Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

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Date:
October 8, 1998

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Business =

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Dear

This letter responds to your representative's June 25, 1998 request for rulings on the federal income tax consequences of a proposed transaction. The facts submitted in that request are summarized below.

Company is the common parent of an affiliated group of corporations engaged in Business. Company has issued and outstanding voting and nonvoting common stock (together, the "Common"), senior preferred stock (the "Preferred"), variable rate participating stock, and employee preferred stock. Company also has issued and outstanding one class of participating stock, consisting of two series (the "Old Participating").

Company issued the first series of Old Participating in a year x recapitalization that consolidated eight previously outstanding series of participating stock. Company issued the second series of Old Participating later in the same year. Both series of Old Participating have dividend and liquidation preferences, subject to prior rights of the

Preferred. Both series of Old Participating also participate in Company's earnings share-for-share with the Common once their dividend preferences and the preferences of senior stock classes have been satisfied. Company has no right to redeem or call the Old Participating, but a shareholder may require Company to redeem the shareholder's Old Participating for its Net Asset Value ("NAV"), provided all of the shareholder's other Company stock (excluding Preferred) is redeemed in the same transaction. NAV is derived by allocating the net value of Company assets (as determined by independent public accountants) among the various classes of Company stock according to provisions governing liquidating distributions. NAV is determined annually and at other times and varies according to Company's economic performance.

Company issued both series of Old Participating to offset the increasing NAV of the common stock and thus facilitate the acquisition of the common stock by employees (who may purchase common stock at NAV). Because the NAV of the common stock has again increased, Company has proposed to issue as a stock dividend y share of new participating stock (the "New Participating") on each outstanding share of Common and Old Participating. Cash will be distributed in lieu of fractional shares. The New Participating will be substantially identical to the Old Participating in all material respects.

Company has made the following representations concerning the proposed transaction:

(a) Company and its shareholders each will pay their own expenses, if any, incurred in the proposed transaction.

(b) To the knowledge of management of the Corporation, no shareholder has any plan or intention to transfer any of the New Participating stock to be received in the proposed transaction, except for transfers of such shares to members of the shareholder's family, to trusts for the benefit of the shareholder's family, or to charities.

(c) In connection with the performance of services, Company has granted options to certain employees to acquire shares of its nonvoting common stock (the "Option Shares"). Apart from the Option Shares, Company has no outstanding options, warrants or any type or right under which any person could acquire any right in Company.

(d) Company has no plan or intention to redeem or otherwise reacquire New Participating stock issued in the transaction.

(e) The shareholders of Company will not have an election to receive cash or other stock or property in the proposed transaction, except that shareholders may receive cash in lieu of fractional shares of New Participating.

(f) The payment of cash in lieu of fractional shares is solely for the purpose of avoiding the expense and inconvenience to Company of issuing fractional shares and does not represent separately bargained-for consideration. Any cash issued in lieu of fractional shares will be issued with respect to less than one percent of the total shares to be distributed.

(g) The New Participating will not be redeemable at the option of any shareholder, unless all of that shareholder's Old Participating and Common are also redeemed in the same transaction.

(h) The New Participating will not be convertible into any class of the Company's capital stock.

(i) The variable rate participating stock is not treated as outstanding for federal income tax purposes.

(j) The employee preferred stock is not treated as outstanding for federal income tax purposes.

(k) The option shares are not treated as outstanding for federal income tax purposes.

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

(1) The proposed distribution by Company of New Participating, as described above, will not be treated as a distribution to the Company shareholders to which section 301 applies by reason of §§ 305(b) and 305(c), but will be a distribution to which §305(a) applies.

(2) No gain or loss will be recognized by Company upon the distribution of New Participating (§311(a)).

(3) Pursuant to § 307(a) and § 1.307-1(a) of the Income Tax Regulations, the cost or other basis of the Common and the Old Participating held immediately before the distribution of New Participating will be allocated between the stock held before the distribution and the New Participating in proportion to the fair market value of each

class of stock on the date of the distribution.

(4) The holding period of New Participating in the hands of the Company shareholders will include the period during which each shareholder held the Common or Old Participating on which the New Participating is distributed (§ 1223(5)).

(5) Regardless of book entries made, the distribution of New Participating will not diminish the accumulated earnings and profits of Company available for later dividend distributions within the meaning of § 316 and § 1.312-11(b) and (c) of the regulations.

(6) The New Participating received by Company shareholders in the distribution will not be "section 306 stock" within the meaning of § 306(c).

(7) The fractional share interests of New Participating to which Company shareholders are entitled will be treated as having been distributed as part of the distribution and then as having been redeemed by Company. The cash payments received in lieu of fractional share interests will be treated as having been received as distributions in full payment in exchange for the stock redeemed as provided in § 302(a) (Rev. Proc. 77-41, 1977-2 C.B. 574).

No opinion is expressed about the tax treatment of the transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above rulings. In particular, we express no opinion regarding the tax treatment of a gift or sale by a shareholder of New Participating to a member of the shareholder's family, a trust, or a charity, or regarding the application of § 83 to any transfer of stock by Company or a shareholder of Company.

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

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

Pursuant to a power of attorney on file in this office, a copy of this letter has been sent to your authorized representative.

Sincerely,

Assistant Chief Counsel (Corporate)

By Lewis K Brickates
Lewis K Brickates
Assistant to the Chief, Branch 2