

Internal Revenue Service

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Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B06

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Date:

November 02, 2005

Legend

Distributing =

Controlled 1 =

Controlled 2 =

Controlled 3 =

Controlled 4 =

Shareholder 1 =

Shareholder 2 =

Shareholder 3 =

Shareholder 4 =

Shareholder 5 =

Shareholder 6 =

Shareholder 7 =

Shareholder 8 =

Shareholder 9 =

Shareholder 10 =

Shareholder 11 =

Shareholder 12 =

Shareholder 13 =

Shareholder 14 =

Shareholder 15 =

Shareholder 16 =

Shareholder 17 =

Shareholder 18 =

Shareholder 19 =

Shareholder 20 =

Shareholder 21 =

Shareholder 22 =

Shareholder 23 =

Shareholder 24 =

Shareholder 25 =

a% =

b% =

c% =

d% =

e% =

PC'S =

Business 1 =

State A =

Dear

This responds to your authorized representative's letter dated July 26, 2005, requesting rulings concerning the federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated August 24, 2005, September 9, and October 25, 2005. The information submitted for consideration is summarized below.

The rulings contained in this letter are predicated upon the 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. Moreover, no information provided by the taxpayer has been reviewed and no determination has been made regarding whether the proposed transaction: (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)), and (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e)(2)(A)(ii) and § 1.355-7T).

Distributing is a State A corporation. Individual Shareholders 1-25 own all the common stock of Distributing. The common stock is the only class of Distributing stock outstanding. Distributing is engaged in Business 1. Business 1 has employees who perform operational and managerial duties. Distributing will enter into lease agreements with PC'S to perform certain operational Business 1 activities on behalf of Distributing.

We have received financial information that Business 1 has had gross receipts and operating expenses representative of an active trade or business for each of the past five years.

For what has been represented to be a valid business purpose, the taxpayers have proposed the following transaction:

- (i) Distributing will transfer approximately a% of the fair market value of the Business 1 assets and liabilities as well as cash to newly created Controlled 1 in exchange for all of the stock of Controlled 1. Distributing will then distribute this Controlled 1 stock to Distributing Shareholders 1-7 in exchange for all their Distributing stock.
- (ii) Distributing will transfer approximately b% of the fair market value of the Business 1 assets and liabilities as well as cash to newly created Controlled 2 in exchange for all of the stock of Controlled 2. Distributing will then distribute this Controlled 2 stock to Distributing Shareholders 8-12 in exchange for all their Distributing stock.
- (iii) Distributing will transfer approximately c% of the fair market value of the Business 1 assets and liabilities as well as cash to newly created Controlled 3 in exchange for all of the stock of Controlled 3. Distributing will then distribute this Controlled 3 stock to Distributing Shareholders 13-16 in exchange for all their Distributing stock.
- (iv) Distributing will transfer approximately d% of the fair market value of the Business 1 assets and liabilities as well as cash to newly created Controlled 4 in exchange for all of the stock of Controlled 4. Distributing will then distribute this Controlled 3 stock to Distributing Shareholders 17-20 in exchange for all their Distributing stock.
- (v) Distributing will retain approximately e% of the fair market value of Business 1 assets and liabilities as well as cash. Distributing will remain actively engaged in Business 1. Shareholders 21-25 will be the exclusive shareholders of Distributing.

Controlled 1, Controlled 2, Controlled 3 and Controlled 4 will hereinafter be referred to as (The "Controlled Corporations").

The following representations are made with respect to the proposed transaction:

- (a) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of the corporation.

- (b) The 5 years of financial information submitted on behalf of the Distributing corporation is representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- (c) Following the transaction, the Distributing and Controlled Corporations will each continue, independently and with its separate employees, the active conduct of its share of all the integrated activities of the business conducted by the Distributing corporation prior to the consummation of the transaction.
- (d) The distribution of the stock of the Controlled Corporations is carried out for the following corporate business purposes: to resolve shareholder disputes and reduce liability exposure. The distribution of the stock of the Controlled Corporations is motivated in whole or substantial part by these corporate business purposes.
- (e) The total adjusted basis and the fair market value of the assets transferred to each of the Controlled Corporations by Distributing will, in each instance, equal or exceed the sum of the liabilities assumed (as determined under § 357(d)) by each of the Controlled Corporations plus the fair market value of any other property, and the amount of any money, transferred by each of the Controlled Corporations to Distributing that is distributed to the shareholders of Distributing, or transferred to the creditors of Distributing, pursuant to the plan of reorganization.

The sum of the liabilities assumed (as determined under § 357(d)) were incurred in the ordinary course of business and are associated with the assets being transferred.

- (f) For purposes of § 355(d), immediately after the distributions, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the distribution.
- (g) For purposes of § 355(d), immediately after the distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of any Controlled Corporation's stock entitled to vote, or 50 percent or more of the total value of shares of all classes of any Controlled Corporation's

stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the distribution date, or (ii) attributable to distributions on Distributing corporation stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five year period (determined after applying § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the distribution date.

- (h) No intercorporate debt will exist between the Distributing corporation and the Controlled Corporations at the time of, or subsequent to, the distribution of the Controlled Corporations' stock.
- (i) Payments made in connection with all continuing transactions, if any, between the Distributing and Controlled Corporations, will be for fair market value based on the terms and conditions arrived at by the parties bargaining at arm's length.
- (j) No two parties to the transaction are investment companies as defined in 368(a)(2)(F)(iii) and (iv).
- (k) The Distributing corporation neither accumulated its receivables nor made extraordinary payments of its payables in anticipation of the transaction.
- (l) The transaction is not used principally as a device for the distribution and earnings and profits of the Distributing corporation or the Controlled Corporations or both.
- (m) There is no acquisition of stock of the Distributing corporation or any Controlled Corporation (including any predecessor or successor of any such corporation) that is part of a plan or series of related transactions (within the meaning of § 1.355-7T) that includes the distribution of the Controlled Corporation stock.
- (n) The fair market value of the stock of a Controlled Corporation received by a shareholder of the distributing corporation will be approximately equal to the fair market value of the distributing corporation stock surrendered by the shareholder in the exchange.

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

- (1) The transfer By Distributing of its assets and liabilities to each of the Controlled Corporations in exchange for all their stock, followed by the distribution by Distributing of all the stock of Controlled Corporation 1, Controlled Corporation 2, Controlled Corporation 3 and Controlled

Corporation 4 to Distributing Shareholders 1-7, Distributing Shareholders 8-12, Distributing Shareholders 13-16, and Distributing Shareholders 17-20, respectively, in exchange for their respective shares of Distributing stock, constitutes a reorganization within the meaning of I.R.C. section 368(a)(1)(D). Distributing and each of the Controlled Corporations will be “a party to a reorganization” within the meaning of I.R.C. section 368(b).

- (2) No gain or loss will be recognized by Distributing upon its transfer of assets subject to liabilities, to the Controlled Corporations in exchange for the stock of the Controlled Corporations. (I.R.C. sections 361(a) and 357(a)).
- (3) No gain or loss will be recognized by Controlled Corporation 1, Controlled Corporation 2, Controlled Corporation 3 and Controlled Corporation 4 on their respective receipt of assets of Distributing in exchange for the stock of Controlled Corporation 1, Controlled Corporation 2, Controlled Corporation 3 and Controlled Corporation 4, respectively. (I.R.C. section 1032(a)).
- (4) The basis of each asset received by the Controlled Corporations will be in each instance, the same as the basis of such assets in the hands of Distributing (I.R.C. section 362(b)).
- (5) The holding period of the Distributing assets received by the Controlled Corporations will include the period during which such assets were held by Distributing. (I.R.C. section 1223(2)).
- (6) No gain or loss will be recognized by (and no amount will be includable in the income of) any of the shareholders upon their receipt of stock in a Controlled Corporation in exchange for the Distributing stock they currently hold. (I.R.C. section 355(a)(1)).
- (7) No gain or loss will be recognized by Distributing upon the distribution of its stock in the Controlled Corporations to its shareholders in exchange for all of the Distributing stock currently held by those shareholders. (I.R.C. section 361(c)(1)).
- (8) The basis of the stock of each of the Controlled Corporations in the hands of its shareholders will be the same as the basis of each shareholder's Distributing stock surrendered in the exchange therefore (I.R.C. section 358(a)(1)).
- (9) The holding period of the stock in each of the Controlled Corporations received by its shareholders will include the holding period of the Distributing stock surrendered in the exchange provided that the

Distributing stock is held as a capital asset on the date of the exchange. (I.R.C. section 1223(1)).

- (10) As provided in I.R.C. section 312(h), proper allocation of earnings and profits among Distributing and each of the four Controlled Corporations will be made under Treas. Reg. section 1.312-10(a).

No opinion is expressed about the tax treatment of the proposed transaction under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the distribution satisfies the business purpose requirement of § 1.355-2(b); (ii) whether the proposed transaction is used principally as a device for the distribution of the earnings and profits of either the distributing corporation or the controlled corporations or both (see § 355(a)(1)(B) and § 1.355-2(d)); and (iii) whether the distribution and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

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

A copy of this letter must be attached to the federal income tax return of each taxpayer involved for the taxable year in which the transaction is consummated.

Under a power of attorney on file with this office, the original letter is being sent to the taxpayer and a copy to the taxpayer's authorized representative.

Sincerely

Steven J. Hankin

Steven J. Hankin
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel (Corporate)

Cc: