

Internal Revenue Service

Number: **200422018**

Release Date: 5/28/04

Index Number: 355.01-00, 368.04-00

Department of the Treasury
Washington, DC 20224

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CC:CORP:B03 – PLR-145942-03

Date:

February 06, 2004

TY:

Distributing =

Controlled =

Sub =

Merger Sub =

Distributing ESOP =

Distributing Medical
Plan Trust =

Distributing Common
Stock =

Distributing Preferred
Stock =

Distributing Restricted
Stock =

Controlled Common
Stock =

Debt A Instruments =

Debt B Instruments =

Debt C Instruments =

Business A =

Business B =

Chairman A =

Shareholder A =

Shareholder B =

Shareholder C =

Management Consultant =

Date A =

State X =

a =

b =

c =

d =

e =

f =

g =

Dear

This letter responds to your August 4, 2003, request for rulings on certain federal income tax consequences of the Proposed Transactions (defined below). The information provided in that request and in later correspondence is summarized below.

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

Summary of Facts

Publicly traded Distributing is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Distributing has two classes of stock outstanding: Distributing Common Stock and Distributing Preferred Stock. Distributing believes that Shareholder A, Shareholder B, and Shareholder C (together, the "Institutional Investors") each owns more than five percent of the Distributing Common Stock. Restricted shares of Distributing Common Stock that have been awarded to certain service providers (Distributing Restricted Stock) will be outstanding at the time of the Proposed Transactions.

The two principal businesses of the Distributing group are Business A and Business B. Distributing conducts Business A directly and through certain subsidiaries and Business B through wholly owned Sub and certain subsidiaries of Sub. Financial information submitted by Distributing and Sub indicates that Business A and Business B each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Business A has cyclical revenue and is in a mature, low-growth industry. Business B, by contrast, has relatively stable revenue and is in a developing, high growth, capital intensive industry. Because the two businesses operate within the same affiliated group, these opposing characteristics have led to an intense competition for capital (and accompanying management distraction) that has prevented Business B from achieving the scale, breadth, and speed of operation needed to reach its potential. Management Consultant has advised Distributing that disaffiliating Business A and Business B would eliminate this systemic problem, improve Business B's access to capital, and allow each business to consistently pursue strategies (including acquisitions) appropriate to its own development. Distributing therefore has decided to separate the two businesses.

Proposed Transactions

To accomplish the separation, Distributing has proposed the following series of transactions (the "Proposed Transactions"):

(i) Distributing will form Controlled as a State X corporation wholly owned by Distributing, and Controlled will form Merger Sub as a State X corporation wholly owned by Controlled. Distributing and Controlled will enter into a separation and distribution agreement, a tax sharing agreement, an employee benefits agreement, and a transition services agreement (collectively, the "Agreements").

(ii) Pursuant to the employee benefits agreement, Sub will assume certain compensation-related contractual obligations of Distributing (many of which are contingent), and Sub will receive from Distributing certain assets related to funding those obligations (the "Employee Benefits Transaction"). Controlled may guarantee the obligations.

(iii) Distributing will offer to repurchase for cash all of its outstanding Debt A Instruments (a dollars of principal amount) and Debt B Instruments (b dollars of principal amount). In connection with this offer, Distributing will solicit consents from the holders of the Debt A Instruments and Debt B Instruments to amend the indentures governing this indebtedness to eliminate substantially all of the restrictive covenants from those indentures in the event that less than all the Debt A Instruments or Debt B Instruments are tendered for repurchase. A small part of the amount paid to the holders of Debt A Instruments or Debt B Instruments who tender their notes and provide their consents will be attributable to the consents (the "Consent Payments"). If Distributing does not obtain sufficient consents to amend the Debt A Instruments or the Debt B Instruments, Distributing may have Controlled become a co-obligor on any Debt A Instruments and/or Debt B Instruments that remain outstanding. In this event, as between Distributing and Controlled, Distributing would be responsible for the Debt A Instruments and the Debt B Instruments. If Distributing does not obtain sufficient consents to amend the Debt A Instruments, Distributing may effect a "covenant defeasance" of the Debt A

Instruments. To do this, Distributing would set aside funds (other than any part of the Cash Distribution defined below) for payment of the Debt A Instruments.

(iv) Distributing will redeem all of the outstanding Distributing Preferred Stock for cash (c dollars).

(v) Merger Sub will merge with and into Sub, with Sub surviving. Under the plan of reorganization adopted for the merger, (a) all the shares of Sub will be cancelled, (b) all the shares of Merger Sub will be converted into stock of Sub, and (c) Controlled will transfer cash to Distributing (the "Cash Distribution"). The Cash Distribution will consist of a lump sum of at least d dollars and an estimated amount for certain tax credits. (Any payment made on or about the date of the Distribution consistent with Distributing's long-held policy (more than five years) of requiring Sub to make quarterly distributions of its net income to Distributing will not be included in the Cash Distribution.) For Federal income tax purposes, the merger will be disregarded, and Distributing will be treated as if it had transferred the Sub stock directly to Controlled in exchange for a constructive issuance of additional Controlled Common Stock, an assumption by Controlled of related liabilities, and the Cash Distribution (altogether, the "Contribution"). See Ruling (1) below.

(vi) Distributing intends to use the Cash Distribution to (a) pay down commercial paper obligations (or bank refinancings of these obligations), (b) repurchase Debt A Instruments and Debt B Instruments as described above in step (iii) and make the Consent Payments, (c) redeem the outstanding Distributing Preferred Stock as described above in step (iv), (d) redeem the Debt C Instruments, or (e) effect some combination of (a) through (d). All payments of Cash Distribution amounts to creditors will be for borrowings incurred or other liabilities accrued (including tax liabilities) at or before the Distribution that were not incurred or accrued in connection with the plan of Distribution. The Consent Payments will be treated as satisfying this requirement. Further, commercial paper balances arising in the ordinary course of business (or bank refinancings thereof) that do not exceed the commercial paper balances of Distributing outstanding on the date the Distributing board of directors resolved to authorize the management of Distributing to prepare for and pursue the Distribution will not be considered incurred or accrued in connection with the plan of Distribution.

(vii) Distributing will distribute all of the Controlled Common Stock pro rata to the holders of Distributing Common Stock (the "Distribution").

After the Distribution, Controlled's board of directors is expected to consist of at least e (more than 10) directors, including f (fewer than five) individuals who will also serve on the board of directors of Distributing (these individuals, the "Overlapping Directors"). Chairman A, the chief executive officer of Distributing and chairman of its board, will be an Overlapping Director and chairman of the Controlled board. The Overlapping Directors will provide a sense of continuity at Distributing and help its

management make the transition from a large, multi-faceted conglomerate to a smaller, more focused company. At the time of the Distribution, Distributing's board may consist only of Overlapping Directors, but Distributing intends that within g (fewer than four) years of the Distribution, as a result of the addition of new directors, the resignation by Overlapping Directors, the removal of Overlapping Directors from the Controlled board, or other means, the Overlapping Directors will constitute a minority of the Distributing board.

Representations

The taxpayer has made the following representations concerning the Proposed Transactions:

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

(b) No part of the consideration distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing, except for shares of Controlled Common Stock received by holders of Distributing Restricted Stock.

(c) The five years of financial information submitted on behalf of Distributing represents Distributing's present operation of Business A, and regarding this business, there have been no substantial operational changes since the date of the last financial statements submitted.

(d) Immediately after the Distribution, the fair market value of the gross assets of the active trade or business directly conducted by Distributing (Business A) will equal at least five percent of the total fair market value of the gross assets of Distributing.

(e) Immediately after the Distribution, at least 90 percent of the fair market value of the gross assets of Controlled will consist of the stock of a controlled corporation (Sub) that is engaged in the active conduct of a trade or business (Business B) as defined in § 355(b)(2) of the Internal Revenue Code.

(f) The five years of financial information submitted on behalf of Sub represents Sub's present operation of Business B, and regarding this business, there have been no substantial operational changes since the date of the last financial statements submitted.

(g) Immediately after the Distribution, the fair market value of the gross assets of the active trade or business directly conducted by Sub (Business B) will equal at least five percent of the total fair market value of the gross assets of Sub.

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

(i) The Distribution is being carried out to eliminate the intense competition for capital and other systemic problems that result from operating Business A and Business B within the same affiliated group. The Distribution is motivated, in whole or substantial part, by this corporate business purpose.

(j) There is no plan or intention by any shareholder who owns five percent or more of the stock of Distributing, and the management of Distributing, 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 to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, either Distributing or Controlled after the Distribution, other than (i) in ordinary market trading, (ii) sales by the Distributing ESOP of Controlled Common Stock received in the Distribution, the proceeds of which sale will be invested by the Distributing ESOP in additional shares of Distributing Common Stock, (iii) sales by the Distributing Medical Plan Trust of Distributing Common Stock and Controlled Common Stock, the proceeds of which will be used to fund the payment of certain retiree medical benefits, and (iv) sales by Institutional Investors described hereinafter. No Institutional Investor (other than Shareholder B) has any plan or intention to sell, exchange, transfer by gift, or otherwise dispose of any stock in Distributing or Controlled after the Distribution. Notwithstanding the forgoing, any Institutional Investor may in the future determine to dispose of or purchase stock of Distributing or Controlled in the normal course of its business based upon market conditions and investment needs in existence at that time. Any disposition or acquisition of stock in, or securities of, either Distributing or Controlled by Shareholder B after the Distribution will be made in furtherance of Shareholder B's fiduciary duties to clients or investors.

No Institutional Investor (i) has a representative on the board of directors of Distributing or any affiliate of Distributing, (ii) has participated in the management or control of the Distributing group, (iii) has in any way been notified or informed by the management of Distributing of its plan for the Distribution, other than by means of the public announcement of the Distribution, (iv) has acted in a manner designed to influence the decision to make the Distribution, (v) suggested to any officer or director of Distributing, before the announcement on Date A relating to the Distribution, that it favored or otherwise supported a separation of Business A from Business B, and (vi) has participated in the negotiation or execution of any of the agreements or arrangements related to the Distribution.

(k) 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, other than through stock purchases meeting the requirements of section 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696.

(l) 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.

(m) (i) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing each equals or exceeds the sum of the liabilities assumed (within the meaning of § 357(d)) by Controlled (excluding liabilities to which § 357(c)(3) applies) plus the Cash Distribution; and (ii) the liabilities assumed (within the meaning of § 357(d)) by Controlled in the transaction were incurred in the ordinary course of business and are associated with the assets being transferred.

(n) No investment credit determined under § 46 has been (or will be) claimed for any property being transferred by Distributing to Controlled.

(o) Except for debt incurred in the ordinary course of business and in continuing transactions under the Agreements, no intercorporate debt will exist between Distributing and Controlled at the time of, or after, the Distribution.

(p) Immediately before the Distribution, 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 of the Income Tax Regulations 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). Further, any excess loss account Distributing may have in the Controlled stock or the Sub stock, and any excess loss account in any direct or indirect affiliate of either, will be included in income immediately before the Distribution to the extent required by applicable regulations (see § 1.1502-19).

(q) Except as provided in the Agreements, any payments made in continuing transactions 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.

(r) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(s) The Cash Distribution received by Distributing from Controlled in the Contribution will be transferred by Distributing to its creditors (and possibly holders of Distributing Preferred Stock) no later than one year following the Distribution to (in the case of creditors) pay liabilities incurred or accrued at or before the Distribution that were not incurred or accrued in connection with the plan of Distribution.

(t) The Distribution will not be a disqualified distribution (as defined in

§ 355(d)(2)) because immediately after the Distribution: (i) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Distributing that will constitute a 50 percent or greater interest (defined in § 355(d)(4)) in Distributing, and (ii) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Controlled that will constitute a 50 percent or greater interest (defined in § 355(d)(4)) in Controlled.

(u) 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 either Distributing or Controlled stock entitled to vote, or stock possessing 50 percent or more of the total value of shares of all classes of stock of either Distributing or Controlled.

(v) Any payment of cash in lieu of fractional shares of Controlled Common Stock is solely for the purpose of avoiding the expense and inconvenience to Controlled of issuing and maintaining fractional shares and will not represent separately bargained-for consideration. The total cash that will be paid in the transaction to shareholders in lieu of fractional shares of Controlled Common Stock will not exceed one percent of the total consideration that will be distributed in the transaction. The fractional share interests of each Distributing shareholder will be aggregated, and it is intended that no Distributing shareholder will receive cash in an amount equal to or greater than the value of one full share of Controlled Common Stock.

(w) Shares of Controlled Common Stock distributed with respect to shares of Distributing Restricted Stock will not exceed, in the aggregate, 20 percent of the Controlled Common Stock outstanding immediately after the Distribution.

Rulings

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

(1) For Federal income tax purposes, the organization of Merger Sub (described above in step (i)) and its merger into Sub (described above in step (v)) will be disregarded, and Distributing will be treated as if it had directly transferred the stock of Sub to Controlled in constructive exchange for additional Controlled stock (defined above in step (v) as part of the Contribution) (see Rev. Rul. 67-448, 1967-2 C.B. 144).

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

(3) No gain or loss will be recognized by Distributing on the Contribution, provided the Cash Distribution is paid in connection with the plan of Distribution to existing creditors of Distributing or holders of Distributing Preferred Stock (§§ 357(a), 361(a), and 361(b)(1) and (3)).

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

(5) The basis of each asset received by Controlled in the Contribution will equal the basis of that asset in the hands of Distributing immediately before its transfer (§ 362(b)).

(6) The holding period of each asset received by Controlled in the Contribution will include the period during which Distributing held that asset (§ 1223(2)).

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

(8) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) any holder of Distributing Common Stock on the Distribution (§ 355(a)(1); Rev. Rul. 2003-75, 2003-29 I.R.B. 79 (distribution justified by competition between affiliated businesses for limited capital); Rev. Rul. 2003-74, 2003-29 C.B. 77 (distribution justified by competition between affiliated businesses for limited management time; business reasons that did not conflict with this corporate business purpose permitted certain directors to serve both the distributing and controlled corporations following their separation); *cf. id.* (shareholder who does not actively participate in the management or operations of distributing or controlled corporation owns eight percent of the outstanding distributing stock; implicit recognition that this type of stock ownership does not present a significant device concern).

(9) The aggregate basis of Controlled Common Stock and Distributing Common Stock in the hands of each holder of Distributing Common Stock (including any fractional interest in Controlled Common Stock to which the holder may be entitled) will equal the aggregate basis of the Distributing Common Stock held by the shareholder immediately before the Distribution, allocated between the Distributing Common Stock and the Controlled Common Stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§§ 358(b)(2) and 358(c)).

(10) The holding period of the Controlled Common Stock received by each holder of Distributing Common Stock in the Distribution will include the holding period of the Distributing Common Stock on which the Distribution is made, provided the Distributing Common Stock is held as a capital asset on the date of the Distribution (§ 1223(1)).

(11) Earnings and profits will be allocated between Distributing and Controlled in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33(e)(3).

(12) A shareholder who receives cash in lieu of fractional shares of Controlled Common Stock will recognize gain or loss measured by the difference between the basis of the fractional share received, as determined above in ruling (9), and the amount of cash received (§ 1001). If the fractional share qualifies as a capital asset in the hands of the shareholder, the gain or loss will be a capital gain or loss subject to the provisions of Subchapter P of Chapter 1 of the Code.

Caveats

We express no opinion about the tax treatment of the Proposed Transactions under other provisions of the Code and regulations or about 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 ruling. In particular, no opinion is expressed concerning:

(i) The federal income tax consequences of the Employee Benefits Transaction described above in paragraph (ii); and

(ii) The federal income tax consequences of non-arm's-length payments made under the Agreements.

Procedural Matters

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

A copy of this ruling letter must be attached to the federal income tax return of each party involved in the Proposed Transactions for the taxable year in which the transactions are completed.

Under the power of attorney on file in this office, a copy of this letter has been sent to your authorized representative.

Sincerely yours,

Associate Chief Counsel (Corporate)

By: Wayne T. Murray

Wayne T. Murray

Special Counsel to the Associate Chief
Counsel (Corporate)