dispose of the Hot Stock.

3. Prior to the consummation of the External Distribution (defined below), Parent will convert a portion of the Controlled Class B common stock into Controlled Class A common stock (the "Stock Conversion"). After the Stock Conversion, the number of shares outstanding of each of Controlled Class A common stock and Controlled Class B common stock will represent approximately eee percent and fff percent, respectively, of the total outstanding number of shares of Controlled Common Stock. In addition, immediately after the Stock Conversion, Parent will own Controlled Common Stock representing more than 80 percent of the total combined voting power of Controlled. There will be no shares of nonvoting Controlled stock outstanding. "Cold Stock" means (i) all the Controlled Class A common stock resulting from the Stock Conversion and all Controlled Class B common stock.
4. Prior to the Split-Off (defined below), the Controlled corporate charter will be amended so that each share of Controlled Class B common stock will be entitled to kk votes per share upon the consummation of the Split-Off (the "Controlled Charter Amendment").
5. Immediately prior to the Split-Off, Distributing will distribute to its sole shareholder, Parent, all of the Cold Stock (the "Internal Spinoff or Distribution").
6. Parent has offered to exchange each share of Parent Class A voting common stock and each share of Parent Class B nonvoting common stock for a specified combination of Controlled Class A common stock and Controlled Class B common stock (the "Split-Off"). If the Split-Off is oversubscribed, tendering shareholders will be prorated.
7. In the event that not all of the Cold Stock is distributed in the Split-Off, Parent will promptly distribute to its shareholders, pro rata, all of the Cold Stock (the "Clean-Up Spinoff" and, together with the Split-Off, the "External Distribution"). As holder of the Series D Fully Participating Preferred Stock, Third Tier Subsidiary will not receive any Cold Stock in the Clean-Up Spinoff. Instead, Third Tier Subsidiary will receive a cash payment from Parent equal to the fair market value of the Cold Stock that Third Tier Subsidiary would have received if the Series D Fully Participating Preferred Stock had been entitled to receive Cold Stock in the Clean-Up Spinoff.
8. Because of the large number of Parent shareholders relative to the number of shares of Controlled Common Stock that may be distributed in the Clean-Up Spinoff, the Clean-Up Spinoff could result in the issuance of a large number of fractional shares of Controlled Common Stock. To avoid the substantial cost and inconvenience to Controlled of having to deal with fractional shares, the exchange agent will, on behalf of the Parent shareholders who would otherwise be entitled to receive such fractional shares (any such Parent shareholder, a "Controlled Fractional Shareholder"), aggregate and sell such fractional shares for cash on the open market (such sale, the "Fractional Share Sale"). The

exchange agent will deliver a pro rata portion of the sale proceeds resulting from the Fractional Share Sale to the relevant Controlled Fractional Shareholders. It is likely that the fractional shares sold pursuant to the Fractional Share Sale will represent a substantial portion of the total number of shares of Controlled Common Stock distributed in the Clean-Up Spinoff.

The taxpayer has made the following representations in connection with the Internal Spinoff:

- (a) The indebtedness (if any) owed by Controlled to Distributing after the Internal Spinoff will not constitute stock or securities.
- (b) No part of the consideration to be distributed by Distributing in the Internal Spinoff will be received by a shareholder as a creditor, employee or in any capacity other than that of a shareholder of Distributing.
- (c) The five years of financial information submitted on behalf of Business B is representative of its present operation and there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) The five years of financial information submitted on behalf of Business C is representative of its present operation and there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) Distributing and Controlled will each continue the active conduct of its business, independently and with its separate employees.
- (f) The Internal Spinoff will be carried out for the following business purposes: (i) fit and focus, (ii) competition, (iii) other valid corporate business purposes. The distribution of the stock of Controlled in the External Distribution is motivated, in whole or substantial part, by one or more of these business purposes.
- (g) The Internal Spinoff is not used as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (h) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Internal Spinoff, except that Distributing may owe Controlled, or Controlled may owe Distributing, amounts payable for goods and services in the ordinary course of business or under certain intercompany agreements regarding the corporate separation including indemnities, transition services, registration rights, and tax matters.
- (i) Immediately before the Internal Spinoff, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations. Further, Distributing will not have any excess loss account with respect to the Controlled Common Stock.

- (j) Payments made in connection with any other transactions will be for fair market value based on terms and conditions arrived at by the parties at arm's length.
- (k) No two parties to the Internal Spinoff are investment companies as defined in Sections 368(a)(2)(F)(iii) and (iv) of the Code.
- (l) There is no acquisition of stock of Distributing or any controlled corporation (including any predecessor or successor of Distributing or any such controlled corporation) that is part of a plan or series of related transactions (within the meaning of Temp. Treas. Reg. § 1.355-7T) that includes the distribution of Controlled Common Stock.

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the Special Distribution and the Internal Spinoff:

1. The Special Distribution will be treated as a distribution described in Section 301 of the Code.
2. Distributing will recognize no income, gain or loss upon its transfer of the Cold Stock to its sole shareholder, Parent, in the Internal Spinoff. Sections 355(c)(1) and 361(c)(1).
3. Distributing's sole shareholder, Parent, will recognize no income, gain or loss (and no amount will be included in its income) upon the receipt of the Cold Stock in the Internal Spinoff. Section 355(a)(1).
4. The aggregate basis of the Distributing Common Stock and Controlled Common Stock in the hands of Distributing's sole shareholder, Parent, immediately after the Internal Spinoff, will equal the basis of the Distributing Common Stock held immediately prior to the Internal Spinoff, allocated in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2). Sections 358(a), (b) and (c).
5. The holding period of Controlled Common Stock received by Distributing's sole shareholder, Parent, in the Internal Spinoff will include the holding period of the Distributing Common Stock with respect to which the Internal Spinoff will be made, provided that such Distributing Common Stock is held as a capital asset on the date of the Internal Spinoff. Section 1223(1).
6. Proper allocation of earnings and profits between Distributing and Controlled will be made in accordance with Treas. Reg. § 1.312-10(a) and § 1.1502-33.

The taxpayer has made the following representations in connection with the External Distribution (except for (u) and (v) which apply to both the Internal Spinoff and the External Distribution):

- (a) The indebtedness (if any) owed by Controlled to Parent after the External Distribution will not constitute stock or securities.



- (b) The fair market value of the Controlled Common Stock to be received by each shareholder of Parent in the Split-Off will be approximately equal to the fair market value of the Parent common stock surrendered by the shareholder in the Split-Off.
- (c) No part of the consideration to be distributed by Parent in the External Distribution will be received by a shareholder as a creditor, employee or in any capacity other than that of a shareholder of Parent.
- (d) No part of the consideration to be distributed by Parent in the External Distribution will be received by a security holder as an employee or in any capacity other than that of a shareholder of Parent. It is possible, however, that a security holder of Parent who is or which is also a shareholder of Parent may receive Cold Stock in the External Distribution.
- (e) The five years of financial information submitted on behalf of Business A is representative of its present operation and there have been no substantial operational changes since the date of the last financial statements submitted.
- (f) The five years of financial information submitted on behalf of Business C is representative of its present operation and there have been no substantial operational changes since the date of the last financial statements submitted.
- (g) Following the External Distribution, Parent and Controlled will each continue the active conduct of its business, independently and with its separate employees. There will be no sharing of employees between Parent and Controlled after the External Distribution.
- (h) The distribution of the stock of Controlled in the External Distribution will be carried out for the following business purposes: (i) fit and focus, (ii) competition, (iii) other valid corporate business purposes. The distribution of the stock of Controlled in the External Distribution is motivated, in whole or substantial part, by one or more of these business purposes.
- (i) The External Distribution is not used as a device for the distribution of the earnings and profits of Parent or Controlled or both.
- (j) No intercorporate debt will exist between Parent and Controlled at the time of, or subsequent to, the External Distribution, except that Parent may owe Controlled, or Controlled may owe Parent, amounts payable for goods and services in the ordinary course of business or under certain intercompany agreements regarding the corporate separation including indemnities, transition services, registration rights, and tax matters.
- (k) Immediately before the External Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations. Further, Parent will not have any excess loss account with respect to the Controlled Common Stock.

- (l) Payments made in connection with any other transactions will be for fair market value based on terms and conditions arrived at by the parties at arm's length.
- (m) No two parties to the External Distribution are investment companies as defined in Sections 368(a)(2)(F)(iii) and (iv) of the Code.
- (n) Third Tier Subsidiary and Parent will be members of the same affiliated group (within the meaning of Section 243(b)(2)(A)) of the Code at the close of the day that Third Tier Subsidiary receives any dividend with respect to the Parent Class D nonvoting preferred stock.
- (o) The dividend with respect to the Parent Class D nonvoting preferred stock in the Clean-Up Spinoff (The "Parent Class D Dividend") will be distributed out of the earnings and profits of a taxable year of Parent on each day of which Parent and Third Tier Subsidiary were members of the same affiliated group (within the meaning of Section 243(b)(2)(A) of the Code).
- (p) Third Tier Subsidiary has no plan or intent to, and each of Parent and the two wholly owned subsidiaries of Parent between Third Tier Subsidiary and Parent has no plan or intent to cause Third Tier Subsidiary to, distribute the cash received in connection with the Parent Class D Dividend to Parent or any member of the Parent consolidated group; provided, however, Third Tier Subsidiary may loan the cash received to one or more members of the Parent consolidated group on arm's length terms.
- (q) Except for contingent liabilities arising from the intercompany agreements governing the separation of Controlled from the Parent group and except for agreements entered into in the ordinary course of business, no intercorporate debt will exist between Parent, Distributing, and Controlled at the time of, or subsequent to, the distribution of the Controlled stock in the Internal or External Distributions.
- (r) None of Distributing, Parent, or Controlled is (or will be) a foreign corporation.
- (s) Neither Distributing, Parent, nor Controlled have been (nor will any of them be) a United States real property holding corporation (as defined in section 897(c)(2)) at any time during the 5-year period ending on the date of the Internal Spinoff or the External Distribution, and none of them will be a United States real property holding corporation immediately after the Internal Spinoff or the External Distribution.
- (t) There is no acquisition of stock of Distributing or any controlled corporation (including any predecessor or successor of Distributing or any such controlled corporation) that is part of a plan or series of related transactions (within the meaning of Temp. Treas. Reg. § 1.355-7T) that includes the distribution of Controlled Common Stock.
- (u) For purposes of section 355(d), immediately after the Internal Spinoff or External Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total

- combined voting power of all classes of Distributing stock (in the case of the Internal Spinoff) and Parent (in the case of the External Distribution) stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock (in the case of the Internal Spinoff) and Parent (in the case of the External Distribution) stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Internal Spinoff (in the case of the Internal Spinoff) or External Distribution (in the case of the External Distribution).
- (v) For purposes of section 355(d), immediately after the Internal Spinoff or External Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Internal Spinoff or External Distribution or (ii) attributable to distributions on Distributing (in the case of the Internal Spinoff) or Parent (in the case of the External Distribution) stock that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Internal Spinoff or External Distribution.

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the External Distribution:

1. Parent will recognize no income, gain or loss upon its exchange of Controlled Common Stock for Parent Common Stock in the Split-Off. Section 355(c)(1).
2. Parent will recognize no income, gain or loss upon its transfer of Controlled Common Stock to its shareholders in the Clean-Up Spinoff. Section 355(c)(1).
3. The Parent Class D Dividend, to the extent it constitutes a dividend for federal income tax purposes under Section 301, will constitute a "qualifying dividend" within the meaning of Section 243(b) and, therefore, subject to the limitations of Section 246, will be eligible for the 100 percent dividends received deduction. Section 243(a)(3).
4. No member of Parent's affiliated group (as defined in section 1504(a)(1)) will recognize any income, gain or loss in connection with the Clean-Up Spinoff. Section 355(a)(1) and 355(c)(1).

5. Parent shareholders will recognize no income, gain or loss (and no amount will be included in their income) upon the receipt of Controlled Common Stock from Parent in the Split-Off. Section 355(a)(1).
6. Parent shareholders will recognize no income, gain or loss (and no amount will be included in their income) upon the receipt of Controlled Common Stock (including any fractional interest to which any of them may be entitled in the Clean-Up Spinoff) from Parent in the Clean-Up Spinoff. Section 355(a)(1).
7. The aggregate basis of the Controlled stock received in the Split-Off will equal the applicable Parent shareholder's basis in the Parent Common Stock surrendered therefor.
8. The aggregate basis of the Parent Common Stock and Controlled Common Stock in the hands of Parent shareholders immediately after the Clean-Up Spinoff (including any fractional interest to which they may be entitled in the Clean-Up Spinoff) will equal the basis of the Parent Common Stock held immediately prior to the Clean-Up Spinoff, allocated in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2). Sections 358(a), (b) and (c).
9. The holding period of Controlled Common Stock received by Parent shareholders (including any fractional interest to which they may be entitled) in the Split-Off will include the holding period of the Parent Common Stock exchanged in the Split-Off, provided that such Parent Common Stock is held as a capital asset on the date of the Split-Off. Section 1223(1).
10. The holding period of Controlled Common Stock received by Parent shareholders (including any fractional interest to which they may be entitled) in the Clean-Up Spinoff will include the holding period of the Parent Common Stock with respect to which the Clean-Up Spinoff will be made, provided that such Parent Common Stock is held as a capital asset on the date of the Clean-Up Spinoff. Section 1223(1).
11. Proper allocation of earnings and profits between Parent and Controlled will be made in accordance with Treas. Reg. § 1.312-10(a) and § 1.1502-33.
12. The Fractional Share Sale will be treated as a transaction that is separate and distinct from the External Distribution for all federal income tax purposes. Cf. Rev. Rul. 66-35, 1966-2 C.B. 116.
13. A Controlled Fractional Shareholder who receives cash from the exchange agent in respect of the Fractional Share Sale will recognize gain or loss in connection therewith. Code Section 1001. Provided that the fractional share sold by the exchange agent on behalf of the relevant Controlled Fractional Shareholder is a capital asset in the

hands of such holder, such gain or loss will be capital gain or loss to such holder. Section 1221.

#### Caveats

No opinion is expressed about the tax treatment of the proposed transaction under other provisions of the Code and 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. In particular, no opinion is expressed regarding: (i) whether the Internal or External Distributions satisfy the business purpose requirement of section 1.355-2(b); (ii) whether the proposed transaction is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see section 355(a)(1)(B) and section 1.355-2(d)); and (iii) whether the Distribution and an acquisition or acquisitions are part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii).

#### Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Associate Chief Counsel (Corporate)

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Gerald B. Fleming,  
Acting Chief, Branch 2