Internal Revenue Service

Department of the Treasury

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October 15, 1998

Distributing #2 =

Distributing #1 =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

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Sub 9	=
Corp	=
Partners	=
Associates	=
Property	=
Date 1	=
Date 2	=
Date 3	=
P	=
Q	=
R	=
S	=
T	=
U	=
V	=
W	=
X	=
Y	=
Z	=

Dear

This is in response to your request on behalf of the above referenced taxpayer, dated March 5, 1998, requesting rulings concerning the federal tax consequences of a proposed transaction. Additional information was provided in additional submissions. The information submitted for consideration is summarized below.

Distributing #2 is a publicly traded parent company of a life-nonlife consolidated group. Distributing #2 owns all of the stock of Distributing #1, Sub 3, Sub 4, Sub 5, Sub 6, and Sub 7.

Distributing #2 also owned W % of Controlled. Distributing #1 owned the remaining V % of Controlled. Prior to the transactions described below, Controlled owned all of the stock of Sub 1, Sub 2, and Sub 8. Controlled also owned a partnership interest in Partnership and Associates.

Distributing #2 wishes to raise equity capital to pay off debt. Distributing #2's investment banker has advised Distributing #2 that an offering of Controlled stock will raise substantially more funds per share than an offering of Distributing #2 stock, and that an offering of Controlled stock will raise substantially more money if Distributing #2 has announced that Controlled will become a stand-alone company than if Controlled were to remain a subsidiary of Distributing #1 and Distributing #2.

For what have been represented as valid business purposes, the following transactions have been completed:

i. On Date 1, Controlled distributed all of the stock of Sub 1 pro rata to its shareholders, Distributing #1 and Distributing #2.

ii. Also on Date 1, Controlled made the following distributions:

- all of the stock of Sub 2 to Distributing #1 in a deferred taxable intercompany transaction that became taxable after step iv below;

- all of its interest in Partners to Distributing #1 in a deferred taxable intercompany transaction that became taxable after step iv;

- all of its interest in Associates to Distributing #1 in a deferred taxable intercompany transaction that became taxable after step iv;

- the account receivable due from Corp (a corporation previously sold by Controlled to an unrelated party) in the amount of $Y to Distributing #2 in a deferred taxable intercompany transaction that became taxable after step iv below.

iii. Also on Date 1, Controlled recapitalized with Distributing #1 exchanging its common stock for Class A stock with one vote per share and Class B stock, which has five votes per share. Distributing #2 exchanged its common stock for Class A stock. Distributing #1 thus substantially increased its voting power over Controlled. Both classes of stock have equal dividend

and liquidation rights and are expected to publicly trade at the same value.

iv. In an IPO that closed on Date 2, Controlled issued shares of its Class A common stock to the public in exchange for cash. As a result, although the IPO shares represented sufficient value to disaffiliate Controlled from the Distributing #2 group under I.R.C. § 1504, Distributing #1 still owned Controlled stock possessing U % of Controlled's voting power. (Distributing #2 owned stock possessing T % of Controlled's voting power, and the public owned stock possessing S % of Controlled's voting power.)

v. Subsequent to the IPO described in paragraph iv above, Controlled repurchased some of its stock issued in the IPO. As a result, as of Date 3, Distributing #1 owned Controlled stock possessing P % of Controlled's voting power, Distributing #2 owned stock possessing Q % of Controlled's voting power, and the public owned stock possessing R % of Controlled's voting power.

vi. Controlled also has issued options to purchase Z shares of Controlled Class A common stock pursuant to employee compensation and benefit plans.

The following steps are proposed:

vii. Distributing #1 will distribute all of its Controlled stock to Distributing #2 (the "First Distribution").

viii Distributing #2 will transfer all of its Sub 3 stock to Sub 4 as a capital contribution.

ix. Distributing #2 will distribute all of its Controlled stock to its shareholders pro rata, except that cash will be paid in lieu of fractional shares of Controlled stock (the "Second Distribution").

The following representations have been made in connection with the proposed transactions:

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

b. The 5 years of financial information submitted on behalf of Distributing #1 is representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last

financial statements submitted.

c. The 5 years of financial information submitted on behalf of Distributing #2 is representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

d. The 5 years of financial information submitted on behalf of the Controlled is representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

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

f. The 5 years of financial information submitted on behalf of Sub 4 is representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

g. The 5 years of financial information submitted on behalf of Sub 5 is representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

h. The 5 years of financial information submitted on behalf of Sub 6 is representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

i. The 5 years of financial information submitted on behalf of Sub 7 is representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

j. Immediately after the distribution, at least 90 percent

of the fair market value of the gross assets of Controlled will consist of the stock and securities of controlled corporations that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).

k. The 5 years of financial information submitted on behalf of Sub 8 is representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

l. Immediately after the distribution, at least 90 percent of the fair market value of the gross assets of Sub 8 will consist of the stock and securities of controlled corporations that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).

m. The 5 years of financial information submitted on behalf of Sub 9 is representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

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

o. The distribution of the stock, or stock and securities, of the controlled corporation is carried out for the following corporate business purpose: to permit Distributing #2 to access the equity capital markets on more favorable terms than it could under is current corporate structure. The distribution of the stock, or stock and securities, of the controlled corporation is motivated, in whole or substantial part, by one or more of these corporate business purposes.

p. There is no plan or intention by any shareholder who owns 5 percent or more of the stock of the distributing corporations, and the management of the distributing corporations, to their best knowledge, is not aware of any plan or intention on the part of any particular remaining shareholder or security holder of the distributing corporations to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in, or securities of, either the distributing or controlled corporation after the transaction.

q. There is no plan or intention by the acquiring, distributing, or controlled corporation, 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.

r. There is no plan or intention to liquidate the distributing or controlled corporations, to merge them with any other corporation, or to sell or otherwise dispose of their assets after the transaction, except in the ordinary course of business.

s. No intercorporate debt will exist between the distributing corporation and the controlled corporation at the time of, or subsequent to, the distribution of the controlled corporation stock.

t. Immediately before the distribution, items of income, gain, loss deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations. Further, any excess loss account of the distributing corporation with respect to the controlled corporation stock will be included in income immediately before the distribution.

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

v. The total amount of cash distributed in lieu of fractional shares will constitute less than one percent (1%) of the total consideration distributed by Distributing #2.

w. The management of Controlled has no plan or intention to propose a change to the respective voting rights or powers of the Class A common stock or the Class B common stock of Controlled.

x. Controlled has no plan or intention to acquire more than 5% of its outstanding stock, taking into account stock purchases made both before and after the transaction.

y. All of the outstanding stock options with respect to Controlled have been issued to employees or directors, and the number of outstanding stock options on the date of the transaction will be such that, even if all of the options were exercised immediately prior to the

transaction, Distributing #1 would still own stock of Controlled constituting control as defined in I.R.C. § 368(c).

Based solely on the information submitted and the representations set forth above, with regard to the First Distribution, we conclude as follows:

1. No gain or loss will be recognized by Distributing #1 upon the distribution to Distributing #2 of all of Distributing #1's Controlled stock, as described above, except with respect to any excess loss account Distributing #1 had in Controlled's stock and except for any income recognized by Distributing #1 as a result of a distribution from Distributing #1's policyholders surplus account pursuant to I.R.C. § 815. I.R.C. § 355(c).

2. No gain or loss will be recognized by Distributing #2 upon receipt of the Controlled stock in the distribution described above. I.R.C. § 355(a)(1).

3. The basis of the stock of Controlled and Distributing #1 stock in the hands of Distributing #2 immediately after the distribution will, in the aggregate, be the same as the basis of the Distributing #1 stock in such shareholder's hands immediately prior to the distribution. Such aggregate basis will be allocated in proportion to the fair market value of each in accordance with section 1.358-2(a)(2) and (4) of the Income Tax Regulations. I.R.C. § 358(b).

4. The holding period of the Controlled stock received by Distributing #2 will include the holding period of the Distributing #1 stock on which the distributions will be made, provided such stock is held as a capital asset on the date of the distribution. I.R.C. § 1223(1).

5. As provided in § 312(h), proper allocation of earnings and profits between Distributing #1 and Controlled will be made under § 1.312-10(b).

Based solely on the information submitted and the representations set forth above, with regard to the Second Distribution, we conclude as follows:

6. No gain or loss will be recognized by Distributing #2 upon the distribution to Distributing #2's shareholders of all of Distributing #2's Controlled stock, as described above, except with respect to any excess loss account Distributing #1 had in Controlled's stock.

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I.R.C. § 355(c).

7. No gain or loss will be recognized by Distributing #2's shareholders upon receipt of the Controlled stock in the distribution described above. I.R.C. § 355(a)(1).

8. The basis of the stock of Controlled and Distributing #2 stock in the hands of each of Distributing #2's shareholders immediately after the distribution will, in the aggregate, be the same as the basis of the Distributing #2 stock in such shareholder's hands immediately prior to the distribution. Such aggregate basis will be allocated in proportion to the fair market value of each in accordance with section 1.358-2(a)(2) and (4) of the Income Tax Regulations. I.R.C. § 358(b).

9. The holding period of the Controlled stock received by Distributing #2's shareholders will include the holding period of the Distributing #2 stock on which the distributions will be made, provided such stock is held as a capital asset on the date of the distribution. I.R.C. § 1223(1).

10. As provided in § 312(h), proper allocation of earnings and profits between Distributing #2 and Controlled will be made under § 1.312-10(b).

11. Any payments of cash in lieu of fractional share interests in Controlled will be treated for federal income tax purposes as if the fractional share were issued in the Second Distribution and then were redeemed by Controlled. The cash payments will be treated as having been received as distributions in full payment in exchange for the stock redeemed as provided in I.R.C. § 302(a). Rev. Proc. 77-41, 1977-2 C.B. 574. Provided the fractional share interest is a capital asset in the hands of the recipient shareholder, the gain or loss will constitute capital gain or loss subject to the provisions and limitations of Subchapter P of Chapter 1 of the Code. I.R.C. §§ 1221 and 1222.

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, no opinion is expressed or implied concerning the tax consequences of any aspect of any

transaction or item discussed or referenced in this letter including the distributions described in step (ii) above.

A copy of this letter must be attached to any income tax return to which it is relevant.

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

Sincerely yours,

Assistant Chief Counsel (Corporate)

By Richard L. Osborne
Richard L. Osborne
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