

## Internal Revenue Service

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## Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

**CC:CORP:B05-PLR-115708-00**

Date:

December 6, 2000

Re:

Distributing =

Controlled =

Acquiring =

Newco =

Business B =

Purchaser =

Date 1 =

Date 2 =

Date 3 =

x percent =

y percent =

PLR-115708-00

We respond to your letter dated August 11, 2000, requesting on behalf of the taxpayer a supplemental ruling to PLR-64726-95, a ruling letter issued on September 10, 1996 ("Prior Ruling Letter") regarding certain federal income tax consequences of a series of transactions, which included the distribution of all of the outstanding capital stock of Controlled owned by Distributing pro rata to Distributing's shareholders. The Prior Ruling Letter held in part that the Distribution qualified as a tax-free distribution under § 355 of the Internal Revenue Code (the Spin Off). The Spin Off was effective on Date 1. On May 29, 1997, we issued a supplemental letter (PLR-254004-96) to the Prior Ruling Letter addressing issues unrelated to those in your current request (the First Supplemental Letter). The information submitted in your request and in subsequent correspondence is summarized below.

In your request, you state that you wish to inform us of two recent developments: (1) the acquisition of Controlled by Acquiring, and (2) the proposed transfer by Distributing of Business B (the business upon which Distributing relied as an active trade or business in the Spin Off) to a newly-formed, wholly-owned subsidiary of Distributing (Newco), as a step toward a likely disposition of Business B. You ask whether both or either of these developments have an adverse effect on the Prior Ruling Letter.

#### The First Development

On Date 2, Acquiring and Controlled announced that Acquiring would acquire Controlled through the merger of a new, wholly-owned subsidiary of Acquiring into Controlled. The merger was effective on Date 3. As a result, Controlled became a wholly-owned subsidiary of Acquiring, and, as a result of the transaction, the Acquiring shareholders continued to hold approximately  $x$  percent of Acquiring and the former Controlled shareholders received approximately  $y$  percent of Acquiring. Controlled received an opinion of counsel stating that the merger would qualify as a reorganization within the meaning of § 368(a) of the Code.

Distributing makes the following representations in connection with the First Development:

- (a) The transactions described in the Prior Ruling Letter and the First Supplemental Letter were carried out in all material respects as described in the Prior Ruling Letter, the Prior Ruling Letter request and the exhibits and supplements thereto.
- (b) Representations (v), (x), and (y) in the Prior Ruling Letter concerning, inter alia, the shareholders' lack of intention to dispose of their Distributing or Controlled stock and Controlled's lack of intention to merge with another company were correct at the time of the Spin Off and prior thereto.

PLR-115708-00

- (c) Distributing management became aware of the pending acquisition of Controlled by Acquiring from press reports and other published sources. Distributing was not consulted or informed about the acquisition prior to public announcement and did not play a role in the acquisition. At the time of the Spin Off, Distributing did not have any negotiations underway with Acquiring concerning any proposed acquisition of Controlled.

#### The Second Development

Distributing plans to transfer all the assets and liabilities (with the possible exception of some accounts receivable and other financial assets and liabilities) of Business B to Newco in exchange for all of the stock of Newco. Business B has undergone significant expansion and changes in focus since Date 1. These changes were in response to market conditions arising after the Spin Off. Further, Distributing has entered into active negotiations with Purchaser for either the transfer by Distributing of the stock of Newco or a transfer by Newco of the Business B assets to Purchaser in exchange for cash and a minority interest in the stock of Purchaser. Distributing anticipates that this transaction would be fully taxable to Distributing. Whether or not the negotiations with Purchaser are successful, Distributing will transfer the assets of Business B to Newco, as described above.

Distributing makes the following representations in connection with the Second Development:

- (d) The transactions described in the Prior Ruling Letter and the First Supplemental Letter were carried out in all material respects as described in the Prior Ruling Letter, the Prior Ruling Letter request and the exhibits and supplements thereto.
- (e) Representation (q) in the Prior Ruling Letter, concerning, inter alia, the continuation of the active conduct of Business B by Distributing, was correct at the time of the Spin Off and prior thereto.
- (f) At the time of the Spin Off, it was Distributing's intention to continue to operate Business B as a division indefinitely. Business B has undergone significant changes since Date 1. The decision to transfer Business B took place more than three years after the Spin Off and was made in response to expansion and changes in Business B and in response to current market conditions that arose long after the Spin Off was complete.
- (g) At the time of the Spin Off, Distributing had had no contact with Purchaser. The first such contact occurred during this year.

PLR-115708-00

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

The acquisition of Controlled by Acquiring and the potential disposition of all or a part of the stock or assets of Newco will have no adverse effect on any of the rulings set forth in the Prior Ruling Letter, and those rulings will remain in full force and effect.

Except as expressly provided herein, we express no opinion about the tax treatment of the First and Second Developments under other provisions of the Code or regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the First and Second Developments that are not specifically covered by the above ruling.

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

Each taxpayer involved in the transactions should attach a copy of this supplemental ruling letter together with the Prior Ruling Letter to the federal income tax returns of the taxpayers involved for the taxable year in which the transactions covered by the letters are consummated.

Under a power of attorney on file in this office, a copy of this letter is being sent to the taxpayer.

Sincerely yours,  
Associate Chief Counsel (Corporate)

By: Filiz A. Serbes  
Chief, Branch 3