

Internal Revenue Service

Department of the Treasury

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LEGEND

Parent =

Distributing =

Controlled =

State W =

Country X =

Country Y =

Date b =

Date c =

Business K =

Business L =

Business M =

X =

Y =

This letter is in reply to your letter dated February 25, 1999 in which you requested rulings under sections 355 of the Internal Revenue Code on behalf of the above-named taxpayers. Additional information was submitted in letters dated April 13, 1999, April 19, 1999, June 7, 1999, June 14, 1999, July 13, 1999, July 19, 1999, August 10, 1999, August 11, 1999, August 27, 1999, August 30, 1999, September 2, 1999, September 22, 1999, September 24, 1999 and September 29, 1999.

Parent, a publicly held State W corporation, is the parent company of a U.S. consolidated group. It is engaged in Business K. Parent uses the accrual method of accounting and has a taxable year ending Date b. Parent has two classes of common stock and one class of preferred stock outstanding.

Parent owns all of the shares of the only class of stock (voting common stock) of Distributing. Distributing is a Country X corporation that uses the accrual method of accounting and has a taxable year ending Date b.

Distributing owns all of the shares of the only class of stock (voting common stock) of Controlled. Controlled is a Country Y corporation that uses the accrual method of accounting and has a taxable year ending Date c.

Distributing is engaged in Business L. Controlled is engaged in Business M. Financial information indicates that each of these businesses have had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the five calendar years immediately preceding the transaction. The excess accumulated earnings of Distributing and Controlled are distributed to Parent through

dividends on a regular basis. Dividend distributions from Controlled to Distributing are subject to a x percent Country Y withholding tax. Under a treaty between Country Y and the U.S., dividend distributions from a Country Y corporation to its U.S. parent are generally subject to a y percent Country Y withholding tax. To take advantage of the reduced withholding tax available under the U.S. - Country Y treaty, Distributing proposes to distribute all of its Controlled stock to Parent. Parent represents that the transaction will result in a substantial savings as a result of the reduction in foreign income taxes. Parent also represents that the proposed transaction will not enable Distributing, Controlled, or Parent to effect a reduction in U.S. federal taxes.

Notwithstanding the proposed foreign tax savings, the proposed Distribution may result in an increase in U.S. federal income taxes for Parent, but such increase in U.S. federal income taxes would likely not occur in the short-term since Parent represents that it currently has an excess limitation for foreign tax credit purposes, and Controlled currently has negative retained earnings. Moreover, because of Parent's excess foreign tax credits, the full y percent decrease in Country Y withholding is not expected to be fully offset by U.S. taxes.

The following additional representations have been made in connection with the transaction:

- (a) 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 the corporation.
- (b) The five years of financial information submitted on behalf of Distributing and Controlled is representative of each corporation's present operation and there have been no substantial operational changes since the date of the last financial statements submitted.
- (c) Following the transaction, Distributing and Controlled will each continue the active conduct of their businesses, independently and with their separate employees.
- (d) The distribution of the Controlled stock is carried out for the following corporate business purpose: the reduction of foreign income taxes. The distribution of the Controlled stock is motivated, in whole or substantial part, by this corporate business purpose.
- (e) There is no plan or intention by the shareholders or security holders of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in, or securities of, either Distributing or Controlled.
- (f) 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 transaction.

- (g) 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 transaction, except in the ordinary course of business.
- (h) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the distribution of Controlled.
- (i) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (j) Neither Distributing nor Controlled is a passive foreign investment company as defined in § 1297(a).
- (k) Both Distributing and Controlled are corporations as defined in § 7701(a)(3).
- (l) Both before and after the distribution, Distributing and Controlled are, and will continue to be, controlled foreign corporations within the meaning of § 957(a).
- (m) Distributing does not have any foreign shareholders and will not have any foreign shareholders after the Distribution.
- (n) Parent is a United States shareholder (within the meaning of Temp. Reg. § 7.367(b)-2(b)) with respect to both Distributing and Controlled.
- (o) The distribution 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 stock of either Distributing or Controlled entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either Distributing or Controlled.
- (p) Less than 50 percent of the total combined voting power of all classes of Distributing stock entitled to vote and less than 50 percent of the total value of shares of all classes of Distributing stock will have been acquired by purchase under § 355(d)(5) or (8) during the five-year period ending on the date of the Distribution (determined after applying § 355(d)(6)).

Based solely on the information submitted and the representations made above, and provided that (i) both Distributing and Controlled are corporations within the meaning of § 7701(a)(3), (ii) both Distributing and Controlled are "controlled foreign

corporations" within the meaning of § 957(a), (iii) the requirements of paragraphs (c)(1) of Temp. Reg. § 7.367(b)-1 and all of the conditions and requirements of Temp. Reg. §§ 7.367(b)-4 through 7.367(b)-12 are satisfied, it is held as follows:

- (1) No gain or loss will be recognized by (and no amount will be included in the income of) Parent, the sole shareholder of Distributing, upon Parent's receipt of Controlled stock in the Distribution. (§ 355(a)(1).)
- (2) The aggregate basis of the stock of Distributing and Controlled in the hands of Parent after the Distribution will equal the basis of the Distributing stock held by Parent immediately before the Distribution (§ 358(a) and § 1.358-1(a)), allocated in proportion to their relative fair market values in accordance with § 1.358-2(a)(2) (§§ 358(b)(2) and 358(c)).
- (3) The holding period of the Controlled stock received by Parent will include the holding period of the Distributing stock held by Parent provided that such Distributing stock is held by Parent as a capital asset on the date of the Distribution. (§ 355(c)(1).)
- (4) No gain or loss will be recognized by Distributing upon the Distribution to Parent of all of its Controlled stock. (§ 355(c)(1).)
- (5) Distributing's distribution of all its Controlled stock to Parent is a distribution to which § 7.367(b)-10(c) of the Temporary Regulations applies, and the requirements of paragraphs (d) through (j) of § 7.367(b)-10 must be satisfied.

No opinion is expressed with respect to whether any or all of the above referenced foreign corporations are passive foreign investment companies within the meaning of § 1297(a) of the Code and the regulations to be promulgated thereunder. If it is determined that any or all of the above-described foreign corporations are passive foreign corporations, no opinion is expressed with respect to the application of §§ 1291 through 1298 of the Code to the proposed transactions. In particular, in a transaction in which gain is not otherwise recognized, regulations under § 1291(f) may require gain recognition notwithstanding any other provision of the Code.

The rulings contained in this letter are predicated upon the 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 a ruling. Verification of the information, representations, and other data may be required as part of the audit process.

No opinion is expressed about the tax treatment of the proposed transaction under any other provisions of the Code and 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.

This ruling letter 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.

A copy of this letter must be attached to any income tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

Sincerely yours,

Assistant Chief Counsel (Corporate)

By Lewis K. Brickates

Lewis K Brickates

Assistant to the Chief, Branch 2