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Date:

December 21, 2006

Legend

Distributing 2 =

Distributing 1 =

Controlled =

DistributingSub =

Corporation Z =

u =

Date 1 =

Date 2 =

v =

w =

Business 1 =

Business 2 =

Assets =

x =

License =

y =

z =

s =

t =

State X =

Transaction Agreement =

Dear :

This letter responds to your September 14, 2006 request for rulings on certain federal income tax consequences of a proposed transaction. The information submitted is summarized below.

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 materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether Distribution A or Distribution B (defined below) (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)), or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7), except as expressly stated in Rulings (8), (9), (10), (16), (17), and (18).

Summary of Facts

Distributing 2, a State X corporation, is a publicly-held corporation and common parent of a consolidated group of corporations. Distributing 2 has approximately u shares of common stock outstanding. Certain employees and directors of Distributing 2 hold restricted shares of Distributing 2 common stock and options to acquire Distributing 2 common stock issued in exchange for services. As of Date 1, such employees and directors held v Distributing 2 restricted shares to which § 83 applies and with respect to which no § 83(b) election has been (or will be) made (Restricted Shares). As of Date 2, such employees and directors held nonvested compensatory options (described in § 1.83-7) to acquire w shares of Distributing 2 common stock (Nonvested Compensatory Options). No holder of Restricted Shares or Nonvested Compensatory Options is a controlling shareholder or a ten-percent shareholder of Distributing 2 or Controlled as defined in § 1.355-7(h), nor is any such holder a member of a coordinating group that is a controlling shareholder or a ten-percent shareholder as defined in § 1.355-7(h).

Distributing 2 is a holding company whose primary asset is the stock of Distributing 1. Distributing 2 wholly owns Distributing 1, a State X corporation and holding company, whose primary asset is the stock of several operating subsidiaries, including the stock of Controlled and DistributingSub. Through DistributingSub and its subsidiaries, Distributing 1 is engaged in Business 1. Through Controlled and its subsidiaries, Distributing 1 is engaged in Business 2.

The financial information submitted that indicates that Business 1 (conducted by DistributingSub and its subsidiaries) and Business 2 (conducted by Controlled) each had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

In order for Controlled's Business 2 to become larger and more competitive in its industry by combining with companies engaged in the same line of business, Distributing 2 proposes to separate Business 2 from Business 1.

Proposed Transaction

The taxpayer proposes the following transaction (the Transaction):

(i) Distributing 1 will transfer Assets (value of \$s and adjusted tax basis of \$t) to Controlled.

(ii) Controlled will make a cash payment to Distributing 1 of \$x (the Cash Distribution). A portion of the Cash Distribution (\$z) will pay off intercompany debt.

(iii) Distributing 1 will distribute the stock of Controlled to Distributing 2 (Distribution A).

(iv) Distributing 2 will transfer License to Controlled in exchange for \$y.

(v) Distributing 2 will distribute the stock of Controlled to the exchange agent for the benefit of the Distributing 2 shareholders (Distribution B). In Distribution B, holders of Restricted Shares will be entitled to receive unrestricted Controlled stock and holders of Nonvested Compensatory Options held by persons becoming employees of Newco following the transaction will be converted into nonvested compensatory options in Controlled stock (Controlled Nonvested Compensatory Options) with the same terms and conditions.

(vi) Newco, a State X corporation, will be organized with two wholly owned subsidiaries, MergerSub 1 and MergerSub 2.

(vii) MergerSub 1 will merge into Controlled (Merger 1) and MergerSub 2 will merge into Corporation Z (Merger 2). All fractional shares of Newco that would otherwise be received by the shareholders of Controlled and the shareholders of Corporation Z will be bundled by the exchange agent on behalf of such shareholders and sold on the open market, with the proceeds then distributed to such shareholders.

(viii) Under Transaction Agreement, each outstanding share of Controlled stock and Corporation Z stock (held by the exchange agent for the benefit of the Controlled and Corporation Z shareholders (the Transfers)) will be converted into the right to

receive Newco common stock. Once Merger 1 and Merger 2 are effective under state law, (1) the exchange agent will exchange the outstanding Controlled and Corporation Z shares for Newco shares to which the shareholders are entitled and distribute the Newco shares to such shareholders, and (2) Controlled Nonvested Compensatory Options will cease to exist and convert into nonvested compensatory options of Newco (Newco Nonvested Compensatory Options) with the same terms and conditions (the Exchange). Restricted Shares held by persons becoming employees of Newco in the transaction will be converted to restricted shares of Newco (Newco Restricted Shares) with the same terms and conditions.

Representations

Distributing 2, Distributing 1, and Controlled (Taxpayers) have made the following representations concerning the Transaction:

Distribution A

(1a) 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.

(1b) The five years of financial information submitted on behalf of the business conducted by DistributingSub (a member of the Distributing 1 separate affiliated group as defined in § 355(b)(3)(B) (SAG)) is representative of the present business operations of DistributingSub, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(1c) The five years of financial information of Controlled is representative of the present business operations of Controlled, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(1d) Following Distribution A, the Distributing 1 SAG and Controlled will continue the active conduct of their respective businesses, independently and with their separate employees.

(1e) Distribution A is carried out to separate Business 2 from Business 1 so that Business 2 can pursue its own long-term strategic objectives. Distribution A is motivated, in whole or substantial part, by these corporate business purposes.

(1f) Distribution A is not used principally as a device for the distribution of earnings and profits of Distributing 1 or Controlled or both.

(1g) For purposes of § 355(d), immediately after Distribution A, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of

the total combined voting power of all classes of Distributing 1 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing 1 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution A.

(1h) For purposes of § 355(d), immediately after Distribution A, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled stock that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution A, or (ii) attributable to distributions on Distributing 1 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution A.

(1i) Assets transferred to Controlled will not include property for which an investment tax credit was taken in prior years.

(1j) Distributing 1 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of Distribution A.

(1k) No intercorporate debt will exist between Distributing 1 and Controlled at the time of, or subsequent to, Distribution A.

(1l) 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.

(1m) No two parties to Distribution A are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(1n) Distribution A is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 1 or Controlled (including any predecessor or successor of any such corporation).

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

Distribution B

(2a) Except for shares of Controlled stock received by holders of Restricted Shares, 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.

(2b) The five years of financial information submitted on behalf of the business conducted by DistributingSub (a member of the Distributing 2 SAG) is representative of the present business operations of DistributingSub, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(2c) The five years of financial information of Controlled is representative of the present business operations of Controlled, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(2d) Following Distribution B, the Distributing 2 SAG and Controlled will continue the active conduct of their respective businesses, independently and with their separate employees.

(2e) Distribution B is carried out to separate Business 2 from Business 1 so that Business 2 can pursue its own long-term strategic objectives. Distribution B is motivated, in whole or substantial part, by these corporate business purposes.

(2f) Distribution B is not used principally as a device for the distribution of earnings and profits of Distributing 2 or Controlled or both.

(2g) For purposes of § 355(d), immediately after Distribution B, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing 2 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution B.

(2h) For purposes of § 355(d), immediately after Distribution B, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled stock that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution B, or (ii) attributable to distributions on Distributing 2 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution B.

(2i) Distributing 2 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of Distribution B.

(2j) No intercorporate debt will exist between Distributing 2 and Controlled at the time of, or subsequent to, Distribution B.

(2k) 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.

(2l) No two parties to Distribution B are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(2m) Distribution B is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 2 or Controlled (including any predecessor or successor of any such corporation).

(2n) Immediately before Distribution B, 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). Further, Distributing 2's excess loss account, if any, with respect to the Controlled stock will be included in income immediately before Distribution B (see § 1.1502-19).

(2o) Shares of Controlled stock distributed with respect to shares of Distributing 2 Restricted Shares will not exceed, in the aggregate, 20 percent of the voting power of the Controlled stock outstanding immediately after Distribution B.

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

The Exchange

(3a) Stock or securities for services rendered to or for the benefit of Newco will not constitute in the aggregate 20 percent or more of the stock issued in connection with the Exchange, and no stock or securities will be issued for indebtedness of Newco that is not evidenced by a security or for interest on indebtedness of Newco which accrued on or after the beginning of the holding period of the Transferors for the debt.

(3b) None of the Controlled stock to be transferred to Newco is "§ 306 stock" within the meaning of § 306(c).

(3c) The Transferors will not retain any rights in the property transferred to Newco.

(3d) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.

(3e) All exchanges will occur on approximately the same date.

(3f) There is no plan or intention on the part of Newco to redeem or otherwise reacquire any stock or indebtedness to be issued in the Transaction.

(3g) Taking into account any issuance of additional shares of Newco stock; any issuance of stock for services; the exercise of any Newco stock rights, warrants, or subscriptions; a public offering of Newco stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of Newco to be received in the Exchange, the Transferors will be in "control" of Newco within the meaning of § 368(c).

(3h) Each Transferor will receive stock or other property approximately equal to the fair market value of the property transferred to Newco.

(3i) Newco will remain in existence and retain and use the property transferred to it in the trade or business of being a holding company.

(3j) There is no plan or intention by Newco to dispose of the transferred property.

(3k) Each of the parties to the Exchange will pay its or his/her own expenses, if any, incurred in connection with the proposed transaction.

(3l) Newco will not be an investment company within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii).

(3m) Taxpayers are not aware of any Transferor that is under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)).

(3n) Newco will not be a "personal service corporation" within the meaning of § 269A.

(3o) The total fair market value of the assets transferred to Newco by the Controlled shareholders exceeds the sum of (a) the amount of liabilities assumed by Newco in connection with the exchange, (b) the amount of liabilities owed to Newco that are discharged or extinguished in connection with the exchange, and (c) the amount of any money and the fair market value of any other property (other than stock permitted to be received under § 351 without the recognition of gain) received by the Controlled shareholders in connection with the exchange. The fair market value of the assets of Newco exceeds the amount of its liabilities immediately after the exchange.

(3p) The distribution of cash in lieu of fractional shares of Newco common stock will be undertaken solely for the purpose of saving the corporation the expense and inconvenience of issuing and transferring fractional shares, will not be separately bargained-for consideration, and will not represent more than one percent of the total consideration that will be issued in the Exchange.

Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows:

Distribution A

(1) Gain or loss will be recognized by Distributing 1 on the transfer of Assets to Controlled (§ 1001). Such gain or loss will be taken into account immediately before Distribution B (§ 1.1502-13).

(2) The remainder of the Cash Distribution not paid in satisfaction of intercompany debt and not exchanged for Assets, will be treated as a distribution under § 301 and § 1.1502-13(f).

(3) The basis of Assets received by Controlled will be the cost of such property to Controlled (§ 1012).

(4) No gain or loss will be recognized by Distributing 2 on its receipt of Controlled stock in Distribution A (§ 355(a)(1)).

(5) No gain or loss will be recognized by Distributing 1 on the distribution of the Controlled stock to Distributing 2 in Distribution A (§ 355(c)(1)).

(6) The aggregate basis of the Distributing 1 and Controlled stock in the hands of Distributing 2 immediately after Distribution A will be the same as Distributing 2's aggregate basis in the Distributing 1 stock held immediately before Distribution A, allocated between the stock of Distributing 1 and the stock of Controlled in proportion to the relative fair market values of each corporation in accordance with § 1.358-2(a)(2) (§ 358(b) and (c)).

(7) The holding period of the Controlled stock received by Distributing 2 will include the holding period of Distributing 1 stock held by Distributing 2, provided that such stock is held as a capital asset on the date of Distribution A (§ 1223(1)).

(8) Provided that (1) the shareholders of Controlled acquire in the aggregate a 50 percent interest in Newco stock (as defined in § 355(d)(4)) and the shareholders of Corporation Z acquire in the aggregate a 50 percent interest in Newco stock (as defined in § 355(d)(4)) (the 50-Percent Acquisitions), (2) one or

more shareholders at the time of the Exchange hold shares (not acquired pursuant to a plan as defined in § 1.355-7) in both Controlled and Corporation Z (Overlapping Shareholders), and (3) no other acquisitions of stock pursuant to a plan (as defined in § 1.355-7) exist, no gain will be recognized by Distributing 1 under § 355(e) as a result of the Exchange. Newco Restricted Shares and restricted shares of Corporation Z will not be taken into account in determining the 50-Percent Acquisitions, to the extent that such property is subject to § 83 and no § 83(b) election has been (or will be) made with respect to such property. Controlled Nonvested Compensatory Options, Newco Nonvested Compensatory Options, and nonvested compensatory options of Corporation Z will not be taken into account in determining the 50-Percent Acquisitions to the extent that such instruments are described in § 1.83-7.

(9) In order to identify Overlapping Shareholders, Taxpayers may rely on their actual knowledge.

(10) The receipt of cash in lieu of fractional shares in the Exchange will not be taken into account in the § 355(e) analysis.

(11) Earnings and profits will be allocated between Distributing 1 and Controlled in accordance with §§ 312(h) and 1.312-10(b)).

Distribution B

(12) No gain or loss will be recognized by the shareholders of Distributing 2 on their receipt of Controlled stock in Distribution B (§ 355(a)(1)).

(13) No gain or loss will be recognized by Distributing 2 on the distribution of the Controlled stock to its shareholders in Distribution B (§ 355(c)(1)).

(14) The aggregate basis of the Distributing 2 and Controlled stock in the hands of the Distributing 2 shareholders immediately after Distribution B will be the same as the Distributing 2 shareholders' aggregate basis in their Distributing 2 stock held immediately before Distribution B, allocated between the stock of Distributing 2 and the stock of Controlled in proportion to the relative fair market values of each corporation in accordance with § 1.358-2(a)(2) (§ 358(b) and (c)).

(15) The holding period of the Controlled stock received by the Distributing 2 shareholders will include the holding period of Distributing 2 stock held by the Distributing 2 shareholders, provided that such stock is held as a capital asset on the date of Distribution B (§ 1223(1)).

(16) Provided that (1) the shareholders of Controlled acquire in the aggregate a 50 percent interest in Newco stock (as defined in § 355(d)(4)) and the shareholders of Corporation Z acquire in the aggregate a 50 percent interest in

Newco stock (as defined in § 355(d)(4)) (the 50-Percent Acquisitions), (2) one or more shareholders at the time of the Exchange hold shares (not acquired pursuant to a plan as defined in § 1.355-7) in both Controlled and Corporation Z (Overlapping Shareholders), and (3) no other acquisitions of stock pursuant to a plan (as defined in § 1.355-7) exist, no gain will be recognized by Distributing 2 under § 355(e) as a result of the Exchange. Newco Restricted Shares and restricted shares of Corporation Z will not be taken into account in determining the 50-Percent Acquisitions, to the extent that such property is subject to § 83 and no § 83(b) election has been (or will be) made with respect to such property. Controlled Nonvested Compensatory Options, Newco Nonvested Compensatory Options, and nonvested compensatory options of Corporation Z will not be taken into account in determining the 50-Percent Acquisitions to the extent that such instruments are described in § 1.83-7.

(17) In order to identify Overlapping Shareholders, Taxpayers may rely on their actual knowledge.

(18) The receipt of cash in lieu of fractional shares in the Exchange will not be taken into account in the § 355(e) analysis.

(19) Earnings and profits will be allocated between Distributing 2 and Controlled in accordance with §§ 312(h) and 1.312-10(a)).

The Exchange

(20) The transfers by the Transferors to Newco represent a transaction within the provisions of § 351(a). Rev. Rul. 68-357, 1968-2 C.B. 144. Accordingly, no gain or loss will be recognized by the Transferors on the transfer of their stock to Newco (§ 351(a)).

(21) The basis in the Newco common stock received by the Transferors will be the same as their basis in the respective property transferred (§ 358(a)).

(22) The holding period of the Newco common stock received by the Transferors will include the period during which each shareholder held the respective property transferred, provided that such property was held as a capital asset at the time of the Exchange (§ 1223(1)).

(23) No gain or loss will be recognized by Newco on the receipt of Controlled stock in exchange for its Newco common stock transferred in the Exchange (§ 1032(a)).

(24) The basis in the Controlled stock received by Newco will be the same as the basis of such property in the hands of the Transferors (§ 362(a)).

(25) The holding period of the Controlled stock received by Newco will include the holding period during which such property was held by the respective Transferors (§ 1223(2)).

(26) The receipt by Controlled shareholders of cash in lieu of fractional shares of Newco stock will be treated for Federal income tax purposes as if the fractional shares had been distributed to the Controlled shareholders as part of the Exchange and then had been disposed of by such shareholders for the amount of such cash in a sale or exchange. The gain (or loss), if any, (determined using the basis allocated to the fractional shares in ruling (21) and the holding period given the fractional shares in ruling (22)), will be treated as a capital gain (or loss), provided the stock was held as a capital asset by the selling shareholder (§ 1001).

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed as to the tax consequences under § 83 of the distribution (in Distribution B) of unrestricted Controlled shares with respect to Restricted Shares.

Procedural Statements

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Gerald B. Fleming
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel (Corporate)