

Internal Revenue Service

Department of the Treasury

Number: **200109020**
Release Date: 3/2/2001
Index Number: 355.01-01

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:CORP:1-PLR-121881-00

Date:

November 29, 2000

LEGEND:

Distributing =

Controlled =

Fund 1 =

Fund 2 =

Investment Banker =

Dear:

This letter responds to your October 13, 2000 request for a supplement to your prior letter ruling dated August 3, 2000 (PLR-107629-00) (the "Prior Letter Ruling").

The Prior Letter Ruling addresses certain federal income tax consequences of a proposed 355 split-off transaction intended to separate Distributing and Controlled. The split-off was to be conducted by way of a "Dutch Auction," whereby tendering Distributing shareholders were to exchange shares of Distributing for shares of Controlled. The Prior Letter Ruling held that the transaction qualified for tax-free treatment under section 355 of the Internal Revenue Code.

Due to unanticipated market conditions, the market demand for Controlled shares has diminished because there has been an apparent market lack of understanding of Controlled's growth potential, a failure by the market to fully understand Controlled's business plan, and a significant short position on Controlled stock. As a result of the limited demand for Controlled shares, Investment Banker anticipates that Distributing shareholders may be reluctant to participate in the split-off, requiring a significant premium to induce Distributing shareholders to tender their Distributing shares.

Based on the advice of Investment Banker, Distributing has decided not to effectuate the separation by means of a split-off contemplated in the Prior Letter Ruling. Instead, Distributing intends to distribute all of the stock of Controlled owned by

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Distributing to Distributing's shareholders on a pro rata basis.

Additionally, at the time of the Prior Letter Ruling, Distributing had one shareholder that owned 5% or more of the outstanding Distributing stock, namely Fund 1. However, Distributing has now learned that Fund 2 also currently owns 5% or more of the outstanding Distributing stock.

As a result of the changed facts described above, the taxpayer has modified the following representations:

(a) Representation (c) on Page 8 of the Prior Letter Ruling should be deleted, as it is no longer applicable.

(b) Representation (y) on Page 11 of the Prior Letter Ruling should be amended to read:

y. The Distribution will occur within the later of (i) the last day of the sixth month beginning after the date of the Public Offering, or (ii) the last day of the third month beginning after the receipt of this supplemental private letter ruling.

Based solely on the information and representations set forth above, and in connection with the Prior Letter Ruling, the following rulings are substituted for rulings (6), (7), (8), (9), (10), (11), and (12) on pages 12 and 13 of the Prior Letter Ruling:

(6) No income, gain, or loss will be recognized by Distributing upon the distribution of all of its Controlled stock to shareholders of Distributing in the spin-off. Section 361(c)(1).

(7) No gain or loss will be recognized by (and no amounts will be included in the income of) the shareholders of Distributing upon their receipt of Controlled stock pursuant to the spin-off. Section 355(a)(1).

(8) The basis of the Distributing stock and the Controlled stock in the hands of the shareholders of Distributing immediately after the Distribution will, in the aggregate, be the same as the basis of the Distributing stock in such shareholder's hands immediately prior to the Distribution and such basis will be allocated between Distributing stock and Controlled stock in proportion to their relative fair market values at the time of the Distribution. Section 358(b) and §1.358-2.

(9) The holding period of the Controlled stock received by the shareholders of Distributing will include the holding period of the Distributing stock retained, provided that such Distributing stock is held as a capital asset by the respective shareholder of Distributing on the date of the Distribution. Section 1223(1).

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(10) If cash is received by a Distributing shareholder as a result of a sale of a fractional share of Controlled stock by the distribution agent, the shareholder will have gain or loss measured by the difference between the basis of the fractional share allocated thereto as determined in ruling (8) above and the amount of cash received. Section 1001(a). If the Controlled stock is held by the shareholder as a capital asset, the gain or loss will be subject to the provisions of Sub-chapter P of Chapter 1 (sections 1221 and 1222).

Except for the rulings substituted specifically herein, all other rulings in the Prior Letter Ruling shall remain in full force and effect

No opinion is expressed about the tax treatment of the above changes under any other provisions of the Internal Revenue Code or Federal Income Tax Regulations.

This supplemental letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it cannot be used or cited as precedent.

A copy of this supplemental letter and