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December 10, 1998

Distributing =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

FSub 1 =

FSub 2 =

FSub 3 =

Acquiring =

Transitory =

LLC 1 =

LLC 2 =

LLC 3 =

LLC 4 =

LLC 5 =

A =

B =

C =

D =

E =

F =

Property G =

Date 1 =

Date 2 =

Date 3 =

a =

b =

c =
d =
e =
f =
g =
h =
Business A =
Business B =
Country A =
Country B =

Dear

This letter responds to your August 10, 1998 request for rulings on certain federal income tax consequences of a proposed transaction.

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

Summary of Facts

Publicly traded Distributing is the common parent of an affiliated group that files a consolidated federal income tax return (the "Distributing Group"). As of Date 1, Distributing had a shares of common stock outstanding, b percent of which were held by A and c percent of which were held in accounts controlled and managed by B. In addition, C holds a warrant for d shares of Distributing common stock (the "Distributing Warrant"). Distributing has various stock option plans that permit employees and directors to acquire Distributing stock.

Distributing wholly owns Sub 1, Sub 3, Sub 4, Sub 5, and FSub 1, a Country A corporation. Sub 1, a holding company, wholly owns Sub 2 and FSub 2, a Country A

corporation. Distributing and Sub 1 together own FSub 3, a Country B corporation. Distributing, Sub 2, and other Distributing subsidiaries directly conduct Business A. Distributing, Sub 3, Sub 4, Sub 5, and other Distributing subsidiaries directly conduct Business B. Financial information has been received indicating that the businesses conducted by Distributing, Sub 2, Sub 3, Sub 4, and Sub 5 have had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

On Date 2, Distributing completed an e dollar public offering of mortgage notes (the “First Mortgage Notes”). The First Mortgage Notes are secured by substantially all of Distributing’s assets and are guaranteed by certain Distributing subsidiaries, including Sub 1, Sub 2, Sub 3, Sub 4, and Sub 5. On Date 3, Distributing completed an f dollar public offering of senior notes (the “Senior Notes”). The Senior Notes are not secured by Distributing assets but are guaranteed on an unsecured basis by certain Distributing subsidiaries. Together, the First Mortgage Notes and the Senior Notes are the “Notes,” and the guarantees of the Notes are the “Guarantees.”

Under an Agreement and Plan of Merger executed on Date 1 (the “Merger Agreement”), unrelated Acquiring has agreed to acquire the Distributing Group’s Business A operations, provided they are first separated from the Business B operations.

Proposed Transaction

To facilitate the acquisition by Acquiring, the following transaction has been proposed:

- (i) Sub 1 will merge into Distributing (the “Sub 1 Merger”).
- (ii) Sub 2, a wholly owned subsidiary of Distributing after the Sub 1 Merger, will merge under applicable state law into LLC 1, a single member limited liability company newly formed by Distributing (the “Sub 2 Merger”). LLC 1 will not elect to be treated as a corporation for federal tax purposes. See § 301.7701-3(b)(1)(ii) of the Income Tax Regulations.
- (iii) LLC 1 will merge under applicable state law into LLC 2, a single member limited liability company newly formed by Distributing. LLC 2 will not elect to be treated as a corporation for federal tax purposes. See § 301.7701-3(b)(1)(ii).
- (iv) Acquiring will tender for the First Mortgage Notes. Thereafter, but immediately before the Contribution by Distributing to Controlled in step (viii) below and the mergers in step (ix) below, the following will occur: (a) the conditions to closing of the tender offer will lapse; (b) Acquiring will acquire as many of the First Mortgage Notes as are tendered (but not less than a majority in principal amount), which will

result in the release of most of the restrictive covenants under the related indenture; (c) Distributing will borrow funds from Acquiring on an arm's length and unsecured basis and will contribute the funds to a trust, as collateral security, to defease most of the restrictive covenants on the Senior Notes; (d) Distributing will form LLC 3, a single member limited liability company that will not elect to be treated as a corporation for federal tax purposes (see § 301.7701-3(b)(1)(ii)); (e) Distributing will contribute to LLC 3 all of the Business B assets (including the stock of Sub 3, Sub 4, and Sub 5) and any other non-Business A assets (including the stock or assets of FSub 1, FSub 2, and FSub 3, depending on whether their liquidations, referred to in step (xii) below, have been completed); and (f) LLC 3 will merge into Distributing. As a result of these steps, all Notes-related security interests in assets being transferred to Controlled in step (viii) below, and all Guarantees by corporations being merged into Controlled in step (ix) below, will be unconditionally and irrevocably released.

