

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Refer Reply To:

CC:DOM:CORP:5 PLR-110578-99

Date:

September 7, 1999

Distributing =

Controlled =

Shareholder A =

Shareholder B =

Date E =

We respond to a letter from your authorized representative, dated June 8, 1999, requesting that we supplement our letter ruling dated March 26, 1998 (PLR-117406-97) (the "Prior Letter Ruling"). Additional information was submitted in letters dated July 1, July 29, August 5, August 6, and August 11, 1999. The information submitted for consideration is summarized below. Capitalized terms retain the meanings assigned to them in the Prior Letter Ruling.

Controlled is an accrual basis foreign corporation that was organized for purposes of the transaction ruled upon in the Prior Letter Ruling and, initially, was wholly owned by Distributing. In the Prior Letter Ruling, the taxpayer established that Controlled had a need to issue equity within 12 months of the distribution to finance its

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operations and make certain acquisitions.

We granted the rulings in the Prior Letter Ruling based primarily on the Stock Offering business purpose, although the Fit and Focus business purpose was considered as well (See Rev. Proc. 96-30, Appendix A).

On Date E, Distributing and Controlled completed the proposed restructuring and distribution transaction described in the Prior Letter Ruling.

In its request for a supplemental letter ruling, Controlled describes its inability to issue equity within 12 months of the distribution as contemplated in the Prior Letter Ruling. Controlled now seeks a supplemental letter ruling, stating that its failure to issue stock does not adversely affect the Prior Letter Ruling since it also established the Fit and Focus business purpose as an independent business purpose, which in no way relies on the issuance of equity, for the transaction.

The taxpayer provided the following additional facts in connection with the original transaction:

- (a) Prior to the distribution, Shareholder A and Shareholder B each held more than five percent of the outstanding Distributing common stock, and there were no other five percent shareholders at the time of the distribution.
- (b) Shareholder A and Shareholder B each have filed Schedules 13G indicating they are passive investors in Distributing. Controlled has provided additional letters from representatives of Shareholder A and Shareholder B indicating that their ownership of Distributing stock was in the manner of passive investments and that the shares were not acquired to influence management decisions of Distributing in any way.

Controlled has represented that all of the other representations made in the Prior Ruling Letter are still true and correct. Based upon the information and representations submitted with the original and supplemental ruling requests, we hold that:

The failure to issue stock as contemplated in the original proposed transaction will not have an adverse effect on the rulings contained in the Prior Letter Ruling, and we reaffirm the rulings set forth in the Prior Letter Ruling.

This supplemental 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.

A copy of this letter together with the Prior Letter Ruling should be attached to the federal income tax returns of the taxpayers involved for the taxable year in which

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the transaction covered by these ruling letters is consummated.

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

Sincerely,

Assistant Chief Counsel (Corporate)

By: *Filiz A. Serbes*

Filiz A. Serbes

Assistant to the Chief, Branch 5