

## Internal Revenue Service

## Department of the Treasury

Number: **200252063**

Release Date: 12/27/2002

Index Number: 355.00-00, 368.04-00

Washington, DC 20224

Person to Contact:

Telephone Number:

**Refer Reply To:**

CC:CORP:4 - PLR-130646-02

Date:

September 18, 2002

Parent =

Distributing =

Controlled =

Sub 1 =

Business A =

Business B =

Business C =

Industry AB =

Government Agency =

Rules =

Agreement E =

Date 1 =

Date 2 =

Date 3 =

X =

Dear

This letter responds to your May 31, 2002 request for rulings on certain federal income tax consequences of a proposed transaction. The information submitted in that request and in later correspondence is summarized below.

### **Summary of Facts**

Parent is the publicly held parent of a consolidated group. Distributing is a wholly owned subsidiary of Parent that conducts Business A, Business B, and Business C, all of which are located within Industry AB. Parent also owns all of the outstanding Sub 1 stock.

We have received financial information indicating that each of Business A and Business C, as operated by Distributing, has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing is subject to regulation by Government Agency. Government Agency has promulgated new rules relating to Industry AB by enacting the Rules. Under the Rules, Business A will remain regulated, but Business B and Business C will be open to competition. The Rules require that all competitive businesses operated by Distributing be separated from its noncompetitive businesses. The Rules do not permit such a separation to be made by a transfer to a Distributing subsidiary.

Distributing and Government Agency have executed Agreement E, which provides that Distributing will separate its regulated businesses from its unregulated businesses. Agreement E specifically requires Distributing to transfer its Business B and Business C assets to respective direct subsidiaries of Parent by Date 1.

Distributing proposes to divest itself of both Business B and Business C. The distribution of Business B was the subject of a private letter ruling issued by this office on Date 2, as modified by a supplemental ruling issued on Date 3.

### **Proposed Transaction**

To effect the separation of Business C, Distributing has proposed the following series of steps (collectively, the "Proposed Transaction"):

(i) Distributing will transfer its Business C assets to newly formed Controlled in exchange for all of Controlled's stock and the assumption by Controlled of the liabilities

associated with the Business C assets (the "Contribution").

(ii) Distributing will distribute all of the stock of Controlled to Parent (the "Distribution").

(iii) Controlled will merge with and into Sub 1 (the "Merger").

Distributing intends, as part of the proposed transaction, to enter into a purchase agreement with Parent whereby Distributing will purchase x from Parent ("Agreement 1"). In addition, Parent and Sub 1 will enter into a purchase agreement whereby Parent will purchase x from Sub 1 for the purpose of fulfilling a part of the Agreement 1 obligation ("Agreement 2").

### **Representations**

The taxpayer has submitted the following representations in connection with the proposed transaction:

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

(b) The five years of financial information submitted on behalf of Distributing represents the corporation's present operations, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(c) The five years of financial information submitted on behalf of Controlled represents the corporation's present operations, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(d) Following the transaction, Distributing and Controlled (or its successor), will each continue the active conduct of its business, independently and with its separate employees, except that during a period of transition Distributing and Controlled may share the services of certain employees to the extent some Business C assets are relocated to Sub 1 before all assets are so relocated. Once all Business C assets have been transferred to Sub 1, it is contemplated there will be no shared employees.

(e) The Distribution is motivated, in whole or substantial part, by the corporate business purpose of separating its regulated and unregulated businesses as required by the Rules.

(f) Except for the Merger, there is no plan or intention by Parent to sell,

exchange, transfer by gift, or otherwise dispose of any stock in either Distributing or Controlled (or its successor) after the transaction.

(g) There is no plan or intention by either Distributing or Controlled (or its successor), directly or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction, other than through stock purchases meeting the requirements of § 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696, 705.

(h) Except for the Merger, there is no plan or intention to liquidate either Distributing or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the transaction, except in the ordinary course of business.

(i) The total fair market value of the assets transferred to Controlled by Distributing will equal or exceed the amount of the liabilities assumed (as determined under § 357(d) of the Internal Revenue Code) by Controlled.

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

(k) No intercorporate debt will exist between Distributing and Controlled at the time of, or after, the Distribution.

(l) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13 as published by T.D. 8597).

(m) Payments made in connection with all continuing transactions between Distributing and Controlled (or its successor), will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(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 part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire, directly or indirectly, stock possessing 50 percent or more of the total combined voting power of all classes of either Distributing stock or Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of either Distributing or Controlled stock.

(p) The Merger will qualify for nonrecognition treatment pursuant to

§ 368(a)(1)(A).

### **Rulings**

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

(1) The Contribution, followed by the Distribution, will be a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled each will be “a party to a reorganization” under § 368(b).

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

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

(4) The basis of the assets received by Controlled in the Contribution will equal the basis of the assets in the hands of Distributing (§ 362(b)).

(5) The holding period of each asset received by Controlled will include the holding period of that asset in the hands of Distributing (§ 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 otherwise be included in the income of) Parent on its receipt of Controlled stock in the Distribution (§ 355(a)(1)).

(8) The aggregate basis of the Distributing and Controlled stock in the hands of Parent after the Distribution will equal Parent’s basis in the Distributing stock held immediately before the Distribution (§ 358(a)(1)), allocated between the Distributing stock and Controlled stock in proportion to fair market value of each immediately after the Distribution in accordance with § 1.358-2(a)(2) of the Income Tax Regulations (§ 358(b)(2) and (c)).

(9) The holding period of the Controlled stock received by Parent will include the holding period of the Distributing stock on which the Distribution is made, provided the Distributing 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), 1.312-10(a), and 1.1502-33(f)(2).

### **Caveats**

We express no opinion on the federal income tax treatment of the proposed transaction under other provisions of the Code or regulations (including the consolidated return 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 given on whether the Merger qualifies as a reorganization under § 368(a)(1)(A) or (a)(1)(D).

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. This office has not verified any of these materials submitted in support of this request for rulings. Verification of this information may be required as part of the audit process.

### **Procedural Statements**

This ruling 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 letter to the taxpayer's federal income tax return for the taxable year in which the transaction is completed.

In accordance with the power of attorney on file in 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)