

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

March 7, 2001

Distributing =

LLC =

Controlled =

Parent =

Sub =

Business A =

Business B =

Business D =

q =

r =

t =

This letter responds to your December 21, 2000 request for a supplement to our letter ruling dated June 30, 1999 (the "Original Ruling") (PLR 199939040) and supplemented by letter ruling dated May 23, 2000 (the "First Supplemental Ruling") (PLR 200033042). Additional information was requested and submitted in subsequent correspondence. The legend abbreviations, Summary of Facts, Proposed Transactions, Representations, and Caveats appearing in the Original Ruling and the First Supplemental Ruling are incorporated by reference.

The ruling contained in this letter is based upon the facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of this material may be required as part

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of the audit process.

The Original Ruling addressed certain federal income tax consequences of a proposed transfer by Distributing of Business B to Controlled for Controlled stock, followed by the distribution (the "Distribution") of Controlled stock pro rata to Distributing's shareholders. Under the proposal, Distributing would continue to own the only membership interest in LLC, an entity intended to be disregarded as separate from Distributing for federal income tax purposes under § 301.7701-3(b)(1)(ii) of the Procedure and Administration Regulations.

At the time of the Original Ruling request, we received financial information indicating that each of Business A and Business D had gross receipts and operating expenses representing the active conduct of a trade or business for each of the previous five years.

The First Supplemental Ruling addressed certain federal income tax consequences of a proposed transfer by Distributing of a q percent membership interest in LLC to Parent in exchange for r percent of the Parent stock, followed by Parent's transfer of its interest in LLC to Sub, which is wholly owned by Parent. In addition, Distributing sold a q percent membership in LLC to Sub. Under the proposal, Distributing would retain a t percent (greater than 50 percent) interest in LLC and continue to control the operation of Business D through LLC.

Supplemental Facts and Proposed Transaction

Because Distributing was considering selling Business A at the time of the Original Request, Distributing compared the offers it was receiving for its Business A with offers being made to other potential sellers of like businesses. Based in part on these comparisons, Distributing re-evaluated the advantages of Business A. In addition, a competitor of Distributing in business A was offered for sale at an attractive price. Distributing purchased such competitor, abandoned its efforts to dispose of Business A, and has continued to conduct Business A.

In addition, Distributing has concluded that it would prefer not to meet the continuing capital needs of Business D and that the risks and volatility associated with Business D are too great to justify Distributing's continuing investment in and conduct of such business. Disposing of its interest in LLC also would facilitate Distributing's management and repayment of certain debt, some of which would have been repaid from the proceeds of selling Business A and some of which has been incurred since the date of the First Supplemental Ruling. Therefore, Distributing proposes to transfer its interest in LLC to Parent.

Representations

Distributing makes the following representations concerning the Supplemental Facts and Proposed Transaction:

(a) The five years of financial information submitted on behalf of Distributing's Business A and Business D represents, in each case, the corporation's present operation of such business, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(b) Since the date of the Original Ruling, Distributing has continued the active conduct of Business A and Business D, independently and with its separate employees, and following Distributing's disposition of its interest in LLC, Distributing will continue the active conduct of Business A, independently and with its separate employees.

(c) Except with respect to Distributing's disposition of its interest in LLC, there is no plan or intention to liquidate Distributing, to merge Distributing with any other corporation, or to sell or otherwise dispose of the assets of Distributing, except in the ordinary course of business.

(d) At the time of the First Supplemental Ruling, Distributing had no intention to dispose of or dilute its interest in LLC.

(e) 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.

(f) Distributing expects that the transfer of its interest in LLC and/or Business D will be a fully taxable transaction.

Ruling

Based solely on the information submitted in the original and supplemental requests, we rule that the Supplemental Facts and Proposed Transaction will have no adverse effect on the Original Ruling or the First Supplemental Ruling.

Caveats

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No opinion is expressed on the tax treatment of the Supplemental Facts and Proposed Transaction if the transfer of the LLC interest is not effected by a fully taxable transaction, and no opinion is expressed on the tax treatment of the Supplemental Facts and Proposed Transaction under other provisions of the Internal Revenue Code or Income Tax Regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the Supplemental Facts and Proposed Transaction that are not specifically covered by the above ruling. In particular, no opinion is expressed about the tax treatment of the transfer by Distributing of its interest in LLC and/or Business D.

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.

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,
Associate Chief Counsel (Corporate)
By: Stephen P. Fattman
Assistant to the Chief, Branch 4