(v) Sub 3 will contribute certain assets and liabilities to LLC 4, a single member limited liability company recently formed by Sub 3. LLC 4 will not elect to be treated as a corporation for federal tax purposes. See § 301.7701-3(b)(1)(ii).

(vi) Sub 4 will contribute certain assets and liabilities to LLC 5, a single member limited liability company recently formed by Sub 4. LLC 5 will not elect to be treated as a corporation for federal tax purposes. See § 301.7701-3(b)(1)(ii).

(vii) C will purchase for g dollars in cash the rights of Sub 5 under a management agreement (the "Buyout"). Under the terms of the Buyout, the Distributing Warrant will be extinguished (the "Extinguishment").

(viii) Distributing will transfer all of the Business B assets (except for the stock of Sub 3, Sub 4, and Sub 5) and any other non-Business A assets (including the stock or assets of FSub 1, FSub 2, and FSub 3, depending on whether their liquidations, referred to in step (xii) below, have been completed) to Controlled in exchange for Controlled common stock and the assumption by Controlled of related liabilities (collectively, the "Contribution"). No part of the Notes will be assumed by Controlled. The transferred Business B assets will include a royalty-free license permitting Controlled to sublicense to C, D, and E Distributing's name and certain other intellectual property related to the operation and management of existing F (the "Licenses"). The sublicense to C will be perpetual, while the sublicense to D and E will continue as long as Controlled manages the related F.

(ix) Sub 3, Sub 4, and Sub 5 will merge into Controlled.

(x) Distributing will distribute its Controlled stock pro rata to its shareholders (the "Distribution"). Fractional shares of Controlled stock to which Distributing shareholders are entitled will be sold by a distribution agent who will transfer the proceeds to the shareholders for whom the shares are sold.

(xi) Under the Merger Agreement, Acquiring will form Transitory, and Transitory will merge into Distributing (the "Acquisition"). In the Acquisition, the shareholders of Distributing will exchange their Distributing stock solely for voting stock of Acquiring in a transaction the taxpayer represents will qualify as a reorganization under § 368(a)(1)(B) of the Internal Revenue Code. The Distributing shareholders will own h percent of the Acquiring stock after the Acquisition.

(xii) It is anticipated that FSub 1, FSub 2, and FSub 3 will liquidate shortly before or after the Distribution.

The taxpayer intends that LLC 1, LLC 2, LLC 3, LLC 4, and LLC 5 each be disregarded for federal tax purposes under § 301.7701-3(b)(1)(ii).

In addition to the Merger Agreement, Distributing and Controlled will enter into a Tax Allocation and Indemnity Agreement (the "Indemnity Agreement").

Sub 1 Merger Representations

The taxpayer has made the following representations concerning the Sub 1 Merger.

(a) Distributing, on the date of adoption of the plan of liquidation, and at all times until the final liquidating distribution is made, will be the owner of at least 80 percent of the single outstanding class of Sub 1 stock.

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

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

(d) As soon as the first liquidating distribution has been made, Sub 1 will cease to be a going concern, and its activities will be limited to winding up its affairs, paying its debts, and distributing its remaining assets to its shareholders.

(e) Sub 1 will not retain any assets following its final liquidating distributions.

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

(g) No assets of Sub 1 have been, or will be, disposed of by either Sub 1 or Distributing, except for dispositions in the ordinary course of business and dispositions occurring more than three years before adoption of the plan of liquidation.

(h) The liquidation of Sub 1 will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation ("Recipient") of any of the businesses or assets of Sub 1 if persons holding, directly or indirectly, more than 20 percent in value of the Sub 1 stock also hold, directly or indirectly, more than 20 percent in value of the stock of Recipient. For this representation, ownership will be determined by applying the constructive ownership rules of § 318(a), as modified by § 304(c).

(i) Before the adoption of the liquidation plan, no assets of Sub 1 will have been distributed in kind, transferred, or sold to Distributing, except for (i) transactions occurring in the normal course of business, and (ii) transactions occurring more than three years before adoption of the liquidation plan.

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

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

(l) Other than intercorporate debt that arose in providing products or services in the ordinary course of business, and for which Distributing's basis in the debt equals the amount thereof, there is no intercorporate debt between Distributing and Sub 1, and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years before the date of adoption of the liquidation plan.

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

Sub 2 Merger Representations

The taxpayer had made the following representations concerning the Sub 2 Merger:

(n) Distributing, on the date of adoption of the plan of liquidation, and at all times until the final liquidating distribution is made, will be the owner of at least 80 percent of the single outstanding class of Sub 2 stock.

(o) No Sub 2 stock will have been redeemed during the three years preceding adoption of the plan of liquidation.

(p) All distributions from Sub 2 to Distributing under the plan of complete

liquidation will be made within a single taxable year of Sub 2.

(q) As soon as the first liquidating distribution has been made, Sub 2 will cease to be a going concern, and its activities will be limited to winding up its affairs, paying its debts, and distributing its remaining assets to its shareholders.

(r) Sub 2 will not retain any assets following its final liquidating distributions.

(s) Sub 2 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years before the date of adoption of the plan of liquidation.

(t) No assets of Sub 2 have been, or will be, disposed of by either Sub 2 or Distributing, except for dispositions in the ordinary course of business and dispositions occurring more than three years before adoption of the plan of liquidation.

(u) The liquidation of Sub 2 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 Sub 2 if persons holding, directly or indirectly, more than 20 percent in value of the Sub 2 stock also hold, directly or indirectly, more than 20 percent in value of the stock of Recipient. For this representation, ownership will be determined by applying the constructive ownership rules of § 318(a), as modified by § 304(c).

(v) Before the adoption of the liquidation plan, no assets of Sub 2 have been distributed in kind, transferred, or sold to Distributing, except for (i) transactions occurring in the normal course of business, and (ii) transactions occurring more than three years before adoption of the liquidation plan.

(w) Sub 2 will report all earned income represented by assets that will be distributed to its shareholder such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

(x) The fair market value of the assets of Sub 2 will exceed its liabilities, both at the date the plan of complete liquidation is adopted and immediately before the first liquidating distribution is made.

(y) Other than intercorporate debt that arose in providing products or services in the ordinary course of business, and for which Distributing's basis in the debt equals the amount thereof, there is no intercorporate debt between Distributing and Sub 2, and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years before the date of adoption of the liquidation plan.

(z) All other transactions undertaken contemporaneously with, in anticipation of,

in conjunction with, or in any way related to, the liquidation have been fully disclosed.

Contribution and Distribution Representations

The taxpayer has made the following representations concerning the Contribution and the Distribution:

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

(bb) Immediately after the Distribution, the gross assets of Distributing's active trade or business (as defined in § 355(b)(2)) will have a fair market value equal to at least five percent of the total fair market value of the gross assets of Distributing.

(cc) The five years of financial information submitted on behalf of Distributing and Sub 2 represents the present operation of each, and with regard to each, there have been no substantial operational changes since the date of the last submitted financial statements.

(dd) Immediately after the Distribution, the gross assets of Controlled's active trade or business (as defined in § 355(b)(2)) will have a fair market value equal to at least five percent of the total fair market value of the gross assets of Controlled.

(ee) Except for the Buyout, the five years of financial information submitted on behalf of Distributing, Sub 3, Sub 4, and Sub 5 represents the present operations of each, and with regard to such operations, there have been no substantial operational changes since the date of the last submitted financial statements.

(ff) Following the proposed transaction, Distributing and Controlled will each continue the active conduct of its business, independently and with its separate employees.

(gg) The Distribution will be carried out to facilitate the Acquisition. The Distribution is motivated, in whole or substantial part, by this and other corporate business purposes.

(hh) Except for the receipt of cash in lieu of fractional shares and the exchange of Distributing shares for Acquiring stock in the Acquisition, there is no plan or intention by either A or B, 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 Distributing or Controlled after the proposed transaction.

(ii) There is no plan or intention to liquidate Distributing or Controlled, to merge either corporation with any other corporation (except for the Acquisition), or to sell or otherwise dispose of the assets of either corporation (except for the possible sale by Controlled of Property G) after the proposed transaction, except in the ordinary course of business.

(jj) The total adjusted basis 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.

(kk) The liabilities assumed in the proposed 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.

(ll) Other than the indemnification obligations between Distributing and Controlled under the Merger Agreement, the obligations of the parties under the Indemnity Agreement, and payables and receivables that may arise in the ordinary course of business between the parties (including the provision of any consulting services by Distributing to Controlled), no intercorporate debt will exist between Distributing and Controlled at the time of, or after, the Distribution.

(mm) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany regulations (see §§ 1.1502-13 and 1.1502-14 of the Income Tax Regulations as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published in T.D. 8597). Further, any excess loss account Distributing may have in the Controlled stock will be included in income immediately before the Distribution (see § 1.1502-19).

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

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

(pp) To the best of the knowledge and belief of the parties and their representatives, the mergers of Sub 3 and Sub 4 into Controlled described above in step (ix) (collectively, the "Controlled Mergers") will qualify as reorganizations under § 368(a)(1)(A), and the Acquisition will qualify as a reorganization under § 368(a)(1)(B).

(qq) The payment of cash in lieu of fractional shares of Controlled is solely for the purpose of avoiding the expense and inconvenience of issuing fractional shares and

does not represent separately bargained for consideration. The method used for handling fractional share interests is designed to limit the amount of cash received by any one shareholder to less than the value of one full share of Controlled stock. The total amount of cash paid in lieu of fractional shares will not exceed one percent of the fair market value of Controlled stock distributed to Distributing's shareholders in the Distribution.

(rr) Distributing is a publicly traded corporation, the stock of which is regularly traded on an established securities market as defined in § 1.897-1(m)(1) and (3). Distributing does not know and has no reason to know, of any foreign person who owns or will own five percent or more of Distributing stock either before or after the Distribution. To the best of its knowledge and belief, neither Distributing nor Controlled was considered a United States real property holding corporation (as defined in § 897(c)(2)) at any time during the 5-year period ending on the date of the Distribution, and neither Distributing nor Controlled will be a United States real property holding corporation immediately after the Distribution.

(ss) There are no foreign assets other than the stock of FSub 1, FSub 2, and FSub 3 owned by Distributing or any of the domestic subsidiaries involved in the proposed transaction.

(tt) No federal income tax consequences under §§ 367(a), 367(b), 897, 951, 1248, 1291, or 1293 will result from the proposed transaction, other than on the liquidations of FSub 1, FSub 2, and FSub 3.

Sub 1 Merger Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows on the Sub 1 Merger:

(1) The Sub 1 Merger will be treated as a distribution by Sub 1 to Distributing in complete liquidation (§ 332 and § 1.332-2(d)).

(2) No gain or loss will be recognized by Distributing on receipt of the Sub 1 assets and liabilities in the Sub 1 Merger (§ 332(a) and § 1.332-7).

(3) No gain or loss will be recognized by Sub 1 on the distribution of assets and liabilities to Distributing in the Sub 1 Merger (§ 337(a)).

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

(5) The holding period of each asset received by Distributing in the Sub 1

Merger will include the period during which Sub 1 held the asset, provided the asset is a capital asset as defined in § 1221 or property described in § 1231 in the hands of Sub 1 (§ 1223(1)).

Sub 2 Merger Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows on the Sub 2 Merger:

(6) The Sub 2 Merger will be treated as a distribution by Sub 2 to Distributing in complete liquidation (§ 332 and § 1.332-2(d)).

(7) No gain or loss will be recognized by Distributing on the deemed receipt of Sub 2's assets and liabilities in the Sub 2 Merger (§ 332(a) and § 1.332-7).

(8) No gain or loss will be recognized by Sub 2 on its deemed distribution of assets and liabilities to Distributing in the Sub 2 Merger (§ 337(a)).

(9) The basis of each Sub 2 asset deemed received by Distributing will equal the basis of that asset in the hands of Sub 2 immediately before the Sub 2 Merger (§ 334(b)(1)).

(10) The holding period of each Sub 2 asset deemed received by Distributing in the Sub 2 Merger will include the period during which Sub 2 held the asset, provided the asset is a capital asset as defined in § 1221 or property described in § 1231 in the hands of Sub 2 (§ 1223(1)).

Contribution and Distribution Rulings

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

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

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

(13) No gain or loss will be recognized by Controlled on the Contribution (§ 1032).

(14) The basis of each Distributing asset in the hands of Controlled will equal the basis of that asset in the hands of Distributing immediately before its transfer

(§ 362(b)).

(15) The holding period of each Distributing asset in the hands of Controlled will include the period during which Distributing held that asset (§ 1223(1)).

(16) The Distribution will not prevent the Controlled Mergers from qualifying as reorganizations under § 368(a)(1)(A). Neither Sub 3 nor Sub 4 will recognize gain under § 357(c) as a result of the Controlled Mergers.

(17) Distributing will recognize gain (but not loss) on the Distribution (§§ 355(e) and 361(c)(2)).

(18) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the shareholders of Distributing on the Distribution (including any fractional shares to which the shareholders may be entitled) (§ 355(a)(1)). Section 355(a)(3)(B) will not treat as “other property” that part of the Controlled stock attributable to the fair market value of the Licenses.

(19) The basis of the stock of Distributing and Controlled in the hands of each Distributing shareholder after the Distribution (including any fractional share interest in Controlled to which the shareholder is entitled) will equal the aggregate basis of the Distributing stock held immediately before the Distribution by the shareholder. This basis will be allocated between the Distributing and Controlled stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§§ 358(b) and 358(c)).

(20) The holding period of the Controlled stock received by each Distributing shareholder (including any fractional share interest in Controlled to which the shareholder is entitled) will include the holding period of the Distributing stock on which the Distribution is made, provided the Distributing stock is held as a capital asset on the date of the Distribution (§ 1223(1)).

(21) As provided in § 312(h), proper allocation of earnings and profits between Distributing and Controlled will be made under § 1.312-10(a).

(22) If cash is received by a Distributing shareholder as a result of a sale of a fractional share of Controlled stock by the distribution agent, the shareholder will have gain or loss measured by the difference between the amount of cash received and the basis of the fractional share, as determined in ruling (19) above (§ 1001). If the Controlled stock is held by the shareholder as a capital asset, the gain or loss will be capital gain or loss subject to the provisions and limitations of Subchapter P of Chapter 1 of the Code (§§ 1221 and 1222).

Caveats

No opinion is expressed about the tax treatment of the proposed transaction under other provisions of the Code and Regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed concerning the tax effects of:

- (a) The merger of LLC 1 into LLC 2 described above in step (iii);
- (b) The transactions described above in step (iv), including whether income or gain is realized on the release of security interests and Guarantees (except to the extent addressed in ruling (16));
- (c) The contribution of assets by Sub 3 to LLC 4 described above in step (v);
- (d) The contribution of assets by Sub 4 to LLC 5 described above in step (vi);
- (e) The Buyout and Extinguishment described above in step (vii);
- (f) Apart from ruling (18), the transfer of the Licenses by Distributing to Controlled described above in step (viii), including whether the Licenses are property (see Rev. Rul. 69-156, 1969-1 C.B. 101);
- (g) Whether the Controlled Mergers described above in representation (pp) will qualify as reorganizations under § 368(a)(1)(A);
- (h) Whether the Acquisition described above in step (xi) will qualify as a reorganization under § 368(a)(1)(B);
- (i) Controlled's acquisition of Sub 5 as described in step (ix);
- (j) Any payments made under the Indemnity Agreement;
- (k) The liquidations of FSub 1, FSub 2, and FSub 3, referred to above in step (xii), under § 367(b) (see § 7.367(b)-5(b)); and
- (l) The proposed transaction under § 367(a), 367(b), 897, 951, 1248, 1291, or 1293.

Procedural Statements

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

Each taxpayer affected by the proposed transaction should attach a copy of this

ruling letter to its, his, or her federal tax return for the taxable year in which the transaction is completed.

Under a power of attorney on file in this office, a copy of this letter is being sent to each of your authorized representatives.

Sincerely,
Assistant Chief Counsel (Corporate)

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