

INTERNAL REVENUE SERVICE

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January 8, 1999

Distributing 2 =

Controlled 2 =

Distributing 1 =

Corporation Y =

Sub 24 =

Business D =

Asset A =

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Asset B =

Asset C =

a =

b =

c =

d =

This responds to a request dated September 1, 1998, submitted on your behalf by your authorized representative, that we supplement our letter ruling dated March 27, 1998 (PLR-121669-97) (the "Prior Ruling") regarding certain federal income tax consequences of a series of transactions, which included the distribution of all of the outstanding capital stock of the successor to Controlled 2 ("New Controlled 2") by Distributing 2 (1) to holders of its Group B Common Stock in exchange for that stock, and (2) to holders of its Group C Common Stock as a distribution with respect to their Group C Common Stock (the "Distribution"). The Prior Ruling held, *inter alia*, that the Distribution qualified as a tax-free distribution under § 355 of the Internal Revenue Code. Capitalized terms retain the meanings originally assigned to them. In a letter dated December 8, 1998, you request that ruling (2) and all material related to Corporation Y be deleted from your original request for ruling.

Following the Distribution, Distributing 2 was renamed Corporation Y and the successor to Controlled 2 was renamed Distributing 2.

Distributing 2, primarily through its wholly-owned subsidiary, Sub 24, is engaged in Business D. In September 1997, Sub 24 completed an overall, periodic evaluation of existing Asset A financial performance (the "1997 Assessment"). By using the 1997 Assessment as a baseline, Sub 24, beginning in February 1998, undertook to examine and evaluate prior dispositions of Asset A, assess its assets and the current competitive environment, and recommend a course of action.

Based upon its initial evaluation, it was tentatively determined in April 1998 that a significant increase in financial performance could be achieved through divesting a portion of under-performing Asset As. A more refined state-by-state evaluation identified approximately a under-performing Asset As or about b percent of all Sub 24's combined Asset As and Asset Bs. These a Asset As represent about c Asset Cs or less than d percent of all Sub 24's Asset Cs. Management of Sub 24 intends to

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recommend to the Board of Directors of Distributing 2, for its approval, that Sub 24 implement a strategy of disposing of these selected Asset As (the "Asset A Disposition"). The proceeds of these proposed sales will be used to invest in assets with the potential for higher performance or to retire debt. The proceeds will not be distributed to shareholders. To the extent possible, these sales will be structured as deferred like-kind exchanges under § 1031 of the Internal Revenue Code.

Distributing 2 has made the following representations:

- (a) Immediately after the Asset A Disposition, at least ninety percent of the fair market value of the gross assets of Distributing 2 will consist of the stock of and securities of controlled corporations that are engaged in the active conduct of a trade or business, as defined in § 355(b)(2) of the Code.
- (b) Immediately after the Asset A Disposition, the gross assets of Sub 24 comprising Business D will have a fair market value that is equal to or greater than five percent of the total fair market value of the gross assets of Sub 24.

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

Consummation of the Asset A Disposition will not adversely affect the rulings contained in the Prior Ruling.

This supplement is directed only to the taxpayer who requested 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 supplement to the taxpayer's federal income tax return for the taxable year in which the transaction is consummated.

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

Sincerely,

Assistant Chief Counsel (Corporate)

By Victor L. Penico

Victor L. Penico
Chief, Branch 3

Refers to Written Determination Number: 9826030