

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

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Date:

April 08, 2005

Legend

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

a =

b =

Date 1 =

Date 2 =

Business 1 =

Business 2 =

Dear :

We respond to your October 20, 2004 letter requesting rulings concerning the federal income tax consequences of a proposed transaction. The information submitted in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. Moreover, no information provided by the taxpayer has been reviewed and no determination has been made regarding whether the Distribution, as defined below: (i) satisfies the business purpose requirement of § 1.355-2(b) of the Federal Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing or controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); and (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in the distributing or controlled corporation (see § 355(e)(2)(A)(ii) and § 1.355-7T).

Summary of Facts

Distributing is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Distributing wholly owns Sub 1 and Sub 2. Sub 1 owns a percent of Controlled, Controlled wholly owns Sub 3, and Sub 3 wholly owns Sub 4. The remaining b percent of Controlled is owned by the public. Sub 2 wholly owns Sub 5, which in turn wholly owns Sub 6. Sub 1, Sub 2, and Sub 5 are holding companies. Sub 4 and Sub 6, each of which has been a member of Distributing's consolidated group for over five years, engage in Business 1 and Business 2, respectively. All of the above-described entities are domestic corporations.

Financial information has been received that indicates that Business 1 and Business 2 each has had gross receipts and operating expenses representative of an active trade or business for each of the past 5 years.

The Proposed Transaction

For what are represented to be valid business purposes, the taxpayer has proposed the following transaction (collectively, the "Proposed Transaction"):

On or after Date 1 but before Date 2

(i) Sub 1 will merge into Distributing ("Liquidation 1"). As a result of Liquidation 1, Distributing will own a% (more than 80%) of the stock of Controlled.

On or after Date 2

(ii) Sub 5 will transfer its Sub 6 stock to its shareholder ("Transfer 1").

(iii) Sub 4 will merge into Controlled (the "Merger"). Sub 4's shareholder, Sub 3, will receive shares of Controlled's common stock as consideration in the Merger. However, Distributing will still own more than 80% of the stock of Controlled after the Merger.

(iv) Sub 2 will transfer its Sub 6 stock to its shareholder ("Transfer 2").

(v) Sub 6 will liquidate ("Liquidation 2").

(vi) Distributing will distribute its Controlled stock, on a pro rata basis, to its shareholders (the "Distribution"). Distributing shareholders will receive cash in lieu of fractional shares in the Distribution.

Distributing and Controlled have recently entered into a Master Separation and Distribution Agreement, a Tax Matters Agreement, and a Transition Services Agreement (collectively, the "Agreements").

Representations

The taxpayer has made the following representations regarding the Distribution:

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

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

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

(d) The Proposed Transaction is not being used principally as a device for the distribution of earnings and profits of Distributing or Controlled or both.

(e) No intercorporate debt will exist between Distributing and Controlled at the time of, or after, the Distribution, except that, under certain of the Agreements, Distributing and Controlled may have certain intercompany payables and receivables that will be incurred and paid on a current and arm's length basis.

(f) Any indebtedness owed by Controlled to Distributing after the Distribution will not constitute stock or securities.

(g) 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 (see § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing's excess loss account with respect to the Controlled stock will be included in income immediately before the Distribution. (See § 1.1502-19.)

(h) The Distribution is being carried out: (i) to facilitate borrowing on favorable financial and non financial terms for both Distributing and Controlled; (ii) to enable Distributing and Controlled to execute growth and expansion plans; (iii) to enable management to focus attention solely on the needs of its particular business; (iv) to provide Controlled with direct access to capital markets to issue equity and/or debt securities; (v) to permit Distributing and Controlled to offer a more focused investment opportunity to investors than currently presented by the more diverse Distributing; and (vi) to enable Distributing and Controlled to offer its employees incentive compensation more directly linked to performance of its own business. The Distribution is motivated, in whole or substantial part, by these corporate business reasons.

(i) No two parties to the Proposed Transaction are investment companies as defined in §§ 368(a)(2)(F)(iii) and (iv).

(j) There is no acquisition of stock of Distributing or Controlled (including any predecessor or successor to any such corporation) that is part of a plan or series of related transactions (within the meaning of § 1.355-7T) that includes the Distribution.

(k) Following the Distribution, Distributing will continue the active conduct of Business 2 and Controlled will continue the active conduct of Business 1. Distributing and Controlled will conduct these businesses independently with their own employees, except that certain administrative services may be shared for a transition period on an arm's length basis for fair market value consideration.

(l) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing that was acquired by purchase as defined in §§ 355(d)(5) and (8) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(m) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled stock that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution, or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(n) There is no plan or intention by Distributing or Controlled, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the Distribution, other than through stock purchases meeting the requirements of § 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696, 705.

(o) There is no plan or intention by any shareholder who owns five percent or more of the outstanding stock of Distributing, and management of Distributing, to its best knowledge, is not aware of any plan or intention on the part of any remaining shareholder or security holder of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, either Distributing or Controlled after the Proposed Transaction.

(p) There is no plan or intention to liquidate either Distributing or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of

the assets of either corporation after the Proposed Transaction, except in the ordinary course of business.

(q) Payments made in connection with all continuing transactions, if any, between Distributing and its subsidiaries and Controlled and its subsidiaries, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(r) Any payment of cash in lieu of fractional shares of Controlled will be solely for the purpose of avoiding the expense and inconvenience to Distributing of issuing fractional shares and will not represent separately bargained-for consideration. The total cash consideration to be paid in lieu of fractional shares of Controlled stock will not exceed one percent of the total consideration that will be issued in the Proposed Transaction to the Distributing shareholders. The fractional share interests of each Distributing shareholder will be aggregated, and no Distributing shareholder will receive cash in an amount equal to or greater than the value of one full share of Controlled stock.

Rulings

Based solely on the information submitted and the representations made, we rule as follows regarding the Distribution:

(1) No gain or loss will be recognized by (and no amount will be included in the income of) the Distributing shareholders upon their receipt of the Controlled stock in the Distribution (§ 355(a)).

(2) The aggregate basis of the Distributing and Controlled stock in the hands of each Distributing shareholder immediately after the Distribution will equal the shareholder's aggregate basis in the Distributing stock held immediately before the Distribution. Such aggregate basis will be allocated between the Distributing and the Controlled stock in proportion to the fair market value of each in accordance with § 1.358-2 (§ 358(b) and (c)).

(3) The holding period of the Controlled stock received by the Distributing shareholders will, in each instance, include the holding period of the Distributing stock on which the Distribution is made, provided such stock is held as a capital asset on the date of the Distribution (§ 1223(1)).

(4) No gain or loss will be recognized by Distributing on the Distribution (§ 355(c)).

(5) Earnings and profits will be allocated between Distributing and Controlled in accordance with § 312(h) and § 1.312-10(b).

(6) Shareholders who receive cash in lieu of fractional shares of Controlled stock will recognize gain or loss measured by the difference between the amount of the cash received and the basis of the fractional share. If the fractional share interest is a capital asset in the hands of the exchanging shareholder, the gain or loss will be a capital gain or loss subject to the provisions and limitations of Subchapter P of Chapter 1 of the Code.

Caveats

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed (and none was requested) concerning: (i) Liquidation 1, Liquidation 2, Transfer 1, Transfer 2, and the Merger; (ii) the federal tax consequences (if any) arising from the Agreements; (iii) whether the Distribution will satisfy the business purpose requirement of § 1.355-2(b); (iv) whether the Proposed Transaction is being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) and § 1.355-2(d)); and (v) whether the Distribution is part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

Procedural Statements

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

Each taxpayer involved in the Proposed Transaction should attach a copy of this letter to the taxpayer's federal income tax return in the year in which the Proposed Transaction is completed.

In accordance with the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Richard K. Passales
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Corporate)