

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:B05

PLR-126243-05

September 07, 2005

Re:

Legend:

Distributor =

The Liquidating
Subsidiaries =

Business A =

Business B =

The Discontinued =

Business

Purchaser =

X =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

m =

n =

Date 1 =

Date 2 =

State A =

Dear :

This letter responds to your May 11, 2005, request for rulings on certain federal income tax consequences of the Proposed Distribution (described below). Additional information was provided in a letter dated August 3, 2005. The material information provided for consideration is summarized below.

Summary of Facts

Distributor, a State A corporation, currently operates Business A and Business B. Prior to Date 1, Distributor also operated the Discontinued Business through the Liquidating Subsidiaries. Prior to Date 1, Distributor operated each business separately and reported each business (including the Discontinued Business) as a separate segment for financial accounting purposes.

Distributor has outstanding two classes of common stock: Common Stock and Class B Common Stock. Distributor's Common Stock is listed and traded on the New York Stock Exchange. Distributor's Class B Common Stock is closely held, mostly by members of the X family.

Holders of Class B Common Stock may convert their shares of Class B Common Stock into shares of Common Stock at any time. Under Distributor's Articles of Incorporation, holders of Common Stock are entitled to cash dividends per share equal to a% of the amount of the cash dividend payable with respect to each share of the Class B Common Stock; however, this premium does not apply to distributions in connection with a partial or complete liquidation of Distributor. Each share of Class B Common Stock is entitled to b votes, and each share of Common Stock is entitled to one vote. Both classes of stock possess the same rights in the event of a liquidation of Distributor.

On Date 1, Distributor and the Liquidating Subsidiaries entered into an asset purchase agreement for the sale of substantially all of the assets of the Discontinued Business to Purchaser (the "Asset Sale") for approximately \$c (the "Gross Proceeds"). The Asset Sale closed on Date 2.

Distributor is using approximately \$d of the Gross Proceeds to pay federal and state income taxes related to the Asset Sale. Distributor used approximately \$e of the Gross Proceeds to pay expenses directly related to the Asset Sale. Distributor also used approximately \$f of the Gross Proceeds to repay its general unsecured debt, and approximately \$g of the Gross Proceeds to repay debt secured by certain assets of the Discontinued Business owned by joint venture entities that were sold in the Asset Sale. The remaining Gross Proceeds, net of such taxes, expenses, and debt repayments, (the "Net Proceeds") are approximately \$h.

Distributor initially deposited approximately \$i of the Gross Proceeds in newly opened money market accounts (the "Accounts") at several banks. The Accounts are segregated from Distributor's regular operating accounts with no in-flow of unrelated funds. Distributor also deposited approximately \$j of the Gross Proceeds with third-party qualified intermediaries to retain the possibility of engaging in transactions intended to qualify under section 1031 of the Internal Revenue Code (the "Code"). At the end of the 180-day period for acquiring replacement properties, Distributor was only able to acquire replacement properties with an aggregate approximate fair market value of \$k. The proceeds returned by the qualified intermediaries were deposited in the Accounts.

Proposed Transactions

Distributor has decided it is in the best interest of Distributor and its shareholders to distribute a substantial portion of the Net Proceeds from the Asset Sale to its shareholders. Distributor proposes to take the following steps to effect such distribution (collectively, the "Proposed Distribution"):

- (1) Distributor will adopt a plan of partial liquidation (the "Plan") as soon as is practical after receipt of this private letter ruling.

- (2) Distributor will cause each of the Liquidating Subsidiaries to liquidate or merge into Distributor or convert into a single member limited liability company (and be treated as a disregarded entity) of Distributor in a transaction intended to qualify under section 332 of the Code.
- (3) Pursuant to the Plan, Distributor will distribute an amount not less than \$m, (the "Proposed Distribution Proceeds") pro rata to its shareholders within the taxable year in which the Plan is adopted or within the succeeding taxable year.

Distributor anticipates using most, if not all, of the Net Proceeds not distributed to its shareholders (the "Retained Proceeds") to expand Business A and Business B. In addition, Distributor may pursue a new business, different from the Discontinued Business, which would complement its retained businesses. The amount of the Retained Proceeds will be no greater than \$n (which is equal to the Net Proceeds less the minimum amount of the Proposed Distribution Proceeds).

Representations

The following representations have been made in connection with the Proposed Distribution:

- (a) The Proposed Distribution Proceeds are proceeds from the sale of business assets that Distributor actively used in the Discontinued Business and are not attributable to an expansion reserve, a mere business decline, or a mere decrease in working capital. None of the Proposed Distribution Proceeds are proceeds from the sale of assets that, directly or indirectly, are or were idle, passive, or investment assets. None of the Proposed Distribution Proceeds are "substitute assets".
- (b) As a result of the Asset Sale, Distributor's (i) gross revenue, (ii) net fair market value of assets, and (iii) employees will be reduced by more than 20%.
- (c) The Proposed Distribution will be made pro rata to all shareholders of Distributor in accordance with the partial liquidation provision in its Articles of Incorporation and without an actual surrender of shares.
- (d) To the extent that the Sold Assets constituted inventory, such assets were substantially similar to, and substantially the same in quantity as, those held during the prior five-year period, and were sold in "bulk" to Purchaser.
- (e) The Proposed Distribution will be made with cash from the segregated Accounts that can be traced to the proceeds received from the Asset Sale. The Proposed Distribution Proceeds will not include any gain or income earned on the Net Proceeds since the Asset Sale, and will be reduced by any loss on the Net Proceeds since the Asset Sale.
- (f) The amount distributed in the Proposed Distribution will be no less than \$m and will be no greater than the amount of the Net Proceeds.

- (g) Distributor will adopt the Plan as soon as practical after the receipt of this private letter ruling. All distributions pursuant to the Plan will be made within the taxable year in which the Plan is adopted or within the succeeding taxable year.
- (h) There are currently no declared but unpaid dividends on any of Distributor's stock.
- (i) There is no plan or intention to completely liquidate Distributor.
- (j) Distributor has no plan or intention to re-enter the Discontinued Business or to expand its continuing business operations other than through normal internal growth, except that it is developing and negotiating the acquisition of properties to expand Business A and Business B, and may pursue a new line of business different and other than the Discontinued Business.
- (k) To the knowledge of the management of Distributor, the Proposed Distribution will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation (a "Recipient") of any of the business or assets of Distributor (including the Proposed Distribution Proceeds), if persons holding more than 20 percent in value of the stock in Distributor also hold more than 20 percent in value of the stock in the Recipient. For this representation, ownership will be determined by application of the constructive ownership rules of section 318 of the Code as modified by section 304(c)(3) of the Code.
- (l) None of the Proposed Distribution Proceeds will be received by a shareholder as a debtor, creditor, employee, or in some capacity other than that of a shareholder of Distributor.
- (m) The Proposed Distribution Proceeds will not include any portion attributable to indebtedness of any of the Liquidating Subsidiaries to Distributor that was or will be canceled upon liquidation.
- (n) Distributor will adjust the terms of its outstanding employee stock options to eliminate the dilutive effect on the value of these options caused by the Proposed Distribution.
- (o) Each of the Liquidating Subsidiaries has either liquidated or merged into Distributor or converted into a single member limited liability company of Distributor in a transaction intended to qualify under section 332 of the Code, or will do so as soon as practical after receipt of this private letter ruling.
- (p) Management of Distributor knows of no plan or intention on the part of any of Distributor's shareholders to reinvest in Distributor any of the Proposed Distribution Proceeds.
- (q) The Proposed Distribution is not a step in a larger integrated transaction.

Rulings

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

- (1) The Proposed Distribution will be treated as a distribution in partial liquidation under sections 302(b)(4) and 302(e)(1) of the Code provided such distribution is made pursuant to the Plan and within the taxable year in which the Plan is adopted or within the succeeding taxable year. (§1.346-1(a)(2))
- (2) Distributions made pursuant to the Plan to a shareholder who is not a corporation will be treated as in-full payment in exchange for the stock constructively redeemed under section 302(a) of the Code. Gain or loss will be recognized to such noncorporate shareholders to the extent of the difference between the amount distributed in partial liquidation and the adjusted basis of the shares deemed surrendered, as provided in ruling (5) below, in exchange therefor. Provided that Distributor's stock is a capital asset in the hands of such noncorporate shareholders, gain or loss, if any, will be considered capital gain or loss subject to the provisions and limitations of Subchapter P of Chapter 1 of the Code.
- (3) For purposes of the rulings above, the number of shares that will be considered to be redeemed, regardless of the number of shares actually surrendered, for the purpose of determining gain or loss will be determined in accordance with the principles set forth in Rev. Rul. 77-245, 1977-2 C.B. 105.

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

Procedural Statements

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

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

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

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the

material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Virginia S. Voorhees
Virginia S. Voorhees
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Corporate)

cc: