

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.

Telephone Number:

Refer Reply To:

CC:CORP:B03

PLR-122160-05

Date:

July 26, 2005

Distributing =

Controlled =

A =

B =

C =

D =

E =

F =

G =

H =

I =

J =

State X =

Business A =

Business B =

K =

L =

M =

N =

O =

P =

Q =

R =

S =

T =

U =

V =

W =

X =

Y =

Z =

Date 1 =

Dear :

We respond to your request dated April 18, 2005, for rulings on the federal income tax consequences of a partially consummated transaction. The material information submitted for consideration is summarized below.

The rulings contained in this letter are based on 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. In particular, this Office has made no determination regarding whether the 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)(2)(A)(ii) and §1.355-7).

Distributing is a State X family corporation engaged directly in Business A. The taxpayer has supplied financial information that indicates that Business A had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

Distributing has outstanding K shares of voting common stock and L shares of voting preferred stock that are owned in the following amounts by family members:

Shareholder

A
B
C
D
E
F
G
H
I
J

Voting
Common Stock

M
N
O
P

Q

Voting
Preferred Stock

R
R
S
T
U
V
W
X

Y
Z

Controlled is a recently formed State X corporation and wholly owned subsidiary of Distributing that was incorporated to effectuate the proposed transaction.

For what are represented to be valid business purposes, the following transaction is proposed and partially consummated:

- (i) Controlled was formed on Date 1. Distributing will transfer some assets of Business A to Controlled in exchange for all of the outstanding stock of Controlled.
- (ii) Distributing will distribute all of Controlled's outstanding stock to each of E, F, and G, proportionately, in exchange for all of their shares of Distributing stock.

The taxpayer has made the following representations in connection with the transaction:

- (a) No part of the consideration to be distributed by Distributing will be received by each of E, F, and G as a creditor, employee, or in any capacity other than that of a shareholder of the corporation.
- (b) The five years of financial information submitted on behalf of Distributing is representative of 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 statement submitted.
- (c) Following the transaction, Distributing and Controlled each will continue the active conduct of its share of all the integrated activities of Business A that was conducted by Distributing before consummation of the transaction, independently and with its separate employees.
- (d) This distribution of the stock of Controlled is to be carried out for the following corporate business purpose: to avoid significant existing disagreements and conflicts among Distributing shareholders concerning business objectives. The distribution is motivated, in whole or in substantial part, by this corporate business purpose.
- (e) The fair market value of the Controlled stock to be received by each of E, F, and G will be approximately equal to the fair market value of the Distributing stock to be surrendered in exchange.
- (f) The transaction is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

- (g) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the distribution of the Controlled stock.
- (h) 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.
- (i) No two parties to the transaction are investment companies as defined in §368(a)(2)(F)(iii) and (iv).
- (j) There is no acquisition of stock of Distributing or Controlled (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 stock.
- (k) Distributing is not an S corporation within the meaning of §1361(a), and there is no plan or intention by Distributing or Controlled to make an S corporation election pursuant to §1362(a).

Based solely on the information submitted and representations made, we hold as follows:

- (1) The transfer by Distributing of some of the Business A assets to Controlled in exchange for all of the issued and outstanding stock of Controlled, followed by the distribution of the stock of Controlled, as described above, will qualify as a reorganization under §368(a)(1)(D). Distributing and Controlled each will be a "party to a reorganization" under §368(b).
- (2) Distributing will recognize no gain or loss upon the transfer of the Business A assets to Controlled in exchange for Controlled stock (§361(a)).
- (3) Controlled will recognize no gain or loss on the receipt of the Business A assets in exchange for Controlled stock (§1032(a)).
- (4) Controlled's basis in the assets received from Distributing will equal the basis of such assets in the hands of Distributing immediately prior to the transfer (§362(b)).
- (5) Controlled's holding period for the assets received from Distributing will include the period during which Distributing held such assets (§1223(2)).

- (6) Distributing will recognize no gain or loss on the distribution of the Controlled stock (§361(c)(1)).
- (7) Each of E, F, and G will recognize no gain or loss (and no amount will be included in their respective incomes) upon each one's receipt of the Controlled stock in exchange for all of each one's Distributing stock (§355(a)(1)).
- (8) The basis of the Controlled stock in the hands of each of E, F, and G will be the same as the basis of the Distributing stock surrendered in exchange therefor (§358(a)(1)).
- (9) Each of E's, F's, and G's holding period for the Controlled stock received in the distribution will include the holding period of the Distributing stock surrendered in exchange therefor, provided such stock is held by each of E, F, and G as a capital asset on the date of the transaction (§1223(1)).
- (10) Earnings and profits will be allocated between Distributing and Controlled in accordance with §1.312-10(a) of the Income Tax Regulations.

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 transaction is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both; or (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 Code provides that it may not be used or cited as precedent.

It is important that a copy of this letter be attached to the federal income tax returns of the taxpayers involved for the taxable year in which the transaction covered by this letter is consummated.

Pursuant to the power of attorney on file in this office, a copy of this letter has been sent to the taxpayers' authorized representative.

Sincerely,

Filiz A. Serbes
Chief, Branch 3
Office of Associate Chief Counsel
(Corporate)

cc: