August 31, 2005

Attn: Comments on the *Tax Technical Corrections Act of 2005*
U.S. Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, D.C. 20515

To whom it may concern:

In response to the request for additional technical corrections dated July 21, 2005, we would like to submit, on behalf of our client Alticor Global Holdings Inc., the following request regarding the treatment of wholly owned partnerships under new section 199. The recently introduced technical corrections bill (H.R.3376/S.1447) adds a provision that generally would treat a partnership and the members of an expanded affiliated group (EAG) as a single taxpayer (for purposes of determining domestic production gross receipts) where the partnership is owned entirely by members of the EAG. For the reasons described below, we respectfully request that a similar rule be applied to situations where a partnership is wholly owned by entities that, in turn, are owned entirely by a common parent. We see no policy reason to distinguish between the two situations.

Applicable Facts:

Alticor Global Holdings Inc. (AGHI) is a U.S. S corporation. It is the common parent of several entities that are collectively engaged in the business of manufacturing and selling a wide range of consumer products. These products are sold in more than 60 countries under trademarks and trade names owned by AGHI and its affiliates. AGHI owns indirectly 100 percent of Alticor Enterprises Inc. (AEI), which, in turn, is the common parent of Alticor Distribution Inc. (ADI) and Access Business Group LLC (ABGL). AGHI intends to elect to treat AEI and ADI as "qualified subchapter S subsidiaries." ABGL is a subchapter C corporation.

ADI and ABGL collectively own 100 percent of Access Business Group International LLC (ABGIL), a Delaware limited liability company that is treated as a partnership for Federal tax purposes. ABGIL was formed as a partnership rather than as a corporation for local law purposes. (A diagram of this corporate structure is attached to this letter.)

ABGIL owns title to the manufacturing intangibles for most of the products produced by the group. It also performs the research and development for the group. ABGIL does not itself manufacture the products it distributes, but rather contracts with ABGL, the group's manufacturer, to produce the products. Under the contracts, ABGL has the right

to use ABGIL's manufacturing intangibles and to affix ABGIL's trademarks and trade names to the products. The products are manufactured entirely in the United States.

Section 199:

Section 199 was enacted under the American Jobs Creation Act of 2004 to encourage the domestic production of goods and to help replace the export tax incentives. In general, Section 199 effectively provides taxpayers with a deduction for a portion of their income derived from property manufactured or produced "by the taxpayer in whole or significant part within the United States."

To fully encourage domestic production, Congress has evinced a policy that integrated producers should be able to treat both their production income and their distribution income as subject to Section 199. This is true regardless of whether the distribution activity takes place in the same entity as the production function, or is undertaken by a related party. For example, by providing that the members of an EAG are treated as a single taxpayer, Congress clearly intended that the Section 199 production incentive apply to both the production income and the distribution income of an integrated group. Similarly, the example in the legislative history regarding the roasting of coffee beans also indicates that distribution income qualifies for the benefit of Section 199 in the case of an integrated producer. Finally, the recently introduced technical corrections bill provides that a partnership and the members of an EAG will be treated as a single taxpayer if the partnership is wholly-owned for its entire taxable year by the members of the EAG. Thus, if the partnership distributes products produced by members of the EAG, the technical correction would allow both the production income derived by members of the EAG and the distribution income derived by the partnership to qualify for the benefits of Section 199.

It is also important to note that tax incentives under both the Foreign Sales Corporation regime and the Extraterritorial Income regime would apply to the distribution income of an integrated production group. Section 199 was a replacement for these two regimes and the statutory scheme is similar in many respects.

The failure to adopt our requested technical correction may cause anomalous results and provide some wholly owned corporate groups with a competitive advantage over others. For example, distributor A is a partnership owned by two C corporations, both of which are members of the same EAG. One of A's corporate partners manufactures all of A's products in the United States. Distributor B is a major competitor of distributor A. Distributor B is a partnership that is owned by a QSS and a C corporation, both of which are wholly owned by a common parent S corporation. The C corporation partner manufactures all of B's products in the United States. A and B both own all of the manufacturing intangibles related to the production of their respective group's products.

In the case of distributor A, both the production income earned by A's corporate affiliate and the distribution income earned by A would qualify as QPAI under the recently introduced technical corrections bill (because the partnership and the members of the

EAG would be treated as a single taxpayer). By contrast, in the case of distributor B, the manufacturing income earned by B's corporate affiliate may not qualify as QPAI (under the benefits and burdens test of Notice 2005-14). Obviously, if B were denied similar treatment to A, it would provide A (and its corporate affiliates) a significant competitive advantage over B (and its corporate affiliates). As with A, both the production income and the distribution income derived by B and its corporate affiliates should be eligible for treatment as QPAI.

Requested Technical Correction:

In light of the foregoing issues, we respectfully request that a technical correction be adopted clarifying the application of section 199 to situations where a partnership is wholly owned by entities that, in turn, are owned entirely by a common parent. We suggest that either of the following two alternatives would properly address our issues. We believe either change is consistent with the legislative policy underlying section 199.

Option 1

For purposes of determining domestic production gross receipts, if a group of entities are wholly owned (directly or indirectly) by a common parent corporation during the entire taxable year of such parent corporation, each such entity and the common parent corporation shall be treated as a single taxpayer.

Option 2

The definition of "expanded affiliated group" in section 199 could be amended to include S corporations by modifying the language of section 199(d)(4)(B)(ii) to read as follows: "without regard to paragraphs (2), (4), and (8) of section 1504(b)."

* * *

We very much appreciate the opportunity to submit our comments regarding proposed technical corrections. We would be happy to meet with you to discuss these issues further. Also, if you have any questions or need additional information, please call either of us.

Sincerely,

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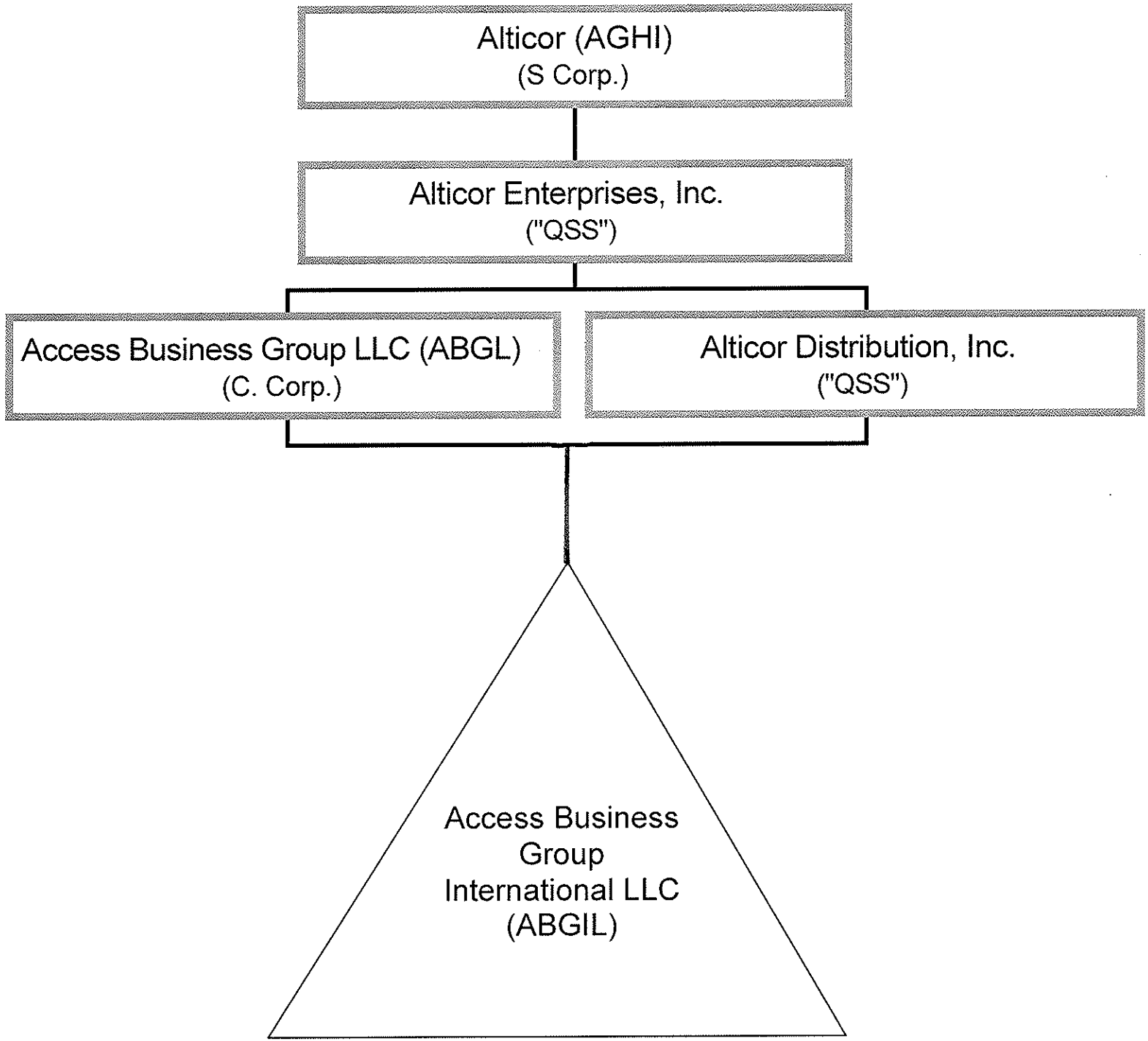
Alticor (AGHI)
(S Corp.)
Alticor Enterprises, Inc.
("QSS")
Access Business Group LLC (ABGL)
(C. Corp.)
Alticor Distribution, Inc.
("QSS")
Access Business
Group
International LLC
(ABGIL)