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Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:CORP:4 PLR-112579-00
Date:
November 30, 2000

Distributing =
Former Parent =
Controlled =
Sub 1 =
Sub 2 =
Sub 3 =
Sub 4 =
Sub 5 =
Sub 6 =
Sub 7 =
Sub 8 =
Sub 9 =
Sub 10 =
Limited Partnership =
Business X =
Business Y =

PLR-112579-00

-2-

Individual A =

Individual B =

Estate C =

Estate D =

Foundation E =

Foundation F =

Foundation G =

Individual H =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Trust 5 =

Trust 6 =

Trust 7 =

Trust 8 =

Trust 9 =

Trust 10 =

Trust 11 =

Trust 12 =

LLC 1 =

LLC 2 =

Date A =

Date B =

a =

b =

c =

This letter responds to your June 21, 2000 request for rulings on certain federal income tax consequences of a proposed transaction. The information provided in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer accompanied by a penalty of perjury statement executed by an appropriate party. Verification of these facts and representations may be required as part of the audit process.

Summary of Facts

Closely held Distributing is the common parent of a corporate group the includible affiliates of which join in filing a consolidated federal income tax return. The Distributing group reports its income on the accrual basis. Distributing has two classes of stock outstanding, Class A Voting Common Stock (the "Distributing Class A Stock") and Class B Non-Voting Common Stock (the "Distributing Class B Stock"). The Distributing Class A Stock is owned or beneficially owned in equal amounts by Individual A and Individual B. Estate C owns a percent of the outstanding shares of Distributing Class B Stock, and the balance is owned or beneficially owned in varying amounts by Individual A, Individual B, Estate D, Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, and Trust 8. Individual A, Individual B, and Estate C are the only shareholders owning five percent or more of the Distributing stock.

The beneficiaries of Trust 1, Trust 2, and Trust 3 are the children of Individual A. The beneficiaries of Trust 4, Trust 5, Trust 6, and Trust 7 are the children of Individual B. The beneficiary of Trust 8 is Individual A, the beneficiaries of Trust 9 are Individual A and Individual A's descendants, of Trust 10 are Individual B and Individual B's descendants, of Trust 11 are Individual A's descendants, and of Trust 12 are Individual B's descendants.

Under the terms of the will governing the disposition of Estate C's assets, the Distributing Class B Stock owned by Estate C, other than a small amount specifically bequeathed to Individual A, will pass to Foundation E shortly after the Controlled Distribution. Under the terms of the will governing the disposition of Estate D's assets, and in light of a disclaimer executed by H before his death, the Distributing Class B

Stock owned by Estate D will pass to Trust 9, Trust 10, Trust 11, and Trust 12 before the Controlled Distribution.

Distributing wholly owns Sub 1, Sub 2, Sub 3, Sub 4 (which wholly owns Sub 6), Sub 5, Sub 7, Sub 8, Sub 9, and Sub 10. Sub 1 wholly owns Controlled, which conducts, through its b percent general partnership interest in Limited Partnership, Business Y. Two individuals unrelated to the Distributing group own limited partnership interests in Limited Partnership. Sub 2 owns a special preferred limited partnership interest in Limited Partnership and holds a receivable from Distributing (the "Receivable"). Before Date A, Sub 1 and Sub 10 owned all the interests in LLC 1, and Sub 1 and Controlled owned all the interests in LLC 2. Both LLCs held Business Y assets.

Distributing is engaged in Business X directly and through Sub 4, Sub 5, Sub 6, Sub 7, Sub 8, and Sub 9, and in Business Y through Controlled and Limited Partnership. We have received financial information indicating that Business X (as conducted by Distributing directly and through Subs 4 through 9) and Business Y (as conducted by Controlled through Limited Partnership) each has had gross income and operating expenses representing the conduct of an active business during each of the past five years.

Since the death of Individual H, Individual A and Individual B have jointly managed Business X and Business Y. However, certain disputes have arisen between Individual A and Individual B that are adversely affecting both businesses, particularly Business Y. To eliminate these disputes, the parties (including Distributing and Controlled) have agreed to place direct ownership and control of Business X in the hands of Individual A and Individual A's family and direct ownership and control of Business Y in the hands of Individual B and Individual B's family (the "Plan"). The parties have also entered into a settlement agreement to resolve certain legal disputes among them.

The Plan

The Plan involves the following steps:

- (i) Sub 1 will merge into Distributing (the "Sub 1 Liquidation").
- (ii) Sub 2 will distribute to Distributing (and thereby cancel) the Receivable.
- (iii) Sub 3 will distribute to Distributing certain assets used in Business X (the "Sub 3 Distribution").
- (iv) Distributing will transfer Business Y assets (including the stock of Sub 2 and

Sub 3 and other assets that will equalize the values of Distributing and Controlled) to Controlled in constructive exchange for additional Controlled stock and the assumption by Controlled of related liabilities (the "Contribution").

(v) Sub 4 will distribute to Distributing certain Business X assets, including the stock of Sub 6 (the "Sub 4 Distribution").

(vi) Distributing will form five single-member limited liability companies (the "LLCs") and merge each of Sub 5, Sub 6, Sub 7, Sub 8, and Sub 9 (the "Liquidating Corporations") into a corresponding LLC, after which Distributing will elect to treat each LLC as a disregarded entity for tax purposes under § 301.7701-3 of the Procedure and Administration Regulations (the "Subsidiary Liquidations"). Before the Subsidiary Liquidations, the gross assets of the Business X operations directly conducted by Distributing will represent less than five percent of the total fair market value of the gross assets of Distributing. As a result of the Subsidiary Liquidations, the percentage will increase to approximately seven.

(vii) Controlled will recapitalize so that its outstanding stock consists of half the number of currently outstanding shares of Distributing Class A Stock (the "Controlled Class A Stock") and half the number of shares of currently outstanding shares of Distributing Class B Stock (the "Controlled Class B Stock") (the "Recapitalization"). The terms and provisions of each class will be identical to those of the corresponding Distributing class.

(viii) Distributing will distribute the stock of Controlled as follows (the "Controlled Distribution"):

(1) Individual B, Trust 4, Trust 5, Trust 6, Trust 7, Trust 10, and Trust 12 each will exchange its shares of Distributing Class A Stock and Distributing Class B Stock for an equal number of shares, respectively, of Controlled Class A Stock and Controlled Class B Stock.

(2) Estate C will exchange one-half of its shares of Distributing Class B Stock for the same number of shares of Controlled Class B Stock, retaining the remaining half of its Distributing Class B Stock. Shortly after the Controlled Distribution, Estate C will transfer all of its Distributing Class B Stock and all of its Controlled Class B Stock to Foundation E, which will, in turn, transfer such stock to Foundation F and Foundation G, respectively, as described in step (ix) below.

(3) Trust 1, Trust 2, and Trust 3 each will exchange approximately c shares of Distributing Class B Stock for an equal number of shares of Controlled Class B Stock. Then, to assure a complete division of Business X and Business Y between the families of Individual A and Individual B, each of Trust 1, Trust 2, and Trust 3 will immediately contribute its shares of Controlled Class B Stock to Foundation G. Collectively, the shareholders that exchange Distributing Class B Stock for Controlled

Class B Stock in steps (viii) (1), (2), and (3) are referred to as the “Exchanging Shareholders.”

(ix) On or about the date of the Distribution, Foundation E will be split into two separate foundations: Foundation F, controlled by a board of directors nominated by Individual A; and Foundation G, controlled by a board of directors nominated by Individual B. Following the Distribution, Foundation E will distribute to Foundation F all of its Distributing Class B Stock and will distribute to Foundation G all of its Controlled Class B Stock.

Representations

Sub 1 Liquidation

The parties have made the following representations in connection with the Sub 1 Liquidation:

(a) Distributing, on the date of adoption of the plan of complete 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 stock of Sub 1.

(b) No shares of Sub 1 stock will have been redeemed during the three years preceding the adoption of the plan of complete liquidation of Sub 1.

(c) All distributions from Sub 1 to Distributing pursuant to the plan of complete liquidation will be made within a single taxable year of Sub 1.

(d) As soon as the first liquidating distribution has been made, Sub 1 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 Distributing.

(d)(i) Sub 1 will retain no assets following the final liquidating distribution.

(e) Sub 1 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years before the date of adoption of the plan of liquidation.

(f) No assets of Sub 1 have been, or will be, disposed of by either Sub 1 or Distributing except for dispositions in the ordinary course of business and dispositions occurring more than three years before the adoption of the plan of complete liquidation, except that (i) in Date B (more than two years before the date of the proposed liquidation), Sub 1 distributed certain partnership interests to Distributing, (ii) on or about Date A (nearly two years before the date of the proposed liquidation), Sub 10 distributed to Distributing its interest in LLC 1 (which had incurred certain costs relating to Business

Y but had no value at the time and continues to have no value because of outstanding liabilities), Distributing contributed part of that interest to Sub 2 and the balance to Sub 1, and Sub 1 contributed its entire interest in LLC 1 to Controlled, and (iii) on or about Date A (nearly two years before the date of the proposed liquidation), Sub 1 distributed to Distributing its interest in LLC 2 (which also had assets relating to Business Y but had no value at the time and continues to have no value because of outstanding liabilities), and Distributing contributed the interest to Sub 2. As a result, neither Distributing nor any of its subsidiaries will own any interest in LLC 1 or LLC 2 following the Controlled Distribution.

(g) Apart from the transfers described above in representation (f), the liquidation of Sub 1 will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation ("Recipient") of any of the business or assets of Sub 1, if persons holding, directly or indirectly, more than 20 percent in value of the Sub 1 stock also hold, directly or indirectly, 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) of the Internal Revenue Code, as modified by § 304(c)(3).

(h) Before the adoption of the liquidation plan, no assets of Sub 1 will have been distributed in kind, transferred, or sold to Distributing, except for transactions occurring in the ordinary course of business, transactions occurring more than three years before adoption of the liquidation plan, and transfers of the partnership interests described above in representation (f).

(i) Sub 1 will report all earned income represented by assets that will be distributed to its shareholder, such as receivables being reported on a cash basis, unfinished construction contracts, commissions, dues, etc.

(j) The fair market value of the assets of Sub 1 will exceed its liabilities both at the date of the adoption of the plan of complete liquidation and immediately before the time the first liquidating distribution is made.

(k) On the date of the distribution, there will be no intercorporate debt existing between Distributing and Sub 1, and none has been canceled, forgiven, or discounted, except for the distribution (and cancellation) of a receivable and transactions that occurred more than three years before the date of adoption of the liquidation plan.

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

(m) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the proposed liquidation of Sub 1 have been fully disclosed.

Sub 3 Distribution and Sub 4 Distribution

The parties have made the following representations concerning the Sub 3 Distribution and the Sub 4 Distribution:

(n) None of the assets being transferred by Sub 3 to Distributing are income items, such as accounts receivable or commissions due.

(o) Sub 3 will not retain any rights in the property transferred to Distributing in the Sub 3 Distribution.

(p) The transfers in the Sub 3 Distribution will occur under a plan agreed upon before the transaction in which the rights of the parties will be defined.

(q) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the Sub 3 Distribution have been fully disclosed.

(r) None of the assets being transferred by Sub 4 to Distributing are income items, such as accounts receivable or commissions due.

(s) Sub 4 will not retain any rights in the property transferred to Distributing in the Sub 4 Distribution.

(t) The transfers in the Sub 4 Distribution will occur under a plan agreed upon before the transaction in which the rights of the parties will be defined.

(u) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the Sub 4 Distribution have been fully disclosed.

Subsidiary Liquidations

The parties have made the following representations in connection with the Subsidiary Liquidations:

(v) Distributing, on the date of adoption of the plan of complete 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 stock of each Liquidating Corporation.

(w) No shares of any Liquidating Corporation will have been redeemed during the three years preceding the adoption of the plan of complete liquidation of the Liquidating Corporation.

(x) All Distributions from each Liquidating Corporation to Distributing pursuant to the plan of complete liquidation will be made within a single taxable year of the Liquidating Corporation.

(y) As soon as the first liquidating distribution has been made, each Liquidating Corporation 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.

(z) No Liquidating Corporation will retain any assets following the final liquidating distribution.

(aa) No Liquidating Corporation will have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years before the date of adoption of the plan of liquidation.

(bb) No assets of any Liquidating Corporation have been, or will be, disposed of by the Liquidating Corporation or Distributing except for dispositions in the ordinary course of business and dispositions occurring more than three years before the adoption of the plan of complete liquidation.

(cc) The liquidation of each Liquidating Corporation will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation ("Recipient") of any of the business or assets of the Liquidating Corporation, if persons holding, directly or indirectly, more than 20 percent in value of the Liquidating Corporation stock also hold, directly or indirectly, 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).

(dd) Before the adoption of the liquidation plan, no assets of any Liquidating Corporation will have been distributed in kind, transferred, or sold to Distributing, except for transactions occurring in the ordinary course of business and transactions occurring more than three years before adoption of the liquidation plan.

(ee) Each Liquidating Corporation will report all earned income represented by assets that will be distributed to its shareholder, such as receivables being reported on a cash basis, unfinished construction contracts, commissions, dues, etc.

(ff) The fair market value of the assets of each Liquidating Corporation will exceed its liabilities both at the date of the adoption of the plan of complete liquidation and immediately before the time the first liquidating distribution is made.

(gg) On the date of the distribution, there will be outstanding intercompany debt owed by each Liquidating Corporation, except Sub 8, to Distributing, which will be canceled in the liquidation. Each debt arose in the ordinary course of business, and its face amount is less than the net fair market value of the assets of each Liquidating

Corporation. Apart from this debt, there is no intercorporate debt existing between any Liquidating Corporation and Distributing and none has been canceled, forgiven, or discounted, except for transactions that occurred more than three years before the date of adoption of the plan of liquidation (or, alternatively, if such date is later) except for transactions occurring before the date Distributing initially acquired stock in the Liquidating Corporation.

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

(ii) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the liquidation of each Liquidating Corporation have been fully disclosed.

The Contribution and the Controlled Distribution

The parties have made the following representations in connection with the Controlled Distribution:

(jj) The fair market value of the Controlled stock received by each Exchanging Shareholder will approximately equal the fair market value of the Distributing stock surrendered by the Exchanging Shareholder in the exchange.

(kk) No part of the consideration distributed by Distributing will be received by an Exchanging Shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

(ll) There will be no securities of Controlled outstanding before or after the Controlled Distribution, and none will be surrendered or exchanged in the Controlled Distribution.

(mm) The five years of financial information submitted on behalf of Distributing, Controlled, Limited Partnership, Sub 5, Sub 6, Sub 7, Sub 8, and Sub 9 represents each entity's present operations, and with regard to each entity, there has not been any substantial operational change since the date of the last financial statement submitted.

(nn) For each of Distributing and Controlled, immediately following the Controlled Distribution the gross assets of the trades or businesses relied on to satisfy the active trade or business requirement of § 355(b) will have a fair market value that is not less than five percent of the total fair market value of the gross assets of the corporation conducting the trades or businesses.

(oo) Following the Controlled Distribution, Distributing and Controlled each will continue the active conduct of Business X and Business Y, respectively, independently and, except for a transition period of no longer than one year, with its own separate

employees.

(pp) The Controlled Distribution will be carried out to separate the operations and ownership of Business Y from that of Business X because of the divergent views held by Individual A and Individual B, and the disputes that have arisen between them, regarding the operation of the businesses, which, if permitted to continue, will jeopardize the operation and continued success of both businesses. The distribution is motivated, in whole or substantial part, by this corporate business purpose.

(qq) There is no plan or intention by the shareholders of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in Distributing or in Controlled after the Controlled Distribution except as follows:

(i) The shares of Distributing and Controlled Class B Stock held by Estate C will be distributed to Foundation E which, in turn, will distribute the Distributing Class B Stock to Foundation F and the Controlled Class B Stock to Foundation G.

(ii) Under § 4943(c), Foundations F and G then will be required to dispose of their shares of Controlled and Distributing Class B Stock within five years and 90 days of the date of transfer or pay an “excess business holdings” tax equal to 200 percent of the value of the stock. Although these foundations do not presently have, and will not have at the time of the Controlled Distribution, any plan or arrangement for disposing of the stock, they will likely contribute the shares to public charities some time before the expiration of the five-year period.

(iii) To assure a complete division of the two businesses such that Individual A and Individual A’s family obtain ownership and control of Business X and Individual B and Individual B’s family obtain ownership and control of Business Y, each of the three trusts for the benefit of Individual A’s children will contribute to Foundation G approximately $\frac{1}{3}$ of shares of Controlled Class B Stock received by each of them in the Controlled Distribution.

(rr) 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 Controlled Distribution.

(ss) 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 Controlled Distribution, except in the ordinary course of business.

(tt) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing in the Contribution will, in each instance, equal or exceed the liabilities assumed (as determined under § 357(d)) by Controlled.

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

(vv) No intercorporate debt will exist between Distributing and Controlled at the time of, or after, the Controlled Distribution.

(ww) Immediately before the Controlled 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 of the Income Tax Regulations 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, any excess loss account Distributing may have in the Controlled stock will be included in income immediately before the Controlled Distribution (see § 1.1502-19).

(xx) Payments made in connection with all continuing transactions between Distributing and Controlled, if any, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arms' length.

(yy) No investment credit property will be transferred between Distributing and Controlled.

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

(aaa) The Controlled Distribution is not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire, directly or indirectly, stock possessing 50 percent or more of the total combined voting power of all classes of either Distributing or Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of either Distributing or Controlled stock.

Rulings

Based solely on the information submitted and the representations made, we hold as follows:

Sub 1 Liquidation

(1) For federal income tax purposes, the merger of Sub 1 into Distributing will be treated as a distribution of property by Sub 1 to Distributing in complete liquidation under § 332(a).

(2) No gain or loss will be recognized by Distributing on receiving the assets and

liabilities of Sub 1 in the Sub 1 Liquidation (§ 332(a)).

(3) No gain or loss will be recognized by Sub 1 on the distribution of its assets to, or the assumption of its liabilities by, Distributing (§§ 336(d)(3), 337(a), and 337(b)).

(4) The basis in each asset received by Distributing from Sub 1 as a result of the Sub 1 Liquidation will equal the basis of that asset in the hands of Sub 1 immediately before the Sub 1 Liquidation (§ 334(b)(1)).

(5) The holding period in each asset received by Distributing from Sub 1 as a result of the Sub 1 Liquidation will include the period during which that asset was held by Sub 1 (§ 1223(2)).

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

(7) Except to the extent Sub 1's earnings and profits are reflected in Distributing's earnings and profits, Distributing will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Sub 1 as of the date of the Sub 1 Liquidation (§§ 381(c)(2)(A), 1.381(c)(2)(1), and 1.1502-33(a)(2)). Any deficit in the earnings and profits of Sub 1 or Distributing will be used only to offset earnings and profits accumulated after the date of the Sub 1 Liquidation (§ 381(c)(2)(B)).

Sub 3 Distribution and Sub 4 Distribution

(8) Distribution 3 and Distribution 4 each will constitute an intercompany distribution to which §§ 301 and 311 apply, subject to the provisions of § 1.1502-13(f)(2) and § 1.1502-32(b)(2)(iv) and (b)(3)(v).

(9) Distribution 3 and Distribution 4 will not be included in the gross income of Distributing, but Distributing must make a corresponding negative adjustment in the amount of each distribution to its basis in each of Sub 3 and Sub 4 stock under § 1.1502-32 (§ 1.1502-13(f)(2)(ii)).

(10) The gain or loss of Sub 3 and Sub 4 from Distribution 3 and Distribution 4 will not be currently included in gross income but will be taken into account under the matching rule of § 1.1502-13(c) if the distributed property is later sold to a nonmember or under the acceleration rule of § 1.1502-13 if Distributing, Sub 3, or Sub 4 later becomes a nonmember of the Distributing group (§ 1.1502-13(f)(2)(iii) and Example (1) of § 1.1502-13(f)(7)).

Subsidiary Liquidations

(11) For federal income tax purposes, the merger of each Liquidating

Corporation into a single-member LLC wholly owned by Distributing will be treated as a distribution of property by the Liquidating Corporation in complete liquidation under § 332(a).

(12) No gain or loss will be recognized by Distributing on the deemed receipt of the assets and liabilities of each Liquidating Corporation in its merger (§ 332(a)).

(13) No gain or loss will be recognized by any Liquidating Corporation on the deemed distribution of its assets and liabilities to Distributing in its merger (§§ 336(d)(3) and 337(a)).

(14) The basis of each Liquidating Corporation asset deemed received by Distributing in the merger will equal the basis of that asset in the hands of the Liquidating Corporation immediately before the merger (§ 334(b)(1)).

(15) The holding period of each Liquidating Corporation asset deemed received by Distributing in the merger will include the period during which that asset was held by the Liquidating Corporation (§ 1223(2)).

(16) Controlled will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of each Liquidating Corporation as of the date of the merger (§§ 381(c)(2) and 1.381(c)(2)-1). Any deficit in earnings and profits of a Liquidating Corporation or Distributing will be used only to offset earnings and profits accumulated after the date of the merger.

(17) The earnings and profits of each Liquidating Corporation that Distributing succeeds to under § 381 as a result of the deemed liquidation of the Liquidating Corporation under § 332 are eliminated under § 1.1502-33(a)(2) to prevent duplication to the extent such earnings and profits are already reflected in the earnings and profits of Distributing under § 1.1502-33(b).

(18) Distributing will succeed to and take into account the items of each Liquidating Corporation described in § 381(c), subject to the conditions and limitations specified in § 381(b) and (c) and the regulations thereunder (§§ 381(a) and 1.381(a)-1).

The Contribution and Controlled Distribution

(19) The Contribution, followed by the Controlled Distribution, will be a reorganization under § 368(a)(1)(D). Distributing and Controlled each will be "a party to a reorganization" under § 368(b).

(20) No gain or loss will be recognized by Distributing on the Contribution (§ 361(a) and § 357(a)).

(21) No gain or loss will be recognized by Controlled on the Contribution

(§ 1032(a)).

(22) The basis of each asset received by Controlled will equal the basis of that asset in the hands of Distributing immediately before the transfer (§ 362(b)).

(23) The holding period of each asset received by Controlled in the Contribution will include the period during which Distributing held that asset (§ 1223(2)).

(24) No gain or loss will be recognized by Distributing on the Controlled Distribution (§ 361(c)).

(25) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) any Exchanging Shareholder on the Controlled Distribution (§ 355(a)(1); § 1.355-3(b)(3)(ii) (regarding expansion, through the Subsidiary Liquidations, of the Business X operations directly conducted by Distributing); Rev. Proc. 96-43, 1996-2 C.B. 330 (regarding the ruling requirement that a business relied on to satisfy § 355(b) must have a greater than de minimis value); Rev. Rul. 92-17, 1992-1 C.B. 142 (regarding the active conduct of Business Y attributed to Controlled from Limited Partnership)).

(26) The basis of Controlled stock in the hands of each Exchanging Shareholder (other than Estate C, Trust 1, Trust 2, and Trust 3) will equal the basis of the Distributing stock surrendered in exchange therefor (§ 358(a)(1)).

(26B) The aggregate basis of the Distributing and Controlled Stock in the hands of Estate C, Trust 1, Trust 2 and Trust 3 after the Controlled Distribution will equal the aggregate basis of the Distributing stock held by Estate C, Trust 1, Trust 2, and Trust 3, immediately before the Controlled 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(a)(1), (b), and (c)).

(27) The holding period of Controlled stock received by each Exchanging Shareholder will include the holding period of the Distributing stock surrendered in the exchange, provided the Distributing stock is held as a capital asset on the date of the Distribution (§ 1223(1)).

(28) The earnings and profits Distributing and Controlled will be allocated in accordance with §§ 312(h), 1.312-10(a), and 1.1502-33(e)(3).

Caveats and Procedural Statements

No opinion is expressed about the tax treatment of the proposed transaction under other provisions of the Code or 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 concerning:

(a) the distribution by Sub 2 of the Receivable to Distributing described above in step (ii);

(b) the Recapitalization described above in step (vii); and

(c) the distributions and contributions described above in representation (f), including no opinion regarding any gain recognized on these distributions and contributions.

The effect of §§ 507 and 4941 on steps (viii)(2) and (ix) described above will be the subject of a separate letter ruling issued by the Tax Exempt and Governmental Entities Division.

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

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

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

Sincerely yours,
Assistant Chief Counsel (Corporate)

By: _____
Wayne T. Murray
Senior Technician/Reviewer, Branch 4