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JAMES MATTHEWS
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

SECURITIES DIVISION
(602) 542-4242

December 21, 1990

Kyle M. Robertson, Esq.
McCutchen, Doyle, Brown & Enerson
Three Embarcadero Center
San Fransisco, California 94111

RE: Bromar, Inc.

Dear Ms. Robertson:

On the basis of the facts set forth in your letters of March 13, May 10 and June 13, 1990 and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letter.

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud provisions of the Act continue to be applicable.

We have attached photocopies of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Dee Ridgell Harris".

DEE RIDDELL HARRIS
Director of Securities

DRH:sw

enclosure

McCUTCHEM, DOYLE, BROWN & ENERSEN

COUNSELORS AT LAW

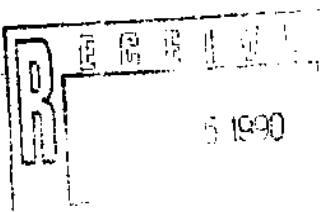
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June 13, 1990

Ms. Susan A. Baker
Senior Counsel
Corporation Commission, Securities Division
1200 West Washington Street
Phoenix, Arizona 85007

No Action Request on Behalf of Bromar, Inc.

Dear Ms. Baker:

I am in receipt of your letter of June 6, 1990, requesting certain items in connection with your review of Bromar's request for a no action letter confirming that Incentive Stock Options, as defined in the Internal Revenue Code of 1986, as amended, fall within the exemption for a sale of securities provided in A.R.S. Section 44-1844(14).

As requested, I enclose a copy of the 1988 Stock Option Plan as amended and restated (the "Plan"). I note that the Plan is being qualified in California and that the California Department of Corporations has requested that the Plan be slightly amended to state that unvested options will not be accelerated in the event of a liquidation or dissolution of the corporation or a sale of all or substantially all of the corporation's assets. This amendment has been requested based on a new policy aimed at making uniform throughout California the treatment of unvested options.

The Plan provides for the grant of stock options to purchase up to 150,000 shares of Bromar's Common Stock. Subject to grant by the Compensation Committee of the Board of Directors, all employees of Bromar and its subsidiaries are eligible to receive stock options under the Plan. All shares purchased by Bromar's employees upon the exercise of stock options granted under the Plan are subject to the Bromar Shareholders Agreement. The exercise price per share of Common Stock subject to each Option is determined solely by the Compensation Committee and is not less than the fair market value of the shares of Common Stock on the date the option is

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granted. No option is exercisable after the expiration of ten years from the date the option is granted. During the term of any option, the Compensation Committee may in its sole discretion at any time accelerate an optionee's right to exercise an Option with respect to all or any portion of the Common Stock covered by such Option.

As stated in our letter of May 10, 1990, the Plan allows for both Incentive Stock Options and Nonqualified Stock Options, but Bromar has not and does not plan to grant any Nonqualified Stock Options to Arizona employees. The Incentive Stock Options granted under the Plan meet the requirements of Section 422A of the Internal Revenue Code (the "Code").

A.R.S. Section 44-1844(14) exempts

The sale or issuance of any investment contract or other security in connection with an employee's pension, profit-sharing, stock purchase, stock bonus, savings, thrift, stock option or other similar employee benefit plan which meets the requirements for qualification under the United States Internal Revenue Code.

The Plan should be considered a stock option plan which meets the requirements for "qualification" under the Code. Alternatively, the Plan should be considered a "similar employee benefit plan" which has the desired tax advantages for which the statute uses the word "qualification."

Prior to the amendment of the Code (effective in 1976) to create Incentive Stock Options ("ISO's"), the stock option plans which were given certain tax advantages under the Code were the so-called "qualified stock options" under Section 422 of the Code. By the terms of Section 422 (as amended in 1976), qualified stock options disappeared after May 21, 1981. A new Code provision, Section 422A, was added in 1981 (applicable to options granted after January 1, 1976), which gave certain other tax advantages to ISO's. In effect, ISO's replaced qualified stock options as the tax-advantaged plans, although the tax advantages are not identical. We thus read the phrase in A.R.S. Section 44-1844(14) "which meets the requirements for qualification under the . . . Code" as exempting those stock option plans which meet the current requirements for gaining tax advantages under the Code. Currently those requirements are found in Section 422A of the Code and the tax-advantaged plans are ISO's.

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This interpretation of A.R.S. Section 44-1844(14) is supported by the fact that the phrase "which meets the requirements for qualification under the . . . Code" also modifies the full list of types of employee benefit plans. Use of the "qualification" phrase to modify various types of specific plans (not all of which are designated with the word "qualified" by the Code but which nevertheless qualify for special tax advantages under the Code) suggests that "qualification" generically refers to qualifying for the then current tax advantages available under the Code. If the statute is not read this way, the word "qualification" becomes meaningless as the Code is continuously amended to change the nomenclature and requirements for tax-advantaged employee benefit plans.

Please call me at 415-393-2380 or George Hisert at 415-393-2098 if you have any questions.

Very truly yours,

MCCUTCHEN, DOYLE, BROWN & ENERSEN

By


Kyle M. Robertson

Enclosure

cc: Mr. Don Gaidano

McCUTCHEM, DOYLE, BROWN & ENERSEN

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May 10, 1990

Ms. Susan Baker
Corporation Commission, Securities Division
1200 West Washington Street
Phoenix, Arizona 85007

Exemption for Stock Option Plan

Dear Ms. Baker:

This letter is a follow-up letter to my letter to you dated March 13, 1990, requesting confirmation that Incentive Stock Options, as defined in the Internal Revenue Code of 1986, as amended (the "Code"), fall within the exemption for a sale of securities provided in Arizona Revised Statutes Section 44-1844(14). Last week, in a telephone conversation, you asked me whether the stock options referred to in my letter were qualified under Section 422A of the Code.

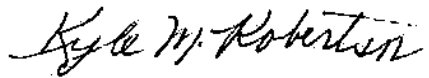
The Stock Option Plan I referred to is the 1988 Stock Option Plan of Bromar, Inc., a California corporation ("Bromar"). The Bromar 1988 Stock Option Plan has provisions for both incentive stock options and non-incentive stock options. The incentive stock options are qualified under Section 422A of the Code. The non-incentive stock options are not qualified under Section 422A of the Code. However, Bromar has not issued, and does not plan to issue, any non-incentive stock options to Arizona employees.

I hope this information is helpful to you in confirming that the Bromar 1988 Stock Option Plan is a "similar employee benefit plan" under Section 44-1844(14).

Very truly yours,

McCUTCHEM, DOYLE, BROWN & ENERSEN

By



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March 13, 1990

Ms. Susan Baker
Corporation Commission, Securities Division
1200 West Washington Street
Phoenix, AZ 85007

Exemption for Stock Option Plan

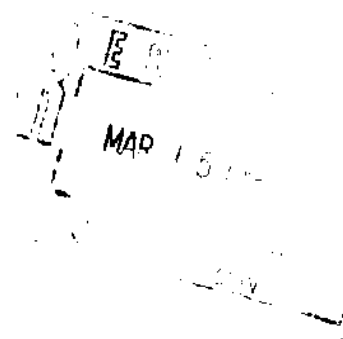
Dear Ms. Baker:

This letter is to request confirmation that Incentive Stock Options, as defined in the Internal Revenue Code of 1986, as amended (the "Code") fall within the exemption for a sale of securities provided in Arizona Revised Statutes Section 44-1844(14). That section exempts:

The sale or issuance of any investment contract or other security in connection with an employee's pension, profit sharing, stock purchase, stock bonus, savings, thrift, stock option or other similar employee benefit plan which meets the requirements for qualification under the United States Internal Revenue Code.

As you may know, there has not for some time been a concept of a qualified stock option plan under the Internal Revenue Code; therefore, it is unclear what is meant in the statute by a "plan which meets the requirements for qualification under the United States Internal Revenue Code." In a phone conversation we had on March 12, 1990, you indicated that an Incentive Stock Option Plan would "meet the requirements for qualification" under the Code. You referred to Section R14-4-106(A) of the Regulations of Arizona Corporations Commission, Title 14, Ch. 4, Art. 1, as amended, which states that

The grant of options, warrants and rights to purchase to officers, directors and other employees in the form of incentive stock



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options, warrants or rights to purchase in accordance with Sec. 422(A) of the Internal Revenue Code of 1954, as amended, will be considered justified.

I am hoping that you can confirm to me that an Incentive Stock Option Plan would meet the requirements for exemption under Section 44-1844(14). Please call me at (415) 393-2380 if you have any questions. If I have not heard from you within two weeks of the date of this letter, I will call you. I look forward to hearing from you.

Very truly yours,

McCUTCHEM, DOYLE, BROWN & ENERSEN

By


Kyle M. Robertson

MAR 15 1990