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Telephone Number:

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Date:
October 29, 1999

Distributing =

Controlled =

1st-Tier Sub 1 =

1st-Tier Sub 2 =

1st-Tier Sub 3 =

1st-Tier Sub 4 =

1st-Tier Sub 5 =

1st-Tier Sub 6 =

1st-Tier Sub 7 =

1st-Tier Sub 8 =

1st-Tier Sub 9 =

1st-Tier Sub 10 =

1st-Tier Sub 11 =

1st-Tier Sub 12 =

1st-Tier Sub 13 =

1st-Tier Sub 14 =

1st-Tier Sub 15 =

1st-Tier Sub 16 =

1st-Tier Sub 17 =

1st-Tier Sub 18 =

1st-Tier Sub 19 =

1st-Tier Sub 20 =

2nd-Tier Sub 1 =

2nd-Tier Sub 2 =

2nd-Tier Sub 3 =

2nd-Tier Sub 4 =

2nd-Tier Sub 5 =

2nd-Tier Sub 6 =

3rd-Tier Sub 1 =

Business A =

Business B =

a =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

Year A =

Shareholder A =

Month A =

Year B =

m =

n =

o =

p =

q =

r =

s =

t =

Date A =

Date B =

u =

v =

w =

x =

y =

z =

Plan 1 =

Plan 2 =

Date C =

aa =

This letter replies to a request dated June 28, 1999, for rulings about the Federal income tax consequences of a proposed transaction. We have received additional information in letters dated October 14 and 27, and November 1, 1999. The information submitted for consideration is summarized below.

Distributing and Controlled, and other corporations, join in the filing of a consolidated return; Distributing is the common parent. Distributing directly owns all the

outstanding equity in Controlled. The consolidated group's taxable year ends on Date C. The consolidated group uses the accrual method of accounting.

Stock in Distributing is publicly traded. Distributing has a single class of common stock outstanding, and no preferred stock. One individual shareholder, Shareholder A, owns approximately d percent of the outstanding stock. The only other shareholders that own five percent or more of Distributing's outstanding stock are institutional investors, one of which owns e percent, and one of which owns f percent.

Distributing has engaged in three public stock offerings since Year A. The first will have preceded the proposed transaction by more than five years. In the second public stock offering, Distributing sold approximately g shares to the public, and Shareholder A sold an additional h shares to the public. In the third public stock offering, Distributing sold approximately i shares to the public, Shareholder A sold approximately j million shares to the public, and other Distributing shareholders sold approximately k shares to the public. (The number of shares described above as issued in the various public stock offerings has been adjusted to reflect stock splits made subsequently to those respective offerings.) Distributing currently has approximately l shares outstanding.

The members of the consolidated group collectively operate two businesses, Business A and Business B. The group entered into Business B only in recent years. In the conduct of Business B, the group competes with prospective purchasers of products offered for sale by the group in its conduct of Business A. Some such prospective purchasers, who are unrelated to the members of the group, have as a result made known an unwillingness to purchase their products from the group, not wanting to support a competitor. For this reason, the taxpayer desires to divest itself of Business A, by distributing the stock of Controlled to Distributing's shareholders. Prior to the spin-off, however, the taxpayer will conduct certain restructurings and other transactions within the group, as described in the steps enumerated further below.

Currently, Distributing, the group parent, owns 100 percent of the equity in the following subsidiaries: 1st-Tier Sub 1, 1st-Tier Sub 2, 1st-Tier Sub 3, 1st-Tier Sub 4, 1st-Tier Sub 5, 1st-Tier Sub 6, 1st-Tier Sub 7, 1st-Tier Sub 8, 1st-Tier Sub 9, 1st-Tier Sub 10, 1st-Tier Sub 11, 1st-Tier Sub 12, 1st-Tier Sub 13, 1st-Tier Sub 14, 1st-Tier Sub 15, 1st-Tier Sub 16, 1st-Tier Sub 17, and 1st-Tier Sub 18. As noted earlier, it also owns all the equity in Controlled. Also, it owns all the equity in aa other corporations, referred to as the "aa Other, Business B, 1st-Tier Subsidiaries". Additionally, it owns all the equity in nine other corporations. Finally, it owns 42.3% of the outstanding equity in 1st-Tier Sub 19.

Controlled owns 100 percent of the equity in 2nd-Tier Sub 1, 2nd-Tier Sub 2, 2nd-Tier Sub 3, and 2nd-Tier Sub 4.

1st-Tier Sub 2 owns 57.7 percent of the outstanding equity in 1st-Tier Sub 19. 1st-Tier Sub 7 owns 100 percent of the outstanding equity interest in 2nd-Tier Sub 5. 1st-Tier Sub 10 owns 100 percent of the outstanding equity in 14 corporations, referred to as "Certain 14 2nd-Tier Subs". Among the Certain 14 2nd-Tier Subs is 2nd-Tier Sub 6. Finally, 2nd-Tier Sub 3 owns 100 percent of the outstanding equity in 3rd-Tier Sub 1.

Following are the various intra-group transactions the taxpayer will conduct prior to the spin-off.

Internal restructuring of Business A:

Step 1: Merge 2nd-Tier Sub 3 into a single-member LLC ("Product LLC") owned by Controlled.

Step 2: Merge 2nd-Tier Sub 2 into Product LLC.

Step 3: Merge 1st-Tier Sub 3 (a shell corporation) upstream into Distributing.

Step 4: Contribute the stock of eight wholly owned corporations, of 1st-Tier Sub 19, and of 1st-Tier Sub 2 to Controlled, and then have Controlled contribute all of such stock to a newly formed single-member LLC ("Distribution LLC").

Step 5: Contribute the stock of one wholly owned corporation (1st-Tier Sub 20) to Controlled, and then merge 1st-Tier Sub 20 into Distribution LLC.

Step 6: Contribute the stock of 1st-Tier Sub 4 to Controlled.

Step 7: Merge 1st-Tier Sub 5 (a shell corporation) upstream into Distributing.

Step 8: Contribute the stock of 1st-Tier Sub 6 to Controlled.

Step 9: Contribute the stock of 1st-Tier Sub 7 to Controlled.

Step 10: Contribute the stock of 1st-Tier Sub 8 to Controlled, and then have Controlled contribute such stock to Product LLC.

Step 11: Contribute the stock of 1st-Tier Sub 9 to Controlled, and then have Controlled contribute such stock to Product LLC.

Step 12: Contribute the stock of 1st-Tier Sub 1 to Controlled, and then have Controlled contribute such stock to Product LLC.

In addition, Distributing may transfer certain intangible assets (“Certain Intangible Assets “) associated with Business A, such as a trade name, to Controlled. Any such

transfer would be of all rights and interests in such property. Distributing will not actually receive additional shares.

Debt of approximately y dollars on which 2nd-Tier Sub 3 and Distributing are co-obligors and are jointly and severally liable will be allocated between 2nd-Tier Sub 3 and Distributing. This allocation will be accomplished by having 2nd-Tier Sub 3 borrow approximately z dollars from third-party lenders and pay off that portion of the old debt. Distributing likewise will borrow an amount approximately equal to y minus z dollars from third-party lenders and pay off that portion of the old debt. In connection with 2nd-Tier Sub 3's new borrowing, Controlled will also become a co-obligor.

Internal Restructuring of Business B:

Step 13: Contribute the stock of 1st-Tier Sub 11, 1st-Tier Sub 12, 1st-Tier Sub 13, 1st-Tier Sub 14, 1st-Tier Sub 15, 1st-Tier Sub 16, 1st-Tier Sub 17, and 1st-Tier Sub 18 to 1st-Tier Sub 10.

Step 14: Merge 1st-Tier Sub 11 into a single-member LLC ("1st-Tier Sub 11 LLC") owned by 1st-Tier Sub 10.

Step 15: Merge 1st-Tier Sub 12 into a single-member LLC ("1st-Tier Sub 12 LLC") owned by 1st-Tier Sub 10.

Step 16: Merge 1st-Tier Sub 13 into a single-member LLC ("1st-Tier Sub 13 LLC") owned by 1st-Tier Sub 10.

Step 17: Merge 1st-Tier Sub 14 into a single-member LLC ("1st-Tier Sub 14 LLC") owned by 1st-Tier Sub 10.

Step 18: Merge 1st-Tier Sub 15 into a single-member LLC ("1st-Tier Sub 15 LLC") owned by 1st-Tier Sub 10.

Step 19: Merge 1st-Tier Sub 16 into a single-member LLC ("1st-Tier Sub 16 LLC") owned by 1st-Tier Sub 10.

Step 20: Merge 1st-Tier Sub 17 into a single-member LLC ("1st-Tier Sub 17 LLC") owned by 1st-Tier Sub 10.

Step 21: Merge 1st-Tier Sub 18 into a single-member LLC ("1st-Tier Sub 18 LLC") owned by 1st-Tier Sub 10.

Step 22: Merge 2nd-Tier Sub 6 (currently a 1st-Tier Sub 10 subsidiary) into a single-member LLC ("2nd-Tier Sub 6 LLC") owned by 1st-Tier Sub 10.

Step 23: Contribute the stock of the aa Other, Business B, 1st-Tier Subsidiaries to 1st-Tier Sub 10.

Distributing's reverse stock split: Distributing will effect a one-for-two reverse stock split prior to the proposed distribution so that the number of shares it has outstanding prior to the proposed distribution of Controlled is reduced approximately to a.

Controlled's recapitalization: Controlled will recapitalize its common stock, so that the number of shares it has outstanding at the time of the proposed distribution is approximately a. Controlled will accomplish this by declaring a c-for-one stock split.

As the final step of the proposed transaction, Distributing will distribute all of its Controlled stock pro rata to Distributing's shareholders.

Financial information has been submitted indicating that Businesses A and B have each had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

The taxpayer commenced its operation of Business B in Month A of Year B (which is fewer than five years ago), by, in that year and subsequent years, acquiring a total of m unrelated companies themselves engaged in Business B. The aggregate fair market value of those companies was approximately $n at the time of their respective acquisitions.

Distributing and its subsidiaries acquired those companies in exchange for three types of consideration: (i) solely Distributing stock; (ii) a combination of Distributing stock and cash; and (iii) solely cash. Distributing generally used debt to finance the cash portion of the acquisitions. Of the purchased companies, approximately o percent by aggregate value were acquired solely for Distributing common stock in wholly tax-free reorganizations; approximately p percent for a mix of Distributing common stock and cash (if only acquisitions qualifying as reorganizations under § 368 (with the use of boot) were counted, the percent would be approximately q percent); and the balance of approximately r percent solely for cash, in taxable transactions. Aggregating the consideration used in all the acquisitions, Distributing voting common stock comprised approximately s percent of the acquisition consideration, while cash comprised the balance of approximately t percent.

Distributing has certain options outstanding for employees to acquire its stock. Distributing adopted Plan 1 as of Date A, under which incentive stock options ("ISOs") and nonstatutory options ("NSOs") were granted to eligible employees. As of Date B, the total number of options outstanding under Plan 1 was u, with an aggregate option price of w dollars.

Distributing adopted Plan 2 as of Date A, under which NSOs were granted to directors of Distributing. As of Date B, the total number of options outstanding under Plan 2 was v, with an aggregate option price of x. When granted, the options granted under Plan 1 and Plan 2 had an exercise price equal to the fair market value of Distributing stock on their applicable date of grant.

As noted elsewhere, Distributing plans to effect a one-for-two reverse stock split, so that the number of shares that it has outstanding prior to the proposed distribution of Controlled stock (the final step of the planned transaction, described below) is reduced approximately to a.

Distributing expects that the ISOs and NSOs held by persons who will be employees of the Distributing group (as opposed to the Controlled group) or directors of Distributing after the Distribution will be adjusted to reflect any decline in value of Distributing stock resulting from the Distribution. The taxpayer has represented that the adjustments to the option prices and the number of shares subject to the options will be such that (i) the excess of the aggregate fair market value of Distributing shares, determined immediately after the Distribution, over the aggregate new option price of such shares will not be more than the excess of the aggregate fair market value of the shares subject to the option immediately before the Distribution over the aggregate former option price of such shares; and (ii) the ratio of the option price immediately after the change to the fair market value of the Distributing stock subject to the option immediately after the Distribution will not be more favorable to the optionee, on a share-by-share comparison, than the ratio of the old option price to the fair market value of the Distributing stock subject to the option immediately before the Distribution.

Distributing also expects that ISOs and NSOs on Distributing stock that are held by persons who will be employees of the Controlled group or Controlled directors after the Distribution will be surrendered, and that ISOs or NSOs (as appropriate) for Controlled shares will be issued in exchange therefore. The taxpayer represents that the excess of the aggregate fair market value of the Controlled shares subject to the options, determined immediately after the Distribution, over the aggregate new option price of such shares, will not be more than the excess of the aggregate fair market value of the Distributing shares subject to the option immediately before the Distribution over the aggregate former option price of such shares. In addition, the taxpayer represents that the ratio of the option price immediately after the change to the fair market value of the Controlled stock subject to the option immediately after the Distribution will not be more favorable to the optionee, on a share-by-share comparison, than the ratio of the old option price to the fair market value of the Distributing stock subject to the option immediately before the Distribution.

Distributing has also represented that (1) the options to purchase Distributing shares did not have a readily ascertainable fair market value when they were granted, and neither those options nor the options to purchase shares of Controlled will be

actively traded on a established securities exchange or have a readily ascertainable fair market value immediately before or after the Distribution of the Controlled stock; and (2) no persons who will be employees or directors of Distributing (or of any subsidiary that remains a subsidiary of Distributing) following the distribution will receive, as part of the transactions described herein, options to acquire Controlled stock.

The following representations have been made in connection with the transaction:

With respect to the proposed contribution of the stock of 1st-Tier Sub 11, 1st-Tier Sub 12, 1st-Tier Sub 13, 1st-Tier Sub 14, 1st-Tier Sub 15, 1st-Tier Sub 16, 1st-Tier Sub 17, and 1st-Tier Sub 18 (collectively, the "Targets") to 1st-Tier Sub 10, followed by the mergers of the Targets into separate single-member LLCs formed by 1st-Tier Sub 10:

(a) The fair market value of the 1st-Tier Sub 10 stock deemed received by each Target shareholder will be approximately equal to the fair market value of the Target stock surrendered in the exchange.

(b) There is no plan or intention by the shareholders of the Targets who own one percent or more of the Targets' stock, and to the best of the knowledge of the management of the Targets, there is no plan or intention on the part of the remaining shareholders of the Targets to sell, exchange, or otherwise dispose of a number of shares of 1st-Tier Sub 10 stock deemed received in the transaction that would reduce the Target shareholders' ownership of 1st-Tier Sub 10 stock to a number of shares having a value, as of the date of the transaction, of less than 50 percent of the value of all of the formerly outstanding stock of the Targets as of the same date. For purposes of this representation, shares of Target stock exchanged for cash or other property, surrendered by dissenters or exchanged for cash in lieu of fractional shares of 1st-Tier Sub 10 stock will be treated as outstanding Target stock on the date of the transaction. Moreover, shares of Target stock and shares of 1st-Tier Sub 10 stock held by the Target shareholders and otherwise sold, redeemed, or disposed of prior to or subsequent to the transaction will be considered in making this representation.

(c) 1st-Tier Sub 10 will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by the Targets immediately prior to the transaction. For purposes of this representation, amounts paid by the Targets to dissenters, amounts paid by the Targets to shareholders who receive cash or other property, amounts used by the Targets to pay its reorganization expenses, and all redemptions and distributions (except for regular, normal dividends) made by the Targets immediately preceding the transfer will be included as assets of the Targets held immediately prior to the transaction.

(d) After the transaction, the shareholders of the Targets will be in control of 1st-Tier Sub 10 within the meaning of § 368(c)(2).

(e) 1st-Tier Sub 10 has no plan or intention to reacquire any of its stock issued in the transaction.

(f) 1st-Tier Sub 10 has no plan or intention to sell or otherwise dispose of any of the assets of the Targets acquired in the transaction, except for dispositions made in the ordinary course of business.

(g) The liabilities of the Targets assumed by 1st-Tier Sub 10 plus the liabilities, if any, to which the transferred assets are subject were incurred by the Targets in the ordinary course of their business and are associated with the assets deemed transferred.

(h) Following the transaction, 1st-Tier Sub 10 will continue the historic business of the Targets or use a significant portion of the Targets' historic business assets in a business.

(i) At the time of the transaction, 1st-Tier Sub 10 will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in 1st-Tier Sub 10 that, if exercised or converted, would affect the Target shareholders' acquisition or retention of control of 1st-Tier Sub 10, as defined in § 368(c)(2).

(j) 1st-Tier Sub 10, the Targets, and the shareholders of the Targets will pay their respective expenses, if any, incurred in connection with the transaction.

(k) There is no intercorporate indebtedness existing between 1st-Tier Sub 10 and the Targets that was issued, acquired, or will be settled at a discount.

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

(m) The fair market value of the assets of the Targets deemed transferred to 1st-Tier Sub 10 will equal or exceed the sum of the liabilities assumed by 1st-Tier Sub 10, plus the amount of liabilities, if any, to which the transferred assets are subject.

(n) The total adjusted basis of the assets of the Targets deemed transferred to 1st-Tier Sub 10 will equal or exceed the sum of the liabilities deemed assumed by 1st-Tier Sub 10, plus the amount of liabilities, if any, to which the transferred assets are subject.

(o) The Targets are not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A\).

With respect to Distributing's proposed contribution of assets to Controlled and the proposed distribution of Controlled stock pro rata to Distributing's shareholders:

(p) Less than 50 percent of the total combined voting power and less than 50 percent of the total combined value of Distributing's stock after the proposed distribution will have been acquired by any person (as defined in § 355(d)(7) and (8)) by purchase after October 9, 1990, and during the five-year period ending on the date of the distribution, even if Distributing's two public offerings, Distributing's outstanding employee stock options, and the issuance of shares in taxable acquisitions are aggregated.

(q) Less than 50 percent of the total combined voting power and less than 50 percent of the total combined value of Controlled's stock will be received by any person (as defined in § 355(d)(7) and (8)) by purchase after October 9, 1990, and during the five-year period ending on the date of the distribution, or as a distribution with respect to the stock of Distributing that was acquired by purchase, even if Distributing's two public offerings, Distributing's outstanding employee stock options, and the issuance of shares in taxable acquisitions are aggregated.

(r) The 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 stock of Distributing or Controlled, or stock possessing 50 percent or more of the total value of all classes of stock of Distributing or Controlled.

(s) Distributing and Controlled have not issued, and they have no plan or intention to issue, an amount of options that, if treated as exercised at the time of issuance, would cause the persons receiving such stock to acquire a 50-percent or greater interest in Distributing or Controlled (as determined under § 355(e)).

(t) The stock options to purchase shares of Distributing did not have a readily ascertainable fair market value at the time of grant, and neither these options nor the options to purchase shares of Controlled will be actively traded on an established securities exchange or have a readily ascertainable fair market value immediately before or after the distribution.

With respect to the distribution of the Controlled stock by Distributing :

(u) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of the corporation.

(v) The five years of financial information submitted on behalf of Controlled is representative of the corporation's present operation, and with respect to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(w) Immediately after the distribution, at least 90 percent of the fair market value of the gross assets of Distributing will consist of the stock and securities of controlled corporations that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(x) The five years of financial information submitted on behalf of Distributing is representative of the corporation's present operation, and with respect to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(y) Following the transaction, the distributing and controlled corporations will each continue the active conduct of its business, independently and with its separate employees.

(z) The distribution of the stock, or stock and securities, of Controlled is carried out for the following corporate business purpose: To resolve Distributing's problems with customers who object to Distributing or Controlled's being associated with a business that competes with the customer. The distribution of the stock of Controlled is motivated, in whole or in substantial part, by this corporate business purpose.

(aa) There is no plan or intention by any shareholder who owns five percent or more of the stock of Distributing, and the management of Distributing, to its best knowledge, is not aware of any plan or intention on the part of any particular remaining shareholder or security holder of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, either the distributing or controlled corporation after the transaction.

(bb) 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 transaction, other than through stock purchases meeting the requirements of § 4.05(1)(b) of Rev. Proc. 96-30.

(cc) There is no plan or intention to liquidate either the distributing or controlled corporation, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the transaction, except in the ordinary course of business.

(dd) The total adjusted bases and fair market value of the assets transferred to Controlled by Distributing each equals or exceeds the sum of the liabilities assumed by Controlled plus any liabilities to which the transferred assets are subject, and the liabilities assumed in the transaction and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.

(ee) Distributing's aggregate adjusted basis in the stock of Controlled will exceed z dollars at the time of Distributing's distribution of the Controlled stock to Distributing's shareholders.

(ff) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the distribution of Controlled stock.

(gg) Immediately before the 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 as in effect before the publication of T.D. 8597,1995-32 I.R.B. 6, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing's excess loss account, if any, with respect to the Controlled stock, will be included in income immediately before the distribution (see § 1.1502-19).

(hh) Payments made in connection with all continuing transactions, if any, between the distributing and controlled corporations, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

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

With respect to the merger of 2nd-Tier Sub 3 into a single-member limited liability company (Product LLC):

(jj) Controlled, on the date of adoption of the plan for the merger, and at all times until the merger is completed, will be the owner of at least 80 percent of the single outstanding class of 2nd-Tier Sub 3 stock.

(kk) No shares of 2nd-Tier Sub 3 stock will have been redeemed during the three years preceding the adoption of the merger plan.

(ll) The merger will take place within a single taxable year of 2nd-Tier Sub 3.

(mm) Effective as of the date of the merger, the corporate existence of 2nd-Tier Sub 3 will cease under state law.

(nn) 2nd-Tier Sub 3 will retain no assets following the merger.

(oo) No assets of 2nd-Tier Sub 3 have been, or will be, disposed of by either 2nd-Tier Sub 3 or Controlled except for dispositions in the ordinary course of business and dispositions occurring more than three years prior to adoption of the plan of merger.

(pp) The merger will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation (Recipient) of any of the businesses or assets of 2nd-

Tier Sub 3, if persons holding, directly or indirectly, more than 20 percent in value of the 2nd-Tier Sub 3 stock also hold, directly or indirectly, more than 20 percent in value of the stock in 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).

(qq) Prior to adoption of the merger plan, no assets of 2nd-Tier Sub 3 will have been distributed in kind, transferred, or sold to Controlled, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years prior to adoption of the merger plan.

(rr) 2nd-Tier Sub 3 will report all earned income represented by assets that will be deemed distributed to Controlled such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

(ss) The fair market value of the assets of 2nd-Tier Sub 3 will exceed its liabilities both at the date of the adoption of the plan of merger and immediately prior to the time the merger occurs.

(tt) There is no intercorporate debt existing between Controlled and 2nd-Tier Sub 3 and none has been canceled, forgiven, or discounted, except for transactions that occurred more than three years prior to the date of adoption of the merger plan.

(uu) Controlled is not an organization that is exempt from Federal income tax under § 501 or any other provision of the Code.

(vv) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the proposed merger of 2nd-Tier Sub 3 have been fully disclosed.

With respect to the merger of 2nd-Tier Sub 2 into a single-member limited liability company (Product LLC):

(ww) Controlled, on the date of adoption of the plan for the merger, and at all times until the merger is completed, will be the owner of at least 80 percent of the single outstanding class of 2nd-Tier Sub 2 stock.

(xx) No shares of 2nd-Tier Sub 2 stock will have been redeemed during the three years preceding the adoption of the merger plan.

(yy) The merger will take place within a single taxable year of 2nd-Tier Sub 2.

(zz) Effective as of the date of the merger, the corporate existence of 2nd-Tier Sub 2 will cease under state law.

(aaa) 2nd-Tier Sub 2 will retain no assets following the merger.

(bbb) 2nd-Tier Sub 2 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years prior to the date of adoption of the plan of merger.

(ccc) No assets of 2nd-Tier Sub 2 have been, or will be, disposed of by either 2nd-Tier Sub 2 or Controlled except for dispositions in the ordinary course of business and dispositions occurring more than three years prior to adoption of the plan of merger.

(ddd) The merger will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation (Recipient) of any of the businesses or assets of 2nd-Tier Sub 2, if persons holding, directly or indirectly, more than 20 percent in value of the 2nd-Tier Sub 2 stock also hold, directly or indirectly, more than 20 percent in value of the stock in 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).

(eee) Prior to adoption of the merger plan, no assets of 2nd-Tier Sub 2 will have been distributed in kind, transferred, or sold to Controlled, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years prior to adoption of the merger plan.

(fff) 2nd-Tier Sub 2 will report all earned income represented by assets that will be deemed distributed to Controlled such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

(ggg) The fair market value of the assets of 2nd-Tier Sub 2 will exceed its liabilities both at the date of the adoption of the plan of merger and immediately prior to the time the merger occurs.

(hhh) There is no intercorporate debt existing between Controlled and 2nd-Tier Sub 2 and none has been canceled, forgiven, or discounted, except for transactions that occurred more than three years prior to the date of adoption of the merger plan.

(iii) Controlled is not an organization that is exempt from Federal income tax under § 501 or any other provision of the Code.

(jjj) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the proposed merger of 2nd-Tier Sub 2 have been fully disclosed.

With respect to the merger of 2nd-Tier Sub 6 into a single-member limited liability company (2nd-Tier Sub 6 LLC):

(kkk) 1st-Tier Sub 10, on the date of adoption of the plan for the merger, and at all times until the merger is completed, will be the owner of at least 80 percent of the single outstanding class of 2nd-Tier Sub 6 stock.

(lll) No shares of 2nd-Tier Sub 6 stock will have been redeemed during the three years preceding the adoption of the merger plan.

(mmm) The merger will take place within a single taxable year of 2nd-Tier Sub 6.

(nnn) Effective as of the date of the merger, the corporate existence of 2nd-Tier Sub 6 will cease under state law.

(ooo) 2nd-Tier Sub 6 will retain no assets following the merger.

(ppp) 2nd-Tier Sub 6 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years prior to the date of adoption of the plan of liquidation, except for transactions described herein.

(qqq) No assets of 2nd-Tier Sub 6 have been, or will be, disposed of by either 2nd-Tier Sub 6 or 1st-Tier Sub 10 except for dispositions occurring more than three years prior to adoption of the plan of merger.

(rrr) The merger will not be preceded or followed by the reincorporation in, other transfer or sale to, a recipient corporation (Recipient) of any of the businesses or assets of 2nd-Tier Sub 6, if persons holding, directly or indirectly, more than 20 percent in value of the 2nd-Tier Sub 6 stock also hold, directly or indirectly, more than 20 percent in value of the stock in 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).

(sss) Prior to adoption of the merger plan, no assets of 2nd-Tier Sub 6 will have been distributed in kind, transferred, or sold to 1st-Tier Sub 10, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years prior to adoption of the merger plan.

(ttt) 2nd-Tier Sub 6 will report all earned income represented by assets that will be deemed distributed to 1st-Tier Sub 10 such as receivables being reported on a cash basis, unfinished contracts, commissions due, etc.

(uuu) The fair market value of the assets of 2nd-Tier Sub 6 will exceed its liabilities both at the date of the adoption of the plan of merger and immediately prior to the time the merger occurs.

(vvv) 1st-Tier Sub 10 is not an organization that is exempt from Federal income tax under § 501 or any other provision of the Code.

(www) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the proposed merger of 2nd-Tier Sub 6 have been fully disclosed.

With respect to the contribution of the stock of the aa Other, Business B, 1st-Tier Subsidiaries to 1st-Tier Sub 10:

(xxx) No stock will be issued for services rendered to or for the benefit of the transferee in connection with the proposed transaction, and no stock will be issued for indebtedness of the transferee that is not evidenced by a security or for interest on indebtedness of the transferee which accrued on or after the beginning of the holding period of the transferor for the debt.

(yyy) The transfer is not the result of the solicitation by a promoter, broker, or investment house.

(zzz) The transferor will not retain any rights in the property transferred to the transferee.

(aaaa) The value of the stock received in exchange for accounts receivable, if any, will be equal to the net value of the accounts transferred, i.e., the face amount of the accounts receivable previously included in income less the amount of the reserve for bad debts.

(bbbb) Any debt relating to the stock being transferred that is being assumed (or to which the stock is subject) was incurred to acquire such stock and was incurred when such stock was acquired, and each transferor is transferring all of the stock for which the acquisition indebtedness being assumed (or to which the stock is subject) was incurred.

(cccc) The adjusted basis and the fair market value of the assets to be transferred by the transferor to the transferee will, in each instance, be equal to or exceed the sum of the liabilities to be assumed by the transferee plus any liabilities to which the transferred assets are subject.

(dddd) The liabilities of the transferor to be assumed by the transferee were incurred in the ordinary course of business and are associated with the assets to be transferred.

(eeee) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.

(ffff) All exchanges will occur on approximately the same date.

(gggg) There is no plan or intention on the part of the transferee to redeem or otherwise reacquire any stock or indebtedness to be issued in the proposed transaction.

(hhhh) Taking into account any issuance of additional shares of transferee stock; any issuance of stock for services; the exercise of any transferee stock rights, warrants, or subscriptions; a public offering of transferee stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of the transferee to be received in the exchange, the transferor will be in "control" of the transferee within the meaning of § 368(c).

(iiii) Each transferor will receive stock, securities, or other property approximately equal to the fair market value of the property transferred to the transferee or for services rendered or to be rendered for the benefit of the transferee.

(jjjj) The transferee will remain in existence and retain and use the property transferred to it in a trade or business.

(kkkk) There is no plan or intention by the transferee to dispose of the transferred property other than in the normal course of business operations.

(llll) Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the proposed transaction.

(mmmm) The transferee will not be an investment company within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii).

(nnnn) The transferor is not under the jurisdiction of a court in a Title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy the indebtedness of such debtor.

(oooo) The transferee will not be a "personal service corporation" within the meaning of § 269A.

Under § 83(a), if, in connection with the performance of services, property is transferred to any person other than the service recipient, the excess of the fair market value of the property, on the first day that the rights to the property are transferable or not subject to a substantial risk of forfeiture (“substantially vested”), over the amount paid for the property is included in the service provider's gross income for the taxable year that includes that day.

Section 83(e)(3) provides that § 83(a) does not apply to the transfer of an option without a readily ascertainable fair market value. However, § 83(a) does apply to such

an option at the time that it is exercised, sold, or otherwise disposed of. If the option is exercised, § 83(a) applies to the transfer of property pursuant to the exercise. If the option is sold or otherwise disposed of in an arm's length transaction, § 83(a) applies to the transfer of money or other property received in the same manner as it would have applied to the transfer of property pursuant to an exercise of the option. See § 1.83-7(a) of the Income Tax Regulations.

In pertinent part, § 421(a) provides that, if a share of stock is transferred to an individual in a transfer in which the requirements of § 422(a) are met, no income shall result to the individual at the time of the transfer, no deduction under § 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.

Section 422(a) provides that § 421 will apply to the transfer of a share of stock to an individual pursuant to the exercise of an "incentive stock option" If (1) no disposition of the stock is made by the individual within two years after the date of grant of the option or within one year after the transfer of such share to the individual, 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 individual 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 § 424(a) applies.

Section 422(b) defines an "incentive stock option" as an option that meets the requirements of paragraphs (1) through (6) of that section. Section 422(b)(1) requires the shareholders of the corporation granting such options to approve certain aspects of the plan under which the options are granted within 12 months before or after the date that the plan is adopted by the corporation's board of directors. See also § 1.422-5 of the regulations and § 1.422A-2(b) of the proposed regulations.

Section 1.425-1(e)(2) provides that any modification, extension, or renewal of the terms of an option to purchase stock shall be considered the granting of a new option. Section 1.425-1(e)(5)(i) provides that the time or date when an option is modified, extended, or renewed is determined, insofar as applicable, in accordance with the rules governing determination of the time or date of granting an option provided in § 1.421-7(c). It also provides that, for purposes of §§ 421 through 424, the term “modification” means any change in the terms of the option that gives the optionee additional benefits under the option.

An “extension” of an option refers to the granting by the corporation to the optionee of an additional period of time within which to exercise the option beyond the time originally prescribed. A “renewal” of an option is the granting by the corporation of

the same rights or privileges contained in the original option on the same terms and conditions. See § 1.425-1(e)(5)(iv).

Section 424(a) and the regulations thereunder specify the circumstances under which a corporation's substitution or assumption of options will not constitute a "modification" of those options, as defined in § 424(h). Section 424(a) applies to a substitution of a new option for an old option, or an assumption of the old option, by reason of a corporate transaction if the "spread" after the substitution is no greater than the "spread" before the substitution. The "spread" is the difference between the aggregate fair market value of the shares subject to the option and their option price. A "corporate transaction" is any corporate merger, consolidation, acquisition of property or stock, separation, reorganization, or liquidation.

A second requirement of § 424(a) is that the terms of the substituted or assumed option cannot give the employee more favorable benefits than those granted under the old option. Section 1.425-1(a)(4)(i) provides a ratio test for determining relative benefits. Under that test, on a share-by-share comparison, the ratio of the option price to the fair market value of the stock subject to the option immediately after the substitution or assumption can be no more favorable to the optionee than the ratio of the option price to the fair market value of the stock subject to the old option immediately before the substitution or assumption. Section 3.01(28) of Rev. Proc. 99-3, 1999-1 I.R.B. 103, 108, provides that the Service will not rule on the question of whether a substitution or assumption constitutes a modification by reason of the failure to satisfy the spread or ratio tests, but that it will rule on the question of whether the new or assumed options give the employee additional benefits.

Based solely on the information submitted and on the representations set forth above, it is held as follows:

With respect to Distributing's proposed contribution to Controlled of the stock of the eight wholly owned distribution subsidiaries, 1st-Tier Sub 19, 1st-Tier Sub 2, 1st-Tier Sub 4, 1st-Tier Sub 6, 1st-Tier Sub 7, 1st-Tier Sub 8, 1st-Tier Sub 9, and 1st-Tier Sub 1 (and the Certain Intangible Assets, if transferred) and the proposed distribution of Controlled stock pro rata to Distributing's shareholders:

1. The transfer by Distributing of the stock of the eight wholly owned subsidiaries, 1st-Tier Sub 19, 1st-Tier Sub 2, 1st-Tier Sub 4, 1st-Tier Sub 6, 1st-Tier Sub 7, 1st-Tier Sub 8, 1st-Tier Sub 9, and 1st-Tier Sub 1 and the Certain Intangible Assets, if transferred, (collectively, the "Contributed Business A Assets") in constructive exchange for Controlled stock, followed by Distributing's pro rata distribution of the Controlled stock to the Distributing shareholders, will be a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled will each be a "party to a reorganization" within the meaning of § 368(b).

2. Distributing will recognize no gain or loss upon the transfer of the Contributed Business A Assets to Controlled in constructive exchange for Controlled stock. Further, to the extent the allocation of the debt between 2nd-Tier Sub 3 and Distributing as described above is a payment of part of Distributing's indebtedness for Federal income tax purposes, Distributing will recognize no gain or loss upon such allocation (Sections 361(a) and 361(b)(3)).

3. Controlled will recognize no gain or loss on the receipt of the Contributed Business A Assets from Distributing in constructive exchange for Controlled stock (Section 1032(a)).

4. Controlled's basis in each of the Contributed Business A Assets received will equal the basis of that respective asset in the hands of Distributing immediately before its transfer (Section 362(b)).

5. Controlled's holding period of each of the Contributed Business A Assets received will include the period during which that respective asset was held by Distributing (Section 1223(2)).

6. Distributing will recognize no gain or loss upon its distribution of Controlled stock to its shareholders (Sections 355(c)(1), (d), and (e)).

7. The Distributing shareholders will recognize no gain or loss (and no amount will otherwise be included in the income of such shareholders) upon their receipt of Controlled stock in the distribution (Section 355(a)(1)).

8. The aggregate basis of Distributing and Controlled stock in the hands of a Distributing shareholder after the distribution will equal the aggregate basis of the Distributing stock held immediately before the 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) (Section 358(b)(2) and (c)).

9. The holding period of the Controlled stock received by a Distributing shareholder will include the holding period of the Distributing stock on which the distribution is made, provided the stock is held as a capital asset on the date of the distribution (Section 1223(1)).

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

11. No gain or loss will be recognized by the holders of outstanding nonqualified options to purchase Distributing common stock as a result of the proposed adjustments to the price and number of shares subject to such options to reflect the decline in value of Distributing stock resulting from the distribution of Controlled stock. This is provided

that such adjustments would satisfy spread and ratio tests identical to those found in § 1.425-1(a)(4)(i); and that those options, as adjusted, have no readily ascertainable fair market value when they are given.

12. No gain or loss will be recognized by the holders of outstanding nonqualified options to purchase Distributing common stock upon the proposed surrender of such options and the issuance of nonqualified options for Controlled shares in exchange therefor. This is provided that such substitutions would satisfy spread and ratio tests identical to those found in § 1.425-1(a)(4)(i); and that the Controlled options received in exchange have no readily ascertainable fair market value when they are granted.

13. The proposed adjustment to the price and number of shares of Distributing stock subject to ISOs to reflect the distribution will not constitute a “modification,” an “extension,” or a “renewal” of such options, within the meaning of § 424(h)(3), and, therefore, will not constitute a grant of new options. This is provided that the requirements of §§ 424(a)(1) and (2) are satisfied by such options.

14. The proposed substitution of ISOs to purchase shares of Controlled stock for outstanding ISOs granted to employees of Controlled will not constitute a “modification,” an “extension,” or a “renewal” of such options, within the meaning of § 424(h)(3), and, therefore, will not constitute a grant of new options. This is provided that the requirements of §§ 424(a)(1) and (2) are satisfied by such options.

With respect to the merger of 2nd-Tier Sub 3 and 2nd-Tier Sub 2 (collectively, the "Product Subsidiaries") into a single-member LLC owned by Controlled:

15. For Federal income tax purposes, the merger of each of the Product Subsidiaries into a single-member LLC wholly owned by Controlled will be treated as a distribution of property by the Product Subsidiaries in complete liquidation under § 332(a).

16. No gain or loss will be recognized by Controlled on the deemed receipt of the assets and liabilities of each Product Subsidiary in the mergers (Section 332(a)).

17. No gain or loss will be recognized by the Product Subsidiaries on the deemed distribution of their assets and liabilities to Controlled in the mergers (Sections 336(d)(3) and 337(a)).

18. The basis of each Product Subsidiary asset deemed received by Controlled in the mergers will be the same as the basis of that asset in the hands of each Product Subsidiary immediately before the mergers (Section 334(b)(1)).

19. The holding period of each Product Subsidiary asset deemed received by Controlled in the merger will include the period during which that asset was held by the Product Subsidiary (Section 1223(2)).

20. Controlled will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of each Product Subsidiary as of the date of the mergers (Sections 381(c)(2) and 1.381(c)(2)-1). Any deficit in earnings and profits of the Product Subsidiaries or Controlled will be used only to offset earnings and profits accumulated after the date of each merger.

21. Earnings and profits of each Product Subsidiary that Controlled succeeds to under § 381 as a result of the deemed liquidation of the Product Subsidiary 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 Controlled under § 1.1502-33(b).

22. Controlled will succeed to and take into account the items of each Product Subsidiary described in § 381(c), subject to the conditions and limitations specified in § 381(b) and (c) and the regulations thereunder (Sections 381(a) and 1.381(a)-1).

With respect to the proposed contribution of the stock of 1st-Tier Sub 11, 1st-Tier Sub 12, 1st-Tier Sub 13, 1st-Tier Sub 14, 1st-Tier Sub 15, 1st-Tier Sub 16, 1st-Tier Sub 17, and 1st-Tier Sub 18 to 1st-Tier Sub 10, followed by the mergers of these companies into separate single-member LLCs formed by 1st-Tier Sub 10:

23. The contribution by Distributing of the stock of 1st-Tier Sub 11, 1st-Tier Sub 12, 1st-Tier Sub 13, 1st-Tier Sub 14, 1st-Tier Sub 15, 1st-Tier Sub 16, 1st-Tier Sub 17, and 1st-Tier Sub 18 (collectively, the "Contributed Business B Subsidiaries") to 1st-Tier Sub 10, followed by the mergers of the Contributed Business B Subsidiaries into separate single-member LLCs, will be treated as the transfer of substantially all of the assets of each of the Contributed Business B Subsidiaries to 1st-Tier Sub 10 in constructive exchange for stock of 1st-Tier Sub 10 and the assumption of liabilities, followed by the constructive distribution of the 1st-Tier Sub 10 stock by each of the Contributed Business B Subsidiaries in liquidation. The transfers will each constitute a reorganization within the meaning of § 368(a)(1)(D). (Rev. Rul. 78-130, 1978-1 C.B. 114; see also Rev. Rul. 67-274, 1967-2 C.B. 141). For purposes of this ruling, the term "substantially all" means at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets of the Contributed Business B Subsidiaries. In respect of each reorganization, 1st-Tier Sub 10 and the particular Contributed Business B Subsidiary will each be a "party to a reorganization" within the meaning of § 368(b).

24. No gain or loss will be recognized by each of the Contributed Business B Subsidiaries on the transfer of its assets to 1st-Tier Sub 10 in constructive exchange for 1st-Tier Sub 10 stock and the assumption by 1st-Tier Sub 10 of the liabilities of each of the Contributed Business B Subsidiaries (Sections 361(a) and 357(a)).

25. No gain or loss will be recognized by each of the Contributed Business B Subsidiaries on the constructive distribution of the 1st-Tier Sub 10 stock in pursuance of the plan of reorganization (Section 361(c)).

26. No gain or loss will be recognized by 1st-Tier Sub 10 on the receipt of the assets of each of the Contributed Business B Subsidiaries in constructive exchange for stock of 1st-Tier Sub 10 (Section 1032(a)).

27. The basis of the assets of each of the Contributed Business B Subsidiaries in the hands of 1st-Tier Sub 10 will be the same as the basis of those assets in the hands of each of the Contributed Business B Subsidiaries immediately prior to the exchange (Section 362(b)).

28. The holding period of the assets of each of the Contributed Business B Subsidiaries to be received by 1st-Tier Sub 10 will include the period during which the assets were held by the Contributed Business B Subsidiaries (Section 1223(2)).

29. 1st-Tier Sub 10 will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of each of the Contributed Business B Subsidiaries as of the date of the mergers. Any deficit in earnings and profits of the Contributed Business B Subsidiaries or 1st-Tier Sub 10 will be used only to offset earnings and profits accumulated after the date of each merger (Sections 381(c)(2) and 1.381(c)(2)-1).

30. 1st-Tier Sub 10 will succeed to and take into account the items of each of the Contributed Business B Subsidiaries described in § 381(c), subject to the conditions and limitations specified in § 381(b) and (c) and the regulations thereunder (Sections 381(a) and 1.381(a)-1)).

With respect to the merger of 2nd-Tier Sub 6 into a single-member LLC owned by 1st-Tier Sub 10:

31. For Federal income tax purposes, the merger of 2nd-Tier Sub 6 into a single-member LLC wholly owned by 1st-Tier Sub 10 will be treated as a distribution of property by 2nd-Tier Sub 6 in complete liquidation under § 332(a).

32. No gain or loss will be recognized by 1st-Tier Sub 10 on the deemed receipt of the assets and liabilities of 2nd-Tier Sub 6 in the merger (Section 332(a)).

33. No gain or loss will be recognized by 2nd-Tier Sub 6 on the deemed distribution of its assets and liabilities to 1st-Tier Sub 10 in the merger (Sections 336(d)(3) and 337(a)).

34. The basis of each 2nd-Tier Sub 6 asset deemed received by 1st-Tier Sub 10 in the merger will be the same as the basis of that asset in the hands of 2nd-Tier Sub 6 immediately before the merger (Section 334(b)(1)).

35. The holding period of each 2nd-Tier Sub 6 asset deemed received by 1st-Tier Sub 10 in the merger will include the period during which that asset was held by 2nd-Tier Sub 6 (Section 1223(2)).

36. 1st-Tier Sub 10 will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of 2nd-Tier Sub 6 as of the date of the merger (Sections 381(c)(2) and 1.381(c)(2)-1). Any deficit in earnings and profits of 2nd-Tier Sub 6 or 1st-Tier Sub 10 will be used only to offset earnings and profits accumulated after the date of the merger.

37. Earnings and profits of 2nd-Tier Sub 6 that 1st-Tier Sub 10 succeeds to under § 381 as a result of the deemed liquidation of 2nd-Tier Sub 6 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 1st-Tier Sub 10 under § 1.1502-33(b).

38. 1st-Tier Sub 10 will succeed to and take into account the items of 2nd-Tier Sub 6 described in § 381(c), subject to the conditions and limitations specified in § 381(b) and (c) and the regulations thereunder (Sections 381(a) and 1.381(a)-1).

With respect to the contribution of the remaining aa Other, Business B, 1st-Tier Subs to 1st-Tier Sub 10:

39. No gain or loss will be recognized by Distributing with respect to the transfer of the stock of the aa Other, Business B, 1st-Tier Subs (referred to in the following rulings, collectively, as the "Business B Subsidiaries") to 1st-Tier Sub 10, in constructive exchange for stock of 1st-Tier Sub 10 (Section 351(a); Rev. Rul. 64-155, 1964-1 C.B. 138).

40. No gain or loss will be recognized by 1st-Tier Sub 10 upon the receipt of the stock of the Business B Subsidiaries from Distributing (Section 1032(a)).

41. The basis of the 1st-Tier Sub 10 stock held by Distributing will be increased by the basis of the stock of the Business B Subsidiaries transferred to 1st-Tier Sub 10

(Section 358(a)(1)).

42. The basis of the Business B Subsidiaries' stock received by 1st-Tier Sub 10 will be the same as the basis of such stock held by Distributing immediately prior to the transfer (Section 362(a)).

43. 1st-Tier Sub 10's holding period for the stock of the Business B Subsidiaries received from Distributing will include Distributing's holding period for such stock (Section 1223(2)).

With respect to Distributing's proposed one-for-two reverse stock split:

44. The reverse stock split of Distributing common stock will qualify as a recapitalization and, therefore, a reorganization within the meaning of § 368(a)(1)(E). Distributing will be a "party to a reorganization" within the meaning of § 368(b).

45. No gain or loss will be recognized by Distributing upon the reverse stock split (Section 1032(a)).

46. No gain or loss will be recognized by the shareholders of Distributing by reason of the reverse stock split (Section 354(a)(1); Rev. Rul. 72-57, 1972-1 C.B. 103).

47. The basis of Distributing common stock to be held by Distributing's shareholders after the reverse stock split will be the same as the basis of the Distributing common stock that was so split (Section 358(a)(1)).

48. The holding period of the Distributing common stock held by Distributing's shareholders after the reverse stock split will include the period during which the Distributing common stock so split was held, provided the Distributing common stock split is held as a capital asset on the date of the split (Section 1223(1)).

49. The reverse stock split will not be treated as a distribution of property to which § 301 applies by reason of the application of §§ 305(b) and (c).

50. The reverse stock split will not diminish the accumulated earnings and profits of Distributing available for the subsequent distribution of dividends within the meaning of § 316 (Section 1.312-11 (b) and (c)).

With respect to Controlled's proposed c-for-one stock split:

51. The stock split of Controlled common stock will qualify as a recapitalization and, therefore, a reorganization within the meaning of § 368(a)(1)(E). Distributing and

Controlled will each be a "party to a reorganization" within the meaning of § 368(b).

52. No gain or loss will be recognized by Controlled upon the stock split (Section 1032(a)).

53. No gain or loss will be recognized by Distributing by reason of the stock split (Section 354(a)(1); Rev. Rul. 72-57, 1972-1 C.B. 103).

54. The basis of Controlled common stock to be held by Distributing after the stock split will be the same as the basis of the Controlled common stock that was so split (Section 358(a)(1)).

55. The holding period of the Controlled common stock held by Distributing after the stock split will include the period during which the Controlled common stock so split was held, provided the Controlled common stock split is held as a capital asset on the date of the split (Section 1223(1)).

56. The stock split will not be treated as a distribution of property to which § 301 applies by reason of the application of §§ 305(b) and (c).

57. The stock split will not diminish the accumulated earnings and profits of Distributing available for the subsequent distribution of dividends within the meaning of § 316 (Section 1.312-11 (b) and (c)).

No opinion is expressed about the tax treatment of the transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above rulings. In this regard, please note that we express no opinion regarding the qualification of any of the options or plans under the rules of §§ 421 through 424.

This ruling 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 affected taxpayer should attach a copy of this letter to its Federal income tax return for the taxable year in which the transaction covered by this ruling letter is consummated.

Sincerely yours,
Assistant Chief Counsel (Corporate)
Victor L. Penico
Branch Chief, Branch 3