

## Internal Revenue Service

## Department of the Treasury

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Person to Contact:

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Refer Reply To:

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Date:

**April 17, 2003**

### Legend

Distributing 4 =

Distributing 3 =

Distributing 2 =

Distributing 1 =

Corporation P =

Sub A =

Sub B =

Sub C =

Sub A1 =

Sub A2 =

Sub A3 =

Sub A4 =

Sub D1 =

Controlled =

LLC B1 =

LLC B2 =

LLC C =

LLC D1 =

LC D2 =

LLC D3 =

GP =

Business A =

Business B =

Business C =

Business P =

Business X =

Business Y =

a =

b =

c =

d =

e =

f =

g =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

M =

N =

Dear

This letter responds to your letter dated November 5, 2002, requesting rulings as to the federal income tax consequences of certain proposed transactions. Additional information was submitted in letters dated February 17, April 8, April 9, and April 15, 2003. The information submitted for consideration is summarized below.

### **Summary of Facts**

Distributing 4 is a publicly traded holding company and the common parent of an affiliated group that files a consolidated federal income tax return (the "Distributing 4 Group"). Distributing 4 is engaged indirectly in Business A, Business B, Business C, Business P, Business X, and Business Y. Business Y has an M sector and an N sector.

Distributing 4 owns approximately a percent (more than 50 percent) of the common stock of Corporation P, a publicly traded corporation engaged in Business P. Corporation P is not a member of the Distributing 4 Group.

Distributing 4 owns all the outstanding stock of holding companies Sub A, Sub B, and Sub C.

Sub A owns all the outstanding stock of Sub A1, Sub A2, Sub A3, and Sub A4, which are corporations engaged in Business A. Distributing 4 has submitted financial information indicating that Sub A1, Sub A2, Sub A3, and Sub A4 each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Sub B owns all the membership interests of LLC B1 and LLC B2, which are limited liability companies engaged in Business B that are disregarded for federal income tax purposes. LLC B1 and LLC B2 previously were wholly owned subsidiaries of Sub B. Distributing 4 has submitted financial information indicating that LLC B1 and LLC B2 and their predecessor corporations each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Sub C owns all the membership interests of LLC C, a limited liability company engaged in Business C that is disregarded for federal income tax purposes. LLC C previously was a wholly owned subsidiary corporation of Sub C. Distributing 4 has submitted financial information indicating that LLC C and its predecessor corporation has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing 4 also owns all the outstanding stock of Distributing 3. Distributing 3 is a holding company that is indirectly engaged in Business X and Business Y through its ownership of all the outstanding stock of Distributing 2.

Distributing 2 is directly and indirectly engaged in Business X and Business Y through its ownership of all the outstanding stock of Distributing 1 and a b-percent managing general partner interest in GP, which is a partnership engaged in Business X.

Distributing 1 is engaged in Business X and Business Y through its ownership interests (described below) in GP and in LLC D1 and LLC D2, which are limited liability companies engaged in Business Y.

Distributing 1 owns a c-percent (at least 80 percent) general partner interest in GP, and the remaining d-percent general partner interest in GP is owned by Sub D1, a subsidiary of Distributing 1 and member of the Distributing 4 Group. Since joining the Distributing 4 Group more than five years ago, Distributing 1 has owned at least e percent (more than 50 percent) of GP. On Date 5, as a result of a restructuring within the Distributing 4 Group, Distributing 1's general partner interest in GP increased to c percent.

All personnel performing operational functions for GP have been employees of GP for each of the past five years. All personnel performing management functions for GP have been officers of Distributing 2 and Distributing 1. With the exception of a few brief periods of time, all of Distributing 1's officers have also been officers of Distributing 2 for each of the past five years.

Distributing 4 has submitted financial information indicating that GP has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing 1 also owns, through a disregarded entity, all the membership interests in LLC D1, which is engaged in the M sector of Business Y. Distributing 1 purchased an f-percent (more than 80 percent) membership interest in LLC D1 on Date 2, which was more than five years before the proposed transactions; on that date LLC D1 was taxable as a partnership. On Date 4, LLC D1 redeemed the remaining interest held by an unrelated member; since Date 4 LLC D1 has been disregarded for federal income tax purposes.

LLC D1 owns all the membership interests in LLC D2, which is engaged in the N sector of Business Y. Distributing 1 acquired a g-percent (more than 80 percent) interest in LLC D2's predecessor, LLC D3, by contributing cash upon the formation of LLC D3 on Date 1, which was more than five years before the proposed transactions. The remaining membership interest was owned by an unrelated person. Also on Date 1, LLC D3 formed LLC D2, a wholly owned limited liability company that is disregarded for federal income tax purposes. Also on Date 1, LLC D2 acquired the assets of the N sector of Business Y, and began to engage in that business. On Date 3, Distributing 1 and the unrelated minority member contributed their interests in LLC D3 to LLC D1, at which time LLC D3 became a disregarded entity of LLC D1. LLC D3 dissolved shortly thereafter.

All personnel performing operational functions for LLC D1 have been employees of LLC D1 for each of the past five years. From the time Distributing 1 first purchased a membership interest in LLC D1 on Date 2, Distributing 1 has appointed a majority of the board members of LLC D1. The board members appointed by D1 have consisted of officers of Distributing 1 and Distributing 4, all of which have, since Date 2, performed management functions for LLC D1 including the supervision, direction, and control of all operational functions of LLC D1.

Distributing 4 has submitted financial information indicating that LLC D1 has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Financial information, including a detailed opinion from an independent investment advisor, indicates that the separation of Business Y from Business X would positively affect the operations of each business. In particular, the Distributing 4 Group has experienced significant managerial and systemic problems by operating Business Y and Business X within the same affiliated group.

### **Proposed Transactions**

In order to accomplish the separation of Business Y from Business X, Distributing 4 proposes the following transactions:

(i) Distributing 1 will form Controlled as a wholly owned subsidiary and will contribute the assets and associated liabilities of LLC D1 to Controlled by causing LLC D1 to merge with and into Controlled with Controlled surviving ("Contribution 1"). Immediately after the merger, Distributing 1 will distribute all of the Controlled stock to Distributing 2 ("Distribution 1").

(ii) Distributing 2 will distribute all of the Controlled stock to Distributing 3 ("Distribution 2").

(iii) Distributing 3 will distribute all of the Controlled stock to Distributing 4 ("Distribution 3").

(iv) Immediately after Distribution 3, Distributing 4 will transfer all rights in certain intellectual property used in Business Y to Controlled ("Contribution 4"). Immediately after the transfer, Distributing 4 will distribute all of the Controlled stock pro rata to its shareholders ("Distribution 4"). Distributing 4 will pay cash in lieu of any fractional shares of Controlled.

In connection with the proposed transaction, Distributing 4 and Controlled will enter into several agreements relating to their separation, including an administrative services agreement, an intellectual property agreement, and a tax sharing agreement. After Distribution 4, Distributing 4's board of directors will consist of 11 members, and Controlled's board of directors will consist of 5 members; one individual will serve as a director on both boards. Distributing 1, Distributing 2, Distributing 3, Distributing 4, and Controlled each will pay its own expenses incurred in connection with the proposed transactions.

## **Representations**

### Contribution 1 and Distribution 1

In connection with Contribution 1 and Distribution 1 described above in step (i), the taxpayer represents as follows:

(a) No part of the consideration to be distributed by Distributing 1 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.

(b) Immediately after Distribution 1, the fair market value of Distributing 1's general partner interest in GP will equal at least five percent of the fair market value of the gross assets of Distributing 1.

(c) The five years of financial information submitted on behalf of Business X and Business Y represents their present operations, and regarding each such business, there has been no substantial operational changes since the date of the last financial statements submitted.

(d) Following Distribution 1, Distributing 1 and Controlled will each continue the active conduct of its business independently and with its separate employees.

(e) Distribution 1 is being carried out for the corporate business purpose of enhancing the success of Business X and Business Y by reducing or eliminating significant managerial and systemic problems arising from the conduct of both businesses within the same affiliated group. Distribution 1 is motivated, in whole or substantial part, by this corporate business purpose.

(f) Except for Distributions 2, 3, and 4, there is no plan or intention by the shareholders or security holders of Distributing 1 to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in either Distributing 1 or Controlled after Distribution 1.

(g) There is no plan or intention by either Distributing 1 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, 1996-1 C.B. 696.

(h) There is no plan or intention to liquidate either Distributing 1 or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after Distribution 1, except in the ordinary course of business.

(i) The total adjusted basis and fair market value of the assets to be transferred to Controlled by Distributing 1 in Contribution 1 each equals or exceeds the sum of the liabilities to be assumed by Controlled (as determined under § 357(d)).

(j) The liabilities to be assumed in Contribution 1 were incurred in the ordinary course of business and are associated with the assets being transferred.

(k) Distributing 1 neither accumulated its receivables nor made any extraordinary payment of its payables in anticipation of the transaction.

(l) No intercorporate debt will exist between Distributing 1 and Controlled at the time of, or after, Distribution 1.

(m) Immediately before Distribution 1, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations.

(n) Payments made in connection with all continuing transactions between Distributing 1 and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

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

(p) Distribution 1 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 (other than as a result of the distributions that are the subject of this ruling) directly or indirectly stock possessing 50 percent or more of the total combined voting power of all classes of stock of Distributing 1 or Controlled or stock possessing 50 percent or more of the total value of all classes of stock of Distributing 1 or Controlled.

### Distribution 2

In connection with Distribution 2 described above in step (ii), the taxpayer represents as follows:

(q) No part of the consideration to be distributed by Distributing 2 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.

(r) Immediately after Distribution 2, at least 90 percent of the fair market value of the gross assets of Distributing 2 will consist of the stock of Distributing 1, which is engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(s) Following Distribution 2, Distributing 2 and Controlled will each continue the active conduct of its business independently and with its separate employees.

(t) Distribution 2 is being carried out for the corporate business purpose of enhancing the success of Business X and Business Y by reducing or eliminating significant managerial and systemic problems arising from the conduct of both businesses within the same affiliated group. Distribution 2 is motivated, in whole or substantial part, by this corporate business purpose.



(u) Except for Distributions 3 and 4, there is no plan or intention by the shareholders or security holders of Distributing 2 to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in either Distributing 2 or Controlled after Distribution 2.

(v) There is no plan or intention by either Distributing 2 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, 1996-1 C.B. 696.

(w) There is no plan or intention to liquidate either Distributing 2 or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after Distribution 2, except in the ordinary course of business.

(x) No intercorporate debt will exist between Distributing 2 and Controlled at the time of, or after, Distribution 2.

(y) Immediately before Distribution 2, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations.

(z) Payments made in connection with all continuing transactions between Distributing 2 and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

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

(bb) Distribution 2 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 (other than as a result of the distributions that are the subject of this ruling) directly or indirectly stock possessing 50 percent or more of the total combined voting power of all classes of stock of Distributing 2 or Controlled or stock possessing 50 percent or more of the total value of all classes of stock of Distributing 2 or Controlled.

### Distribution 3

In connection with Distribution 3 described above in step (iii), the taxpayer represents as follows:

(cc) No part of the consideration to be distributed by Distributing 3 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 3.

(dd) Immediately after Distribution 3, at least 90 percent of the fair market value of the gross assets of Distributing 3 will consist of the stock of Distributing 2, which is engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(ee) Following Distribution 3, Distributing 3 and Controlled will each continue the active conduct of its business independently and with its separate employees.

(ff) Distribution 3 is being carried out for the corporate business purpose of enhancing the success of Business X and Business Y by reducing or eliminating significant managerial and systemic problems arising from the conduct of both businesses within the same affiliated group. Distribution 3 is motivated, in whole or substantial part, by this corporate business purpose.

(gg) Except for Distribution 4, there is no plan or intention by the shareholders or security holders of Distributing 3 to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in either Distributing 3 or Controlled after Distribution 3.

(hh) There is no plan or intention by either Distributing 3 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, 1996-1 C.B. 696.

(ii) There is no plan or intention to liquidate either Distributing 3 or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after Distribution 3, except in the ordinary course of business.

(jj) No intercorporate debt will exist between Distributing 3 and Controlled at the time of, or after, Distribution 3.

(kk) Immediately before Distribution 3, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations.

(ll) Payments made in connection with all continuing transactions between Distributing 3 and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

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

(nn) Distribution 3 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 (other than as a result of the distributions that are the subject of this ruling) directly or indirectly stock possessing 50 percent or more of the total combined voting power of all classes of stock of Distributing 3 or Controlled or stock possessing 50 percent or more of the total value of all classes of stock of Distributing 3 or Controlled.

#### Contribution 4 and Distribution 4

In connection with Contribution 4 and Distribution 4 described above in step (iv), the taxpayer represents as follows:

(oo) No part of the consideration to be distributed by Distributing 4 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 4.

(pp) Immediately after Distribution 4, at least 90 percent of the fair market value of the gross assets of Distributing 4 will consist of the stock of Sub A, Sub B, Sub C, and Distributing 3, each of which is engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(qq) Immediately after Distribution 4, at least 90 percent of the fair market value of the gross assets of Sub A will consist of the stock of Sub A1, Sub A2, Sub A3, and Sub A4, each of which is engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(rr) The five years of financial information submitted on behalf of Businesses A, B, and C represents their present operations, and regarding each such business, there has been no substantial operational changes since the date of the last financial statements submitted.

(ss) Following Distribution 4, Distributing 4 and Controlled will each continue the active conduct of its business independently and with its separate employees.

(tt) Distribution 4 is being carried out for the corporate business purpose of enhancing the success of Business X and Business Y by reducing or eliminating significant managerial and systemic problems arising from the conduct of both businesses within the same affiliated group. Distribution 4 is motivated, in whole or substantial part, by this corporate business purpose.

(uu) There is no plan or intention by any shareholder who owns five percent or more of the stock of Distributing 4, and the management of Distributing 4, 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 4 to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, Distributing 4 or Controlled after Distribution 4.

(vv) There is no plan or intention by either Distributing 4 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, 1996-1 C.B. 696.

(ww) There is no plan or intention to liquidate either Distributing 4 or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after Distribution 4, except in the ordinary course of business.

(xx) The total adjusted basis and fair market value of the assets to be transferred to Controlled by Distributing 4 in Contribution 4 each equals or exceeds the sum of the liabilities to be assumed by Controlled (as determined under § 357(d)).

(yy) The liabilities to be assumed in Contribution 4 were incurred in the ordinary course of business and are associated with the assets being transferred.

(zz) Distributing 4 neither accumulated its receivables nor made any extraordinary payment of its payables in anticipation of Distribution 4.

(aaa) No intercorporate debt will exist between Distributing 4 and Controlled at the time of, or after, Distribution 4.

(bbb) Immediately before Distribution 4, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations. Furthermore, Distributing 4's excess loss account in the Controlled stock, if any, will be included in income immediately before Distribution 4.

(ccc) Payments made in connection with all continuing transactions between Distributing 4 and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

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

(eee) Distribution 4 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 4 or Controlled or stock possessing 50 percent or more of the total value of all classes of stock of Distributing 4 or Controlled.

(fff) The payment of cash in lieu of fractional shares of Controlled will be solely for the purpose of avoiding the expense and inconvenience to Distributing 4 of distributing fractional shares and does not represent separately bargained-for consideration. The total cash consideration to be paid in lieu of fractional Controlled shares will not exceed one percent of the total consideration that will be issued in Distribution 4 to Distributing 4 shareholders. The fractional share interests of each Distributing 4 shareholder will be aggregated and no Distributing 4 shareholder will receive cash in an amount equal to or greater than the value of one full Controlled share.

## **Rulings**

### **Contribution 1 and Distribution 1**

Based on the facts submitted and representations set forth above, we rule as follows on Contribution 1 and Distribution 1 described in step (i) above:

(1) Contribution 1 and Distribution 1 collectively will qualify as a "reorganization" within the meaning of § 368(a)(1)(D). Distributing 1 and Controlled each will be a "party to a reorganization" within the meaning of § 368(b).

(2) Distributing 1 will recognize no gain or loss on the transfer of assets to Controlled in exchange for Controlled stock and any assumption of liabilities (§§ 361(a) and 357(a)).

(3) Controlled will recognize no gain or loss on the receipt of assets in exchange for Controlled stock and any assumption of liabilities (§ 1032(a)).

(4) Controlled's basis in each asset received from Distributing 1 will equal the basis of that asset in the hands of Distributing 1 immediately prior to Contribution 1 (§ 362(b)).

(5) Controlled's holding period for each asset received from Distributing 1 will include the period during which Distributing 1 held such asset (§ 1223(2)).

(6) Distributing 1 will recognize no gain or loss on the distribution of Controlled stock to Distributing 2 (§ 361(c)).

(7) Distributing 2 will recognize no gain or loss (and no amount will be included in the income of Distributing 2) on the receipt of Controlled stock (§ 355(a)(1)).

(8) The aggregate basis of the Distributing 1 stock and the Controlled stock held by Distributing 2 will equal the aggregate basis of the Distributing 1 stock in Distributing 2's hands immediately before Distribution 1, allocated between the Distributing 1 stock and the Controlled stock in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2) (§ 358(a), (b), and (c)).

(9) Distributing 2's holding period for the Controlled stock received from Distributing 1 will include the holding period of the Distributing 1 stock on which the distribution is made, provided that the Distributing 1 stock is held as a capital asset on the date of the distribution (§ 1223(1)).

(10) The earnings and profits of Distributing 1 and Controlled will be allocated in accordance with §§ 312(h), 1.312-10(a), and 1.1502-33(e)(3).

#### Distribution 2

Based on the facts submitted and representations set forth above, we rule as follows on Distribution 2 described in step (ii) above:

(11) Distributing 2 will recognize no gain or loss on the distribution of Controlled stock to Distributing 3 (§ 355(c)).

(12) Distributing 3 will recognize no gain or loss (and no amount will be included in the income of Distributing 3) on the receipt of Controlled stock (§ 355(a)(1)).

(13) The aggregate basis of the Distributing 2 stock and the Controlled stock held by Distributing 3 will equal the aggregate basis of the Distributing 2 stock in Distributing 3's hands immediately before Distribution 2, allocated between the

Distributing 2 stock and the Controlled stock in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2) (§ 358(a), (b), and (c)).

(14) Distributing 3's holding period for the Controlled stock received from Distributing 2 will include the holding period of the Distributing 2 stock on which the distribution is made, provided that the Distributing 2 stock is held as a capital asset on the date of the distribution (§ 1223(1)).

(15) The earnings and profits of Distributing 2 and Controlled will be allocated in accordance with §§ 312(h), 1.312-10(a), and 1.1502-33(e)(3).

### Distribution 3

Based on the facts submitted and representations set forth above, we rule as follows on Distribution 3 described in step (iii) above:

(16) Distributing 3 will recognize no gain or loss on the distribution of Controlled stock to Distributing 4 (§ 355(c)).

(17) Distributing 4 will recognize no gain or loss (and no amount will be included in the income of Distributing 4) on the receipt of Controlled stock (§ 355(a)(1)).

(18) The aggregate basis of the Distributing 3 stock and the Controlled stock held by Distributing 4 will equal the aggregate basis of the Distributing 3 stock in Distributing 4's hands immediately before Distribution 3, allocated between the Distributing 3 stock and the Controlled stock in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2) (§ 358(a), (b), and (c)).

(19) Distributing 4's holding period for the Controlled stock received from Distributing 3 will include the holding period of the Distributing 3 stock on which the distribution is made, provided that the Distributing 3 stock is held as a capital asset on the date of the distribution (§ 1223(1)).

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

### Contribution 4 and Distribution 4

Based on the facts submitted and representations set forth above, we rule as follows on Contribution 4 and Distribution 4 described in step (iv) above:

(21) Contribution 4 and Distribution 4 collectively will qualify as a "reorganization" under § 368(a)(1)(D). Distributing 4 and Controlled each will be a "party to a reorganization" within the meaning of § 368(b).

(22) Distributing 4 will recognize no gain or loss on the transfer of assets to Controlled in exchange for Controlled stock and any assumption of liabilities (§§ 361(a) and 357(a)).

(23) Controlled will recognize no gain or loss on the receipt of assets in exchange for Controlled stock and any assumption of liabilities (§ 1032(a)).

(24) Controlled's basis in each asset received from Distributing 4 will equal the basis of that asset in the hands of Distributing 4 immediately prior to Contribution 4 (§ 362(b)).

(25) Controlled's holding period for each asset received from Distributing 4 will include the period during which Distributing 4 held such asset (§ 1223(2)).

(26) Distributing 4 will recognize no gain or loss on the distribution of Controlled stock to Distributing 4's shareholders (§§ 355(c) and 361(c)).

(27) The Distributing 4 shareholders will recognize no gain or loss (and no amount will be included in the income of the Distributing 4 shareholders) on the receipt of Controlled stock (§ 355(a)(1)).

(28) The aggregate basis of the Distributing 4 stock and the Controlled stock held by Distributing 4 shareholders will equal the aggregate basis of the Distributing 4 stock in the hands of those shareholders immediately before Distribution 4, allocated between the Distributing 4 stock and the Controlled stock in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2) (§ 358(a), (b), and (c)).

(29) The holding period for the Controlled stock received by Distributing 4 shareholders will include the holding period of the Distributing 4 stock on which the distribution is made, provided that the Distributing 4 stock is held as a capital asset on the date of the distribution (§ 1223(1)).

(30) The earnings and profits of Distributing 4 and Controlled will be allocated in accordance with §§ 312(h), 1.312-10(a), and 1.1502-33(e)(3).

(31) Shareholders of Distributing 4 who receive cash in lieu of fractional shares of Controlled stock will recognize gain or loss measured by the difference between the basis of the fractional share interest and the amount of cash received (§ 1001). If the fractional share qualifies as a capital asset of the shareholder, the gain or loss will be a capital gain or loss subject to the provisions and limitations of Subchapter P of Chapter 1 of the Code.

No opinion is expressed about the tax treatment of the transaction under other provisions of the Code and Income Tax Regulations or about the tax treatment of any conditions existing at the time of, or effect resulting from, the transaction that are not specifically covered by the above rulings.

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

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

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the factual information, representations, and other data may be required as part of the audit process.

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

By:\_\_\_\_\_  
Michael J. Wilder  
Senior Technician Reviewer, Branch 1  
Office of Associate Chief Counsel  
(Corporate)