

## Internal Revenue Service

Department of the Treasury  
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November 18, 2011

### Legend

Distributing =

Controlled 1 =

Controlled 2 =

Shareholder 1 =

Shareholder 2 =

Shareholder 3 =

Shareholder 4 =

Business A =

Business B =

Business C =

Property A =

Property B =

Property C =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

Dear :

This letter responds to your July 15, 2011 request for rulings on certain federal income tax consequences of a series of proposed transactions. The information submitted in that letter and in subsequent correspondence is summarized below.

The rulings contained in this ruling letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by the 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.

In particular, this office has not reviewed any information pertaining to and has made no determination regarding whether the distribution described below: (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporations or any (see section 355(a)(1)(B) of the Internal Revenue Code and Treas. Reg. § 1.355-2(d)); or (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 a controlled corporation (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

#### FACTS

Distributing has two classes of common stock outstanding, Class A common stock and Class B common stock. Class A and Class B have equal rights to operating and liquidating distributions, and differ only with respect to vote. Class A is voting stock. Class B is non-voting stock. Distributing is owned by Shareholder 1, Shareholder 2, Shareholder 3, and Shareholder 4 (the "Shareholders"), with each holding the following share interests:

	Class A	Class B
Shareholder 1	<u>a</u> shares	<u>b</u> shares
Shareholder 2	<u>c</u> shares	<u>d</u> shares
Shareholder 3	<u>e</u> shares	<u>f</u> shares
Shareholder 4	<u>g</u> shares	<u>h</u> shares

All Shareholders are U.S. residents for federal income tax purposes.

Distributing has organized two wholly-owned subsidiaries, Controlled 1 and Controlled 2, in anticipation of the Distribution, defined below. Both Controlled 1 and Controlled 2 have a single class of common stock outstanding. Distributing, Controlled 1, and Controlled 2 all use a cash method of accounting.

Distributing is engaged in Business A directly and in Business B and Business C through Controlled 1 and Controlled 2. Distributing has submitted financial information indicating that Business A, Business B, and Business C have had gross receipts and

operating expenses representing the active conduct of a trade or business for each of the past five years.

Significant disagreements have developed between the Shareholders concerning the management, operation, and strategic vision of Distributing. These disagreements have resulted in a breakdown in communications among the Shareholders and an inability to carry on the business effectively. Accordingly, to resolve or avoid further disputes, avoid litigation, and continue operation of the businesses currently conducted by Distributing (together, the “Business Purposes”), the Shareholders have agreed to separate their interests in Distributing through the Proposed Transaction.

### PROPOSED TRANSACTION

For what have been represented to be valid business purposes, the following series of transactions has been proposed, some of which have already occurred:

- (i) Distributing formed Controlled 1 and transferred to it Property B and all of the Business B assets. In exchange, Distributing received all of Controlled 1’s outstanding stock.
- (ii) Distributing formed Controlled 2 and transferred to it Property C and all of the Business C assets. In exchange, Distributing received all of Controlled 2’s outstanding stock (steps i and ii, the “Incorporations”). After the Incorporations, Business B has been conducted by Controlled 1 and Business C has been conducted by Controlled 2.
- (iii) Shareholder 3 purchased i shares of Class B stock from Shareholder 1 for Shareholder 3’s promissory note with a face value of \$j, and k shares of Class B stock from Shareholder 2 for Shareholder 3’s promissory note with a face value of \$l. Both notes are secured by property owned personally by Shareholder 3 outside of Distributing.
- (iv) Distributing will distribute to Shareholder 1 all of the stock of Controlled 1 in exchange for all of Shareholder 1’s stock in Distributing.
- (v) Distributing will distribute to Shareholder 2 all of the stock in Controlled 2 in exchange for all of Shareholder 2’s stock in Distributing (steps iv and v, the “Distributions”).

After the Distributions, Shareholder 3 and Shareholder 4 will hold all of the stock of Distributing, which will conduct Business A and hold Property A and all of the Business A assets.

### REPRESENTATIONS

- (a) Any Indebtedness owed by Controlled 1 or Controlled 2 to Distributing after the Distributions will not constitute stock or securities.
- (b) Neither Controlled 1 nor Controlled 2 will transfer any property or assets to Distributing in the Proposed Transaction except for their own stock.
- (c) The fair market value of Controlled 1 stock and Controlled 2 stock to be received by each shareholder of Distributing will be approximately equal to the fair market value of the Distributing stock surrendered by such shareholder in the exchange.
- (d) 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 Distributing.
- (e) The 5 years of financial information submitted on behalf of Distributing, Controlled 1, and Controlled 2 is representative of the corporations' present operations and with regard to such corporations there have been no substantial operational changes since the date of the last financial statements submitted.
- (f) Following the Distributions, Distributing, Controlled 1, and Controlled 2 will each continue the active conduct of its business, independently and with its separate employees.
- (g) The distribution of the stock of Controlled 1 and Controlled 2 is carried out for the Business Purposes. The distribution of the stock of Controlled 1 and Controlled 2 is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (h) The Distributions are not used principally as a device for the distribution of the earnings and profits of Distributing, Controlled 1, Controlled 2, or any combination thereof.
- (i) The liabilities assumed (as determined under section 357(d)) in the transaction and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.
- (j) The income tax liability for the taxable year in which investment credit property (including any building to which section 47(d) applies) is transferred will be adjusted pursuant to section 50(a)(1) or (a)(2) (or section 47, as in effect before the amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect an early disposition of the property.

- (k) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.
- (l) No intercorporate debt will exist between or among Distributing, Controlled 1, or Controlled 2 at the time of, or subsequent to, the Distributions.
- (m) Payments made in connection with all continuing transactions, if any, between or among Distributing, Controlled 1, and Controlled 2, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arms' length.
- (n) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (o) The Distributions are not part of a plan or series of transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of section 355(d)(4)) in Distributing, Controlled 1, or Controlled 2 (including any predecessor or successor of any such corporation).
- (p) Immediately after the transaction (as defined in section 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3)) in Distributing, Controlled 1, or Controlled 2, (ii) if any person holds a 50 percent or greater interest (within the meaning of section 355(g)(3)) in any disqualified investment corporation (within the meaning of section 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (iii) neither Distributing, Controlled 1, nor Controlled 2 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (q) For purposes of section 355(d), immediately after the Distributions, no person (determined after applying section 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50% or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the 5-year period (determined after applying section 355(d)(6)) ending on the date of the Distributions.
- (r) For purposes of section 355(d), immediately after the Distributions, no person (determined after applying section 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled 1 stock, that was acquired by purchase (as defined in section

355(d)(5) and (8)) during the 5-year period (determined after applying section 355(d)(6)) ending on the date of the Distributions.

- (s) For purposes of section 355(d)(5), immediately after the Distributions, no person (determined after applying section 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled 2 stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled 2 stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the 5-year period (determined after applying Section 355(d)(6)) ending on the date of the Distributions.
- (t) The total adjusted basis of the assets transferred by Distributing to Controlled 1 and Controlled 2, respectively, will equal or exceed the sum of the total amount of liabilities assumed (as determined under section 357(d)) by Controlled 1 and Controlled 2, respectively.
- (u) The total fair market value of the assets transferred by Distributing to Controlled 1 and Controlled 2, respectively, in the Contributions will exceed the sum of (i) the amount of any liabilities assumed (as determined under section 357(d)) by each of Controlled 1 and Controlled 2, respectively, in connection with the Contributions, and (ii) the amount of any liabilities owed to each of Controlled 1 and Controlled 2, respectively, by Distributing that are discharged or extinguished in connection with the Contributions.
- (v) The fair market value of the assets of Controlled 1 and Controlled 2 will each equal or exceed the amount of the liabilities of each immediately after the Distributions.
- (w) The liabilities of Distributing assumed by Controlled 1 and Controlled 2 plus the liabilities, if any, to which the transferred assets were subject, were incurred by Distributing in the ordinary course of its business and are associated with the assets transferred.
- (x) Controlled 1, Controlled 2, Distributing, and the shareholders of Distributing will each pay their respective expenses, if any, incurred in connection with the Proposed Transaction.

#### RULINGS

Based solely on information submitted and representations set forth above, this office rules as follows:

- (1) The transfer by Distributing to Controlled 1 of part of its assets in exchange for all of the Controlled 1 stock followed by the distribution of all of the Controlled 1 stock to Shareholder 1 will constitute a reorganization within the

- meaning of section 368(a)(1)(D). Distributing and Controlled 1 each will be “a party to a reorganization within the meaning of section 368(b). The transfer by Distributing to Controlled 2 of part of its assets in exchange for all of the Controlled 2 stock followed by the distribution of all of the Controlled 2 stock to Shareholder 2 will constitute a reorganization within the meaning of section 368(a)(1)(D). Distributing and Controlled 2 each will be “a party to a reorganization within the meaning of section 368(b).
- (2) No gain or loss will be recognized by Distributing on the Contributions (sections 361(a) and 357(a)).
  - (3) No gain or loss will be recognized by Controlled 1 or Controlled 2 on the Contributions (section 1032(a)).
  - (4) Controlled 1’s basis and Controlled 2’s basis in each asset received from Distributing in the Contributions will equal the basis of such asset in the hands of Distributing immediately before the transfer (section 362(b)).
  - (5) Controlled 1’s and Controlled 2’s holding period in each asset received from Distributing in the Contributions will include the holding period during which Distributing held such asset (section 1223(2)).
  - (6) No gain or loss will be recognized by Distributing on the Distributions (section 361(c)).
  - (7) Shareholder 1 and Shareholder 2 will not recognize gain or loss (and will include no amount in income) upon their receipt of Controlled 1 and Controlled 2 stock, respectively, from Distributing (section 355(a)(1)).
  - (8) The basis of Controlled 1 stock in the hands of Shareholder 1 and the basis of Controlled 2 stock in the hands of Shareholder 2 will respectively equal the basis of Distributing stock surrendered in exchange thereof, as adjusted under Treas. Reg. § 1.358-1 (section 358(a)(1)).
  - (9) The holding period of the Controlled 1 and Controlled 2 stock to be received by Shareholder 1 and Shareholder 2, respectively, will include the holding period during which Shareholder 1 and Shareholder 2, respectively, held the Distributing stock exchanged therefor, provided that the Distributing stock is held as a capital asset on the date of the Distributions (section 1223(1)).
  - (10) Earnings and profits will be allocated between Distributing, Controlled 1, and Controlled 2 in accordance with section 312(h) and Treas. Reg. § 1.312-10(a).

#### CAVEATS



Except as expressly provided herein, no opinion is expressed about the tax treatment of the Proposed Transaction or any other transaction or item mentioned in this letter 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 foregoing 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 Treas. Reg. § 1.355-2(b); (ii) whether the Distribution is used principally as a device for the distribution of the earnings and profits of Distributing, Controlled, or both; or (iii) whether the Distribution is part of a plan (or a series of related transactions) under section 355(e)(2)(A)(ii).

#### PROCEDURAL STATEMENTS

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Isaac W. Zimbalist  
Isaac W. Zimbalist  
Senior Technical Reviewer, Branch 5  
Office of Associate Chief Counsel  
(Corporate)

cc: