

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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CC:CORP:4 – PLR-146033-03

Date:

December 03, 2003

LEGEND

Date 10 =

Date 11 =

Date 12 =

d =

e =

f =

g =

Business M =

Technology N =

Consideration O =

Dear

PLR-146033-03

This letter responds to your August 5, 2003, request that we supplement our letter ruling dated May 14, 2002 (PLR-102683-02) (the "Prior Letter Ruling"). The information submitted for consideration is summarized below. Capitalized terms not defined in this ruling have the meanings assigned to them in the Prior Letter Ruling.

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.

The Prior Letter Ruling addresses certain federal income tax consequences of a distribution by Distributing of Controlled stock to its shareholders and related transactions. The Distribution was completed on Date 10.

Supplemental Facts

On Date 11, Controlled undertook a private placement of a portion of its stock (the "Controlled Private Placement").

Since the Distribution, certain unanticipated, adverse events have occurred that have caused Controlled to revise its business plan. As a result, Controlled has entered into and is exploring additional transactions to address the unanticipated events and revisions to its business plan, including, among other transactions: (i) raising additional capital; and (ii) restructuring its indebtedness to Distributing.

Proposed & Partially Completed Transactions

As a result of the unexpected change in business conditions, Controlled has contemplated several transactions to address its business needs, including the following (collectively the "Additional Transactions"):

- (i) On Date 12, Controlled sold d shares of preferred stock convertible into e shares of common stock and issued warrants to acquire an additional f shares of Controlled common stock.
- (ii) Controlled anticipates undertaking another private placement to raise up to \$g additional needed equity capital.
- (iii) Controlled intends to restructure its outstanding indebtedness to Distributing, possibly including the repayment of Controlled's obligation to Distributing with newly issued Controlled shares or the forgiveness of some or all of the indebtedness.

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- (iv) Controlled may acquire Distributing's Business M business segment.
- (v) Controlled may acquire Distributing's rights to the Technology N.
- (vi) Controlled may issue additional warrants to certain of its customers in exchange for Consideration O.

Supplemental Representations

In connection with their request for a supplemental ruling, the taxpayers have made the following representations:

- (a) Except as otherwise described in the supplemental ruling letter request, all facts and representations set forth in the Prior Letter Ruling remain true and correct.
- (b) In the case of the Additional Transactions, there was an identifiable, unexpected change in market or business conditions occurring after the Distribution resulting in the Additional Transactions that was otherwise unexpected at the time of the Distribution.
- (c) The Distribution was motivated in whole or substantial part by a business purpose (within the meaning of §1.355-2(b)) other than a business purpose to facilitate the Controlled Private Placement or Additional Transactions.
- (d) The Distribution would have occurred at approximately the same time and in similar form regardless of the Controlled Private Placement or Additional Transactions.

Supplemental Rulings

Based solely on the information submitted in the original and supplemental ruling requests and the representations set forth above, we rule as follows:

- (1) The consummation of the Additional Transactions will not adversely affect the Prior Letter Ruling and the Prior Letter Ruling will retain full force and effect.

Caveat

No opinion is expressed about the tax treatment of the transaction under any other provision of the Code or regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above ruling.

Procedural Statements

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

Each taxpayer involved in the transaction should attach a copy of this ruling letter to the taxpayer's federal income tax return for the taxable year in which the transaction is completed.

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

Sincerely,

Richard K. Passales
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Corporate)