

Internal Revenue Service

Department of the Treasury

Number: **200044017**

Washington, DC 20224

Release Date: 11/3/2000

Index Number: 355.01-00
355.03-00

Person to Contact:

Telephone Number:

Refer Reply To:

PLR-103080-00 CC:CORP:03

Date:

August 2, 2000

Distributing =

DSub1 =

DSub1Sub1 =

DSub1Sub2 =

GP =

Unrelated Partner =

DSub1Sub3 =

DSub2 =

DSub2Sub1 =

DSub2Sub2 =

Controlled =

CSub1 =

Shareholder 1 =

Shareholder 2 =

Shareholder 3 =

State X =

Business A =

Business B =

PLR-103080-00

Business C =

Business D =

Functions N =

Exchange =

Year 1 =

Year 2 =

Date 1 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

Dear:

This letter is in reply to a letter dated February 4, 2000, requesting rulings as to the federal income tax consequences of a proposed transaction. Additional information was provided in letters dated March 8, 2000, April 5, 2000, May 9, 2000, May 25, 2000, June 15, 2000, July 21, 2000, and July 26, 2000. The material submitted for consideration is summarized below.

Distributing, a State X corporation, is the common parent of an affiliated group filing a consolidated federal income tax return. Distributing is a holding company and its

PLR-103080-00

businesses are conducted through its direct and indirect subsidiaries and joint ventures.

Distributing has a single class of common stock outstanding, which is widely held and publicly traded on the Exchange. Shareholder 1, Shareholder 2 and Shareholder 3 (the "Specified Shareholders") collectively hold approximately a% (which is less than 5%) of the outstanding common stock of Distributing.

Controlled is a subsidiary of Distributing. Controlled, a State X corporation, is a holding company with two classes of outstanding stock, which are Class A and Class B voting common stock. The Class B shares have b votes per share. The Class A shares have c votes per share. The Class A and Class B shares otherwise contain identical terms. Distributing owns all of the Class B shares, which represent approximately d% (which is greater than 80%) of the vote and e% of the value of Controlled's stock. The Class A shares, representing approximately f% percent of the vote and g% of the value of Controlled's stock, are widely held and publicly traded on the Exchange.

Distributing owns 100% of DSub1, which owns 100% of DSub1Sub1 and DSub1Sub2. DSub1Sub1 is a 50% general partner in GP, a general partnership. GP operates Business A. DSub1Sub2 is the other 50% general partner in GP. Dsub1Sub2 acquired its 50% general partnership interest in GP in two separate transactions in Year 1 (the first day of which was less than five years from the date of this letter) and Year 2 from Unrelated Partner, which had been a 50% general partner in GP for many years. DSub1Sub2 acquired an h% interest in GP in Year 1 and the remainder of its 50% interest in Year 2.

During the period that Unrelated Partner was a 50% partner in GP with DSub1Sub1, all personnel performing management or operational functions for GP were either employees of DSub1Sub3 (some of whom were also officers of DSub1Sub1) or were representatives of Unrelated Partner. During such period (and at all times since), DSub1Sub3 was and has been a member of Distributing's consolidated group. During such period, Unrelated Partner and DSub1Sub1 had equal say in making policy decisions and in the overall supervision of GP. The day-to-day management of Functions N of GP's Business A and the day-to-day supervision, direction, and control of the personnel who performed Functions N was done exclusively by officers of DSub1Sub1 and employees of DSub1Sub3.

Since DSub1Sub2's acquisition of an h% interest in GP from Unrelated Partner in Year 1, officers of DSub1Sub1 have performed full-time management functions for Business A of GP, including the day-to-day supervision, direction, and control of all of the personnel performing the operational functions for Business A of GP. Since that time, the operational functions of Business A of GP have been performed, depending on the year, by either (1) employees of GP, (2) employees of DSub1Sub3, or (3)

PLR-103080-00

employees of another member of Distributing's consolidated group. In all cases where employees of affiliates of DSub1Sub1 performed services for GP, GP was charged for such services.

Distributing owns 100% of DSub2, which owns 100% of DSub2Sub1 and 100% of DSub2Sub2. DSub2Sub1 is engaged in Business B. DSub2Sub2 is engaged in Business C.

The operation and management of Business A has been conducted, as described above, for each of the past five years. Business B has been conducted by DSub2Sub1 for each of the past five years. Business C has been conducted by DSub2Sub2 for each of the past five years.

Controlled owns 100% of the stock of CSub1. CSub1 conducts Business D, which it has conducted for each of the past five years.

Information has been submitted indicating that Business A, Business B, Business C, and Business D each have had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years. With respect to Business A, the information submitted indicates that DSub1Sub1 has been engaged in an active trade or business (within the meaning of § 355(b) of the Internal revenue Code for each of the past five years) under the principles of Rev. Rul. 92-17, 1992-1 C.B. 142, and Rev. Rul. 79-394, 1979-2 C.B. 141, amplified by Rev. Rul. 80-181, 1980-2 C.B. 121.

Distributing needs to generate additional capital to grow its businesses. Distributing has submitted a letter from an investment banker advising Distributing that its borrowing capacity would be increased if the business of Controlled were spun off to the shareholders of Distributing. Accordingly, Distributing has proposed the following transaction (the "Proposed Transaction"):

Distributing will distribute all of its holdings of Class B common stock of Controlled to the shareholders of Distributing (other than the Specified Shareholders) pro rata in accordance with their relative ownership of Distributing's common stock. The Specified Shareholders will receive additional shares of Distributing's common stock in lieu of Class B stock of Controlled. After the transaction, both the Class A shares and Class B shares of Controlled will be listed on the Exchange.

Prior to the Proposed Transaction, Distributing and Controlled will have taken steps to reorganize certain of their subsidiaries. The following transactions will occur prior to the Proposed Transaction (the "Internal Restructuring"):

- (i) DSub1Sub1 will be converted into a State X single-member limited liability

PLR-103080-00

company ("LLC").

- (ii) DSub1 will be converted into an LLC.
- (iii) DSub1Sub2 will be converted into an LLC. As a result, GP will terminate.
- (iv) DSub2 will be converted into an LLC.
- (v) DSub2Sub1 will be converted into an LLC.
- (vi) DSub2Sub2 will be converted into an LLC.
- (vii) CSub1 will be converted into an LLC.

The taxpayer has represented that the conversions above will each be treated as non-taxable liquidations under § 332 and that all of the resulting LLCs will be disregarded as entities separate from their respective owners for federal income tax purposes under § 301.7701-3.

The following representations have been made concerning the Proposed Transaction:

- (a) As of Date 1, Controlled owed Distributing approximately \$i, which is evidenced by a note. The note was not issued to Distributing at a discount. Such debt did not arise in connection with a transfer of assets from Distributing to Controlled. Such debt was issued in order to provide Controlled the funds required to expand Business D. Except for this intercorporate debt, which will remain outstanding after the Proposed Transaction, and any possible claims under the tax allocation agreements, no intercorporate debt will exist between Distributing and Controlled at the time of, or after, the Proposed Transaction. The interest and payment terms of the note are at fair market value. The indebtedness owed by Controlled to Distributing after the Proposed Transaction will not constitute stock or securities.
- (b) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (c) The five years of financial information submitted on behalf of Distributing, Controlled, GP, DSub1Sub1, DSub2Sub1, DSub2Sub2, and CSub1 and CSub1's predecessors is representative of each company's present operations, and, with regard to each such company, there have been no substantial operational changes since the date of the last financial statements submitted.

PLR-103080-00

- (d) Following the Proposed Transaction, Distributing and Controlled will each continue the active conduct of their respective businesses independently and with their respective separate employees.
- (e) The distribution of the stock of Controlled is carried out for the following corporate business purpose: to enable Distributing to increase its borrowing capacity in order to fund its capital needs to grow its businesses. The Proposed Transaction is motivated, in whole or in substantial part, by this corporate business purpose.
- (f) There is no plan or intention by any shareholder who owns 5% percent or more of the stock of Distributing, and the management of Distributing, to its best knowledge, is not aware of any plan or intention on the part of any other 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.
- (g) There is no plan or intention by either Distributing or Controlled, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the Proposed Transaction, other than through stock purchases meeting the requirements of § 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696.
- (h) There is no plan or intention to liquidate Distributing or Controlled, to merge any of these corporations with any other corporation, or to sell or otherwise dispose of the assets of any of these corporations after the Proposed Transaction, except in the ordinary course of business.
- (i) Immediately before the Proposed Transaction, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations. Furthermore, to the extent that Distributing has an excess loss account with respect to Controlled or any of the direct or indirect subsidiaries of Controlled, such excess loss account will be included in income immediately before the Proposed Transaction.
- (j) Payments made in connection with all continuing transactions between Distributing and its affiliates on the one hand and Controlled and its affiliates on the other hand will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (k) Immediately after the Proposed Transaction, the gross assets of the businesses that are actively conducted by Distributing (within the meaning of § 355(b)(2)) will have a fair market value of at least 5% of the total fair market value of Distributing's gross assets.

PLR-103080-00

- (l) Immediately after the Proposed Transaction, the gross assets of the business that is actively conducted by Controlled (within the meaning of § 355(b)(2)) will have a fair market value of at least 5% of the total fair market value of Controlled's gross assets.
- (m) The distributions are not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire directly or indirectly stock possessing 50% or more of the total combined voting power of all classes of stock of Distributing or Controlled, or stock possessing 50% or more of the total value of all classes of stock of Distributing or Controlled.
- (n) Distributing is not an S corporation (within the meaning of § 1361(a)) and there is no plan or intention by Distributing or Controlled to make an S corporation election pursuant to § 1362(a).

Based solely on the information submitted and the representations set forth above, we hold as follows:

1. Distributing will recognize no gain or loss upon its distribution of all of its Controlled stock under the Proposed Transaction (§ 355(c)).
2. No gain or loss will be recognized by (and no amount will be included in the income of) the shareholders of Distributing upon their receipt of the stock of Controlled (§ 355(a)(1)).
3. The basis of the Distributing stock and the Controlled stock in the hands of the shareholders of Distributing (other than the Specified Shareholders) after the distribution will be the same as the basis of the Distributing stock held by them immediately before the distribution, allocated between the Distributing stock and the Controlled stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(a)(1) and (b)).
4. The holding period of the Controlled stock received by the Distributing shareholders will include the holding period of their Distributing stock with respect to which the distribution was made, provided that such Distributing stock was held as a capital asset on the date of the Proposed Transaction (§ 1223(1)).
5. As a result of the Proposed Transaction, the earnings and profits of Distributing and Controlled will be allocated between Distributing and Controlled pursuant to § 312(h), and §§ 1.312-10 and 1.1502-33(e)(3).
6. Payments made between any of Distributing, Controlled, or their subsidiaries under the tax allocation agreements between them regarding tax liabilities that (i) have arisen or will arise for a taxable period ending before the Proposed

PLR-103080-00

Transaction, or (ii) will not become fixed and ascertainable until after the Proposed Transaction, will be treated as occurring immediately before the Proposed Transaction.

7. No amount of gain or loss will be included in the income of the Specified Shareholders upon the receipt of additional Distributing stock (§ 305(a)).
8. The basis of the Distributing stock held by each Specified Shareholder immediately after the Proposed Transaction will equal the basis of the Distributing stock held before the Proposed Transaction, allocated between the Distributing stock held before the Proposed Transaction and the Distributing stock received in the Proposed Transaction in proportion to the fair market value of each (§ 307(a) and § 1.307-1(a)).
9. The holding period of the Distributing stock received by the Specified Shareholders in the Proposed Transaction will include the period during which each Specified Shareholder held the Distributing stock on which the Distributing stock will be distributed (§ 1223(5)).

We express no opinion about the federal income tax treatment of this transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above rulings. In particular, no rulings were requested, and no opinion is expressed, concerning the tax treatment of any of the transactions in the Internal Restructuring described above, or whether the \$ 1 debt owed by Controlled to Distributing is debt or equity.

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

Each affected taxpayer must attach a copy of this letter to the taxpayer's federal income tax return for the tax year in which the transaction covered by this ruling letter is consummated.

We have sent a copy of this letter to your authorized representatives pursuant to the powers of attorney on file in this office.

Sincerely yours,
Associate Chief Counsel (Corporate)
By: Michael J. Wilder
Assistant to the Branch Chief, Branch 3