

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

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Refer Reply To:
CC:CORP:04
PLR-103979-07

Date:
March 21, 2007

Legend

Distributing =

Controlled =

Shareholder A =

Shareholder B =

Shareholder C =

Shareholder D =

Shareholder E =

a =

b =

c =

d =

e =

f =

g =

Business X =

Business Y =

Dear :

This letter responds to your December 21, 2006 letter requesting rulings as to certain federal income tax consequences of a proposed transaction. The information provided in that letter 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 penalty 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. In particular, this office has not reviewed any information pertaining to, and has made no determination 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)); 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 the controlled corporation (see § 355(e) and § 1.355-7).

Summary of Facts

Distributing is a fiscal year corporation engaged in Business X and in Business Y. Distributing has one class of common stock outstanding, owned approximately a% by Shareholder A, b% by Shareholder B, c% by Shareholder C, d% by Shareholder D, e% by Shareholder E. Financial information submitted by Distributing indicates that each of

Business X and Business Y has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

Proposed Transaction

For what is represented to be a valid business purpose, Distributing proposes the following transaction (the "Proposed Transaction"):

- (i) Distributing will form Controlled and contribute all of the Business Y assets to Controlled in exchange for all of the outstanding Controlled common stock and the assumption of certain liabilities associated with the Business Y assets (the "Contribution").
- (ii) Shareholder A will acquire d% of Distributing common stock from Shareholder D in a transaction to which § 1041 applies. Shareholder A will purchase f% of Distributing common stock from Shareholder E for \$g.
- (iii) Immediately thereafter, Distributing will distribute all of the Controlled common stock to Shareholder A in exchange for all shares of Distributing common stock held by Shareholder A equal to the fair market value of Business Y on the date of the distribution (the "Distribution").

Representations

Distributing makes the following representations with respect to the Contribution and the Distribution:

- (a) No part of the consideration to be distributed by Distributing will be received by Shareholder A as a creditor, employee, or in any capacity other than that of a Distributing shareholder.
- (b) The fair market value of the Controlled stock to be received by Shareholder A will be approximately equal to the fair market value of the Distributing stock surrendered by Shareholder A in the exchange.
- (c) The five years of financial information submitted on behalf of Distributing's Business X and Business Y represents the present operations of each business, and regarding each business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) Following the Distribution, Distributing and Controlled will each continue the active conduct of its business, independently and with its separate employees.

(e) The Distribution is being carried out for the following corporate business purpose: to segregate all business operations between Distributing and Controlled and allow Shareholder A to go his separate way. The Distribution is motivated, in whole or substantial part, by this corporate business purpose.

(f) 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 Distributing entitled to vote or 50-percent or more of the total value of shares of all classes of Distributing 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 Controlled stock entitled to vote or 50-percent or more of the total value of shares of all classes of Controlled 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 date of the Distribution, or (ii) attributable to distributions on 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.

(h) The Distribution is not part of a plan or series of related transactions (within the meaning of § 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 § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).

(i) The total fair market value of the assets transferred to Controlled by Distributing in the Contribution will equal or exceed the aggregate adjusted basis of the transferred assets.

(j) 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 (as determined under § 357(d)) by Controlled plus any liabilities to which the transferred assets are subject.

(k) The liabilities to be assumed (as determined under § 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.

(l) The indebtedness, if any, owed by Controlled to Distributing after the Distribution will not constitute stock or securities.

(m) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.

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

(o) The Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(p) Payments made in connection with all continuing transactions, if any, 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.

(q) Neither Distributing nor Controlled is a "disqualified investment corporation" as defined in § 355(g)(2)(A).

Rulings

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

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

(2) No gain or loss will be recognized by Distributing on the Contribution (§ 357(a) and § 361(a)).

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

(4) 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)).

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

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

(7) No gain or loss will be recognized by (and no amount will be included in the income of) Shareholder A on the Distribution (§ 355(a)(1)).

(8) The basis of the Controlled stock held by Shareholder A immediately after the Distribution will equal the basis of the Distributing stock surrendered by Shareholder A in the exchange (§ 358(a)(1)).

(9) The holding period of the Controlled stock received by Shareholder A will include the holding period of the Distributing stock on which the distribution is made, provided such stock is held as a capital asset on the date of the Distribution (§ 1223(1)).

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

Caveats

No opinion is expressed about the tax treatment of the proposed transaction described above under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the proposed transaction that is not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the proposed transaction 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 Distributing or Controlled or both; and (iii) whether the proposed transaction is part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

Procedural Statements

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

In accordance with the power of attorney on file in this office, a copy of this ruling letter will be sent to your authorized representatives.

Sincerely,

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