

Internal Revenue Service

Department of the Treasury

Index Numbers: 0368.04-00

Washington, DC 20224

Number: **200006047**

Person to Contact:

Release Date: 2/11/2000

Telephone Number:

Refer Reply To:

CC:DOM:CORP:4 PLR-117226-99

Date:

November 17, 1999

Distributing 2 =

Distributing 1 =

Controlled =

Parent =

Target =

Shareholder A =

Business A =

Business B =

Business C =

Business D =

Business E =

Business F =

a =

b =

This letter responds to your October 18, 1999 request for rulings on certain aspects of the proposed transactions described below.

Summary of Facts

Publicly traded Distributing 2 is the common parent of a consolidated group. Distributing 2 directly conducts Business A, Business B, Business C, and Business D. Only Shareholder A owns five percent or more of Distributing 2.

Distributing 2 wholly owns Distributing 1, which engages through its subsidiaries in Business A, Business B, Business C, Business D, Business E, and Business F.

Distributing 1 wholly owns Controlled, which engages directly and through its subsidiaries in Business F.

We have received financial information indicating that each of Businesses A through F has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Controlled wishes to acquire unrelated Target, which is wholly owned by Parent and engages in Business F. Parent will not agree to the acquisition unless Controlled is first separated from the Distributing group.

Proposed Transactions

To accommodate Parent, Distributing 2 proposes the following series of transactions:

- (i) Controlled will undergo a stock split.
- (ii) Distributing 2 will transfer approximately a dollars in cash to Distributing 1.
- (iii) Distributing 1 will transfer the cash received in step (ii) to Controlled (the "Contribution").

(iv) Distributing 1 will distribute the Controlled stock to Distributing 2 ("Distribution 1").

(v) Distributing 2 will distribute the Controlled stock to its shareholders pro rata ("Distribution 2"). In lieu of distributing fractional shares of Controlled common stock, Distributing 2 will transfer these shares to an exchange agent (the "Exchange Agent") for sale in the open market. The proceeds will then be delivered to the Distributing 2 shareholders who would otherwise have received the shares.

(vi) Controlled will acquire the stock of Target from Parent in exchange for b percent of the Controlled stock plus cash (the "Acquisition").

Distributing and Controlled will enter into a Distribution Agreement, a Tax Allocation Agreement, and an Employee Matters Agreement as part of the proposed transactions.

Representations

Contribution and Distribution 1

The taxpayer makes the following representations regarding the Contribution and Distribution 1:

(a) No part of the consideration distributed by Distributing 1 will be received by Distributing 2 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.

(b) The five years of financial information submitted on behalf of Distributing 1 and Controlled represents the present operations of each corporation, and there have been no substantial operational changes to either corporation since the date of the last financial statement submitted.

(c) Immediately after Distribution 1, at least 90 percent of the fair market value of the gross assets of Distributing 1 will consist of stock of controlled corporations that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(d) Following Distribution 1, Distributing 1 and Controlled will each continue the active conduct of its business(es) independently and with its separate employees.

(e) Distribution 1 will be carried out to facilitate the Acquisition. Distribution 1 is motivated in whole or substantial part by this corporate business purpose.

(f) Except for Distribution 2, there is no plan or intention by Distributing 2 to sell, exchange, transfer by gift, or otherwise dispose of any of its stock in either Distributing

1 or Controlled after Distribution 1.

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

(h) There is no plan or intention to liquidate either Distributing 1 or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after Distribution 1, except in the ordinary course of business.

(i) No intercorporate debt will exist between Distributing 1 and Controlled at the time of, or after, Distribution 1.

(j) Immediately before Distribution 1, 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, 1995-2 C.B.147, and as currently in effect; § 1.1502-13 as published by T.D. 8597).

(k) Payments made in connection with any continuing transactions between Distributing 1 and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(l) Neither Distributing 1 nor Controlled is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).

(m) Distribution 1 is 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 percent or more of the total combined voting power of all classes of either Distributing 1 or Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of either Distributing 1 or Controlled stock.

Distribution 2

The taxpayer has made the following representations regarding Distribution 2:

(n) Any indebtedness owed by Controlled to Distributing 2 after Distribution 2 will not constitute stock or securities.

(o) No part of the consideration distributed by Distributing 2 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder

of Distributing 2.

(p) The five years of financial information submitted on behalf of Distributing 2 and Controlled represents the present operations of each corporation, and there have been no substantial operational changes to either corporation since the date of the last financial statement submitted.

(q) Following Distribution 2, Distributing 2 and Controlled will each continue the active conduct of its business(es) independently and with its separate employees.

(r) Distribution 2 will be carried out to facilitate the Acquisition. Distribution 2 is motivated in whole or substantial part by this corporate business purpose.

(s) There is no plan or intention by Shareholder A, and the management of Distributing 2, to its best knowledge, is not aware of any plan or intention on the part of any particular remaining shareholder or security holder of Distributing 2 to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, either Distributing 2 or Controlled after Distribution 2.

(t) There is no plan or intention by either Distributing 2 or Controlled, directly or through any subsidiary corporation, to purchase any of its outstanding stock after Distribution 2, other than through stock purchases meeting the requirements of section 4.05(1)(b) of Rev. Proc. 96-30.

(u) There is no plan or intention to liquidate either Distributing 2 or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after Distribution 2, except in the ordinary course of business.

(v) Immediately before Distribution 2, 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, any excess loss account Distributing 2 may have in the Controlled stock will be included in income immediately before Distribution 2 to the extent required by applicable regulations (see § 1.1502-19).

(w) Payments made in connection with any continuing transactions between Distributing 2 and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(y) Distribution 2 is 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 percent or more of the total combined voting power of all

classes of either Distributing 2 or Controlled stock entitled to vote or 50 percent or more of the total value of shares of all classes of either Distributing 2 or Controlled stock.

(z) The payment of cash in lieu of fractional shares of Controlled is solely for the purpose of avoiding the expense and inconvenience of issuing fractional shares and does not represent separately bargained for consideration. The method used for handling fractional share interests is designed to limit the amount of cash received by any one shareholder to less than the value of one full share of Controlled stock. The total amount of cash paid in lieu of fractional shares will not exceed one percent of the fair market value of Controlled stock distributed to Distributing 2's shareholders in Distribution 2.

Rulings

Contribution and Distribution 1

Based solely on the information submitted and representations set forth above, we rule as follows on the Contribution and Distribution 1:

(1) The Contribution, followed by Distribution 1, will be a reorganization under § 368(a)(1)(D). Distributing 1 and Controlled each will be "a party to a reorganization" under § 368(b).

(2) No gain or loss will be recognized by Distributing 1 on the Contribution (§§ 361(a) and 357(a)).

(3) No gain or loss will be recognized by Controlled on the Contribution (§1032(a)).

(4) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing 2 on Distribution 1 (§ 355(a)(1); Rev. Rul. 62-138, 1962-2 C.B. 95).

(5) No gain or loss will be recognized by Distributing 1 on Distribution 1 (§361(c)).

(6) The holding period of the Controlled stock received by Distributing 2 in Distribution 1 will include the holding period of the Distributing 1 stock on which Distribution 1 is made, provided the Controlled stock is held as a capital asset on the date of Distribution 1 (§ 1223(1)).

(7) The earnings and profits of Distributing 1 and Controlled will be allocated in accordance with §§ 312(h), 1.312-10(a), and 1.1502-33(f)(2).

Distribution 2

Based solely on the information submitted and representations set forth above, we rule as follows on Distribution 2:

(8) No gain or loss will be recognized by Distributing 2 on Distribution 2 (§355(c)(1); Rev. Rul. 62-138).

(9) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the Distributing 2 shareholders on Distribution 2 (§355(a)(1)).

(10) The aggregate basis of the Distributing 2 stock and Controlled stock in the hands of each Distributing 2 shareholder after Distribution 2 (including any fractional shares of Controlled stock to which the shareholder is entitled) will equal the aggregate basis of Distributing 2 stock held by the Distributing 2 shareholder immediately before Distribution 2, allocated between the two in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(b)(2) and (c)).

(11) The holding period of Controlled stock received by each Distributing 2 shareholder will include the holding period of the Distributing 2 stock on which Distribution 2 is made, provided the Distributing 2 stock is held as a capital asset on the date of Distribution 2 (§ 1223(1)).

(12) The earnings and profits of Distributing 2 and Controlled will be allocated in accordance with §§ 312(h), 1.312-10(b), and 1.1502-33(e)(3).

(13) If cash is received by a Distributing 2 shareholder as a result of a sale of a fractional share of Controlled stock by the Exchange Agent, the shareholder will have gain or loss measured by the difference between the amount of cash received and the basis of the fractional share, as determined in ruling (10) above (§ 1001). If the Controlled stock is held by the shareholder as a capital asset, the gain or loss will be capital gain or loss subject to the provisions and limitations of Subchapter P of Chapter 1 of the Code (§§ 1221 and 1222).

Caveats

No opinion is expressed about the tax treatment of the proposed transactions 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 transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed concerning the tax effect of (1) the Controlled stock split described above in step (i), (2) the Acquisition, or (3) any payments made under the Distribution Agreement, Tax Allocation Agreement, or Employee Matters Agreement.

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

Each taxpayer affected by the proposed transaction should attach a copy of this ruling letter to its, his, or her federal tax return for the taxable year in which the transaction is completed.

Under the power of attorney on file in this office, a copy of this letter is being sent to each of your authorized representatives.

Sincerely yours,

Assistant Chief Counsel (Corporate)

By: *Wayne J. Murray*

Wayne T. Murray
Senior Technician/Reviewer
Branch 4