

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:01

PLR-141523-10

Date:

May 18, 2011

Legend:

Parent =

Former Parent =

Controlled =

Sub 1 =

Distributing =

Merger Sub =

State A =

State B =

Business A =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Dear :

This letter is in response to your October 7, 2010 request for rulings regarding certain federal income tax consequences of a completed transaction (described below as the "Spin-Off"). The information submitted in that request and in your later correspondences 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.

In particular, this office has reviewed no information pertaining to, and has made no determination regarding, whether the Spin-Off: (i) satisfied the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) was used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); or (iii) was part of a plan (or series of related transactions) pursuant to which one or more persons would acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see section 355(e)(2)(A)(ii) and § 1.355-7).

Factual Summary

Parent, a holding company, is the common parent of a group of affiliated corporations that files a consolidated U.S. federal income tax return (the "Parent Group"). Since Date 7, Parent has wholly owned Distributing, which wholly owns Controlled, which wholly owns Sub 1; and since that date, each of Distributing, Controlled, and Sub 1 has been a member of the Parent Group. Distributing and Controlled are engaged in Business A.

Former Parent is the former common parent of a group of affiliated corporations that filed a consolidated U.S. federal income tax return (the "Former Parent Group"). On Date 2, Former Parent wholly owned Parent, which owned all common stock of Controlled; in turn, Controlled wholly owned Sub 1, which wholly owned Distributing. Each of Parent, Distributing, Controlled, and Sub 1 was a member of the Former Parent Group. Controlled also had several classes of non-voting preferred stock outstanding on Date 2. One class of preferred stock was issued in Year 1, was subject to periodic redemptions, and was wholly owned by Former Parent; the last outstanding shares were redeemed on Date 3 (a date within the five year pre-distribution period preceding the Spin-Off). The other class of preferred stock was issued on Date 1, was mandatorily redeemable, and was wholly owned by unrelated third parties; the last outstanding shares were redeemed on Date 4 (a date within the five year pre-distribution period preceding the Spin-Off).

Parent is currently contemplating a joint venture pursuant to which an unrelated party would contribute property to Controlled in exchange for a greater-than-20% interest therein, thereby causing Controlled to disaffiliate from the Parent Group.

Financial information has been received indicating that Business A (as conducted by Distributing) had gross receipts and operating expenses representing the active conduct of a trade or business for each of the five years preceding the Spin-Off (described below).

For what have been represented as valid business purposes, the following transactions have been consummated:

- (i) On Date 5, while owned by Former Parent, Parent created Merger Sub and contributed 100% of Controlled stock thereto. Parent has represented that the exchange constituted a tax-free exchange under section 351.
- (ii) On Date 6, Sub 1 exchanged common shares of Distributing for common shares of Parent, thus making both Merger Sub and Distributing first-tier subsidiaries of Parent (the "Exchange").

- (iii) Immediately after the Exchange, Merger Sub merged into Distributing (the “Merger”). Parent has represented that the Exchange and Merger were transactions in which no gain or loss was recognized in whole or in part.
- (iv) On Date 7, Former Parent distributed Parent to its shareholders in a distribution that qualified under section 355. Parent thus became the parent of the Parent Group.
- (v) On Date 8, Distributing distributed Controlled stock to Parent in a transaction intended to qualify as a tax-free reorganization under section 355 (the “Spin-Off”).

Steps (i) through (iv) were completed within the 5-year predistribution period with respect to the Spin-Off. Prior to the Spin-Off, Parent entered into a tax-sharing agreement with its subsidiaries (including Distributing and Controlled) that covered the parties’ respective rights, responsibilities, and obligations with respect to taxes.

Representations

Parent has made the following representations in connection with the Spin-Off:

- (a) No part of the consideration that was distributed by Distributing in the Spin-Off was received by Parent 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 Distributing with respect to Business A as conducted by Distributing was representative of the business’s operations at the time of the Spin-Off, and there have been no substantial operational changes since the date of the last financial statements submitted.
- (c) Following the Spin-Off, Distributing and Controlled each continued the active conduct of its business, independently and with its separate employees.
- (d) The Spin-Off was carried out for the following corporate business purposes: creating a more efficient capital structure and decreasing the administrative burden of complying with the State B regulations applicable to Business A. The distribution of the stock of Controlled was motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (e) The Spin-Off was not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

- (f) For purposes of section 355(d), immediately after the Spin-Off, no person (determined after applying the aggregation rules of section 355(d)(7)) held stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing stock that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Spin-Off.
- (g) For purposes of section 355(d), immediately after the Spin-Off, no person (determined after applying section 355(d)(7)) held stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Spin-Off or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Spin-Off.
- (h) The Spin-Off was not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons acquired directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Distributing or Controlled (including any predecessor or successor to any such corporation).
- (i) Other than (i) trade account indebtedness created in the ordinary course of business through continuing transactions at terms comparable to those which could be obtained in an arm's length transaction at terms consistent with past practices for intercompany charges, (ii) any liabilities that may arise from the tax sharing agreement, and (iii) payables created for all transitional services negotiated at arm's length at terms consistent with past practices for intercompany charges, no intercorporate debt existed between Distributing and Controlled at the time of, or subsequent to, the Spin-Off.
- (j) The indebtedness owed by Controlled to Distributing after the Spin-Off, if any, did not constitute stock or securities.
- (k) Immediately before the Spin-Off, items of income, gain, loss, deduction, and credit were taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; Treas. Reg. § 1.1502-13 as published by T.D. 8597). Distributing's excess loss account, if any, with respect to the Controlled stock was included in income immediately before the Spin-Off.

- (l) At the time of the Spin-Off, no member of the Parent Group had an excess loss account in the Controlled stock.
- (m) Except as set forth in the tax sharing agreement, payments made in connection with all continuing transactions after the Spin-Off, if any, between Distributing and Controlled were for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length at terms consistent with past practices for intercompany charges.
- (n) Neither Distributing nor Controlled was an investment company as defined in section 368(a)(2)(F)(iii) and (iv) at the time of the Spin-Off.
- (o) Distributing and Controlled each paid its own expenses, if any, incurred in connection with the Spin-Off.
- (p) Immediately following the Spin-Off, (i) neither Distributing nor Controlled was a disqualified investment corporation, as defined by section 355(g)(2), and (ii) no shareholder held a 50 percent or greater interest in any disqualified investment corporation, as defined by section 355(g)(2), who did not hold such an interest in such corporation prior to the Spin-Off.
- (q) Since Date 8, Parent has consistently treated the Spin-Off as having qualified under section 355 for all purposes, including the determination of its basis in the stock of Distributing and Controlled.
- (r) Parent has continuously owned directly or indirectly all of the stock of Distributing and Controlled since the Spin-Off through the present.
- (s) Distributing and Controlled have been members of the Parent Group at all times since the Spin-Off.

Rulings

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

- (1) No gain or loss was recognized by (and no amount was included in the income of) Parent upon the Spin-Off (section 355(a)).
- (2) No gain or loss was recognized by Distributing upon the Spin-Off (section 355(c)).

- (3) The aggregate basis of the Distributing and Controlled stock in the hands of Parent equaled the aggregate basis of the stock of Distributing held immediately before the Spin-Off, allocated between the stock of Distributing and Controlled in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2) (section 358(b) and (c)).
- (4) The holding period of the Controlled stock received by Parent in the Spin-Off included the holding period of the Distributing stock with respect to which the distribution was made, provided such Distributing stock was held as a capital asset by Parent on the date of the Spin-Off (section 1223(1)).
- (5) Earnings and profits were allocated between Distributing and Controlled in accordance with section 312(h) and §§ 1.312-10(b) and 1.1502-33(f)(2).

Caveats

Except as expressly provided herein, no opinion is expressed about the tax treatment of the Spin-Off under other provisions of the Code or regulations, or about the tax treatment of any conditions existing at the time of, or effects resulting from, the Spin-Off not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the Spin-Off satisfied the business purpose requirement of § 1.355-2(b); (ii) whether the Spin-Off was used principally as a device for the distribution of earnings and profits of Distributing or Controlled or both (see section 355(a)(1)(B) and § 1.355-2(d)); or (iii) whether the Spin-Off was part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii).

Procedural Statements

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

A copy of this letter must be attached to the federal income tax returns to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching to the return a statement that provides the date and control number (PLR-141523-10) of this ruling letter.

Pursuant to the power of attorney on file in this matter, a copy of this letter is being sent to your authorized representative.

Sincerely,

Mark J. Weiss
Reviewing Attorney, Branch 6
Office of Associate Chief Counsel
(Corporate)