**Internal Revenue Service**

Department of the Treasury

Index Number: 355.00-00, 355.01-01

Washington, DC 20224

Number: **200024028**
Release Date: 6/16/2000

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:CORP:1-PLR-119144-99
Date:
March 10, 2000

LEGEND:

Distributing =

Controlled 1 =

Controlled 2 =

Controlled 3 =

State X =

Business Y =

A =

B =

Manufacturer =

z =

Dear :

We respond to your letter dated December 2, 1999, requesting rulings concerning the federal income tax consequences of a proposed transaction. Additional information was submitted on January 19, 2000. The information submitted for consideration is summarized below.

Distributing is a State X corporation, all of whose stock is owned equally by A and B. Distributing has adopted the accrual method of accounting. Distributing is a holding company that wholly owns State X corporations Controlled 1, Controlled 2, and Controlled 3, all of which have adopted the accrual method of accounting. Controlled 1, Controlled 2, and Controlled 3 are engaged in Business Y, under franchise agreements with Manufacturer.

Financial information has been submitted indicating that Controlled 1, Controlled 2, and Controlled 3 each have had gross income and operating expenses representing the conduct of an active business during each of the past five years.

Disputes have arisen between A and B that are negatively impacting Distributing and each of Controlled 1, Controlled 2, and Controlled 3. To eliminate these disputes, the taxpayers have proposed the following transaction:

Distributing will distribute the Controlled 1 stock to A in exchange for A's Distributing stock. As a result, B will own all the stock of Distributing.

The franchise agreements with Manufacturer require that each corporation engaged in Business Y with Manufacturer's products make available a successor manager who owns stock in the corporation. Solely to comply with the franchise agreements, A and B each may dispose of a small percentage of his stock, not to exceed z percent, after the transaction.

The taxpayers have made the following representations about the proposed transaction:

(a) The fair market value of the Controlled 1 stock received by A will approximately equal the fair market value of the Distributing stock surrendered by B.

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

(c) The five years of financial information submitted on behalf of Distributing, Controlled 1, Controlled 2, and Controlled 3 represents each corporation's present operations, and with regard to such corporations, there have been no

substantial operational changes since the date of the last financial statements submitted.

(d) Following the transaction, Controlled 1, Controlled 2, and Controlled 3 each will continue the active conduct of its business, independently and with its separate employees.

(e) The transaction is being carried out for the following corporate business purpose: to end shareholder disputes over the operation of Business Y. The transaction is motivated, in whole or substantial part, by this corporate business purpose.

(f) There is no plan or intention by A or B to sell, exchange, transfer by gift, or otherwise dispose of more than z percent of their stock in Controlled 1, Controlled 2, or Controlled 3 after the transaction.

(g) There is no plan or intention by either Controlled 1, Controlled 2, or Controlled 3 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 section 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696, 705.

(h) There is no plan or intention for Controlled 1, Controlled 2, and/or Controlled 3 to liquidate, to merge any of the three corporations with any other corporation, or to sell or otherwise dispose of the assets of any corporation after the transaction, except in the ordinary course of business.

(i) 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. No liability or indebtedness was created immediately prior to or in contemplation of the transaction.

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

(k) No parties to the transaction are investment companies as defined in sections 368(a)(2)(F)(iii) and (iv)of the Internal Revenue Code.

(l) Payments made in all continuing transactions, if any, between Distributing, Controlled 1, Controlled 2, and/or Controlled 3 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm’s length.

(m) Distributing is not an S corporation (within the meaning of section 1361(a) of the Internal Revenue Code), and there is no plan or intention by Controlled 1,

Controlled 2 or Controlled 3 to make an S corporation election pursuant to section 1362(a).

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

(1) Distributing will recognize no gain or loss upon the distribution of all the Controlled 1 stock (section 361(c)(1)).

(2) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) A or B upon the receipt of the Controlled 1 stock by A or the retention of Distributing stock by B (section 355(a)(1)).

(3) The basis of the stock of Controlled 1 in the hands of A will be the same as the aggregate basis of the Distributing stock surrendered in exchange therefor (section 358(a)(1)). The transaction will have no effect on B's basis in his Distributing stock.

(4) The holding period of Controlled 1 stock received by A will include the holding period of Distributing stock surrendered in exchange therefor, provided that the Distributing stock is held as a capital asset on the date of the exchange (section 1223(1)). The transaction will have no effect on the holding period in the Distributing stock held by B.

(5) As provided in section 312(h) of the Code, proper allocation of earnings and profits between Distributing and Controlled 1 will be made under section 1.312-10(b) of the Income Tax Regulations.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. Except as expressly provided herein, we express no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer(s) requesting 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 supplemental letter ruling was consummated.

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

Sincerely,

Assistant Chief Counsel (Corporate)

By: _____

Mark S. Jennings
Acting Chief, Branch 1