

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person To Contact:

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Refer Reply To:

CC:CORP:B01 – PLR-148344-03

Date:

December 18, 2003

RE:

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Corporation A =

h =

i =

m =

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o =

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Date 1 =

Date 2 =

Dear

This letter responds to your letter dated August 6, 2003, in which supplemental rulings were requested to our initial ruling letter dated March 21, 2003 (PLR-163753-02) (the "Prior Letter Ruling"). The Prior Letter Ruling addresses certain federal income tax consequences of a proposed transaction under sections 355 and 368 of the Internal Revenue Code consisting of the Distribution to be followed within a year by the Debt Offering. The Distribution has not yet been consummated, but the Debt Offering was consummated on Date 1. Capitalized terms not defined in this letter retain the meanings assigned in the Prior Letter Ruling and the facts and representations set forth in the Prior Letter Ruling are hereby incorporated, except as modified below, for purposes of the supplemental rulings. Additional information was submitted in letters dated October 22 and December 15, 2003.

Modifications have occurred or will occur in some of the steps of the proposed transaction in the Prior Letter Ruling, including the Debt Offering. As an additional step not in the Prior Letter Ruling, Controlled will issue warrants to purchase a number of shares of Controlled common stock equal to g% of the number of outstanding shares of common stock upon completion of the Distribution (subject to reduction for any Distributing Warrants retired prior to the Distribution).

Accordingly, the steps in the proposed transaction described in the Prior Letter Ruling have been modified as follows:

- (i) On Date 1, Distributing issued subordinated notes (the "Distributing Notes") and warrants (the "Distributing Warrants") to investors to purchase a number of shares of Distributing's common stock equal to approximately i% of the Distributing common stock (the "Debt Offering"). The Distributing Notes are secured by a mortgage on the Real Property. Distributing has used a portion of the funds raised in the Debt Offering to repay part of the amount it owed under its existing Credit Facility. Investors in the Debt Offering have the right to demand redemption of the Distributing Notes if the Distribution is not consummated within g months after the completion of the Debt Offering and the right lapses upon the Distribution.
- (ii) On Date 2, Distributing transferred Non-Core Assets with a value of

approximately \$h to Sub 2 in repayment of approximately \$h of debt owed by Distributing to Sub 2. Distributing has obtained from new banks a new revolving credit facility (the "New Credit Facility") of approximately \$m, which will replace its existing Credit Facility.

- (iii) Distributing will transfer \$n in cash, the Property Claim (which has been modified), all of the Sub 2 stock and its remaining Non-Core Assets not used to repay debt (the "Remaining Non-Core Assets") to Controlled in exchange for all of the common stock of Controlled (the "First Contribution").
- (iv) Controlled will then transfer \$n in cash, the Property Claim and the Remaining Non-Core Assets to Sub 2 in constructive exchange for Sub 2 stock (the "Second Contribution").
- (v) Within one year of the Debt Offering, Distributing will distribute all of the outstanding stock of Controlled to the stockholders of Distributing on a pro-rata basis (the "Distribution"). Cash will be paid in lieu of fractional share interests in Controlled.
- (vi) Controlled will issue to the then holders of the Distributing Warrants warrants to purchase a number of shares of its common stock equal to o% of its common stock upon completion of the Distribution (subject to reduction for any Distributing Warrants retired prior to the Distribution).

Distributing may retain, rather than transfer to Sub 2 or Controlled, its interest in Corporation A (one of the Non-Core Assets), which is valued at approximately \$n. If Corporation A is retained, Distributing may transfer that stock to Sub 1 before the Distribution is consummated. The banks under the existing Credit Facility have released their security interests in the assets of the Distributing Group, including the Non-Core Assets, the stock of Sub 2 and its assets, and have released Sub 2 as a guarantor of the existing Credit Facility. The New Credit Facility has a longer repayment term and less onerous financial covenants than those under the existing Credit Facility. In addition, the banks extending the New Credit Facility have a security interests only in the assets of Sub 1 and the accounts receivable of Sub 2. Sub 2 is the guarantor of the debt to the extent of its accounts receivable, but the guarantee will be released to the extent that such accounts receivable are not needed in the borrowing base of the New Credit Facility. In addition, Distributing will pay a fee to Sub 2 for providing the guarantee and Sub 2 has a right to be indemnified by Distributing for any claims made upon Sub 2 or its accounts receivable with respect to the New Credit Facility.

In connection with its request for a supplemental ruling, the taxpayer has made the following additional representations:

- (a) Except for the representations set forth in paragraph (u) of the Prior Letter Ruling (which has been modified as set forth below), all the representations in the Prior Letter Ruling remain true and correct.
- (b) Representation (u) of the Prior Letter Ruling is modified to read as follows:

The Distribution will occur no later than twelve months after the date of the Debt Offering (Date 1).

Based solely on the information submitted and the representations set forth above, we rule that the above changes will have no effect on the rulings contained in the Prior Letter Ruling and such rulings will remain in full force and effect.

No opinion is expressed about the tax treatment of the proposed transaction under other provisions of the Code and Income Tax Regulations other than those expressed in the Prior Letter Ruling, or about 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 ruling or those rulings set forth in Prior Letter Ruling. We specifically express no opinion regarding the tax treatment of the guarantee transactions or the creation or exercise of the warrants.

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

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

The rulings contained in this letter are predicated upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by the appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as part of the audit process.

Pursuant to the power of attorney on file in this office, a copy is being sent to the taxpayer.

Sincerely,
Associate Chief Counsel (Corporate)

By Mark S. Jennings
Mark S. Jennings
Chief, Branch 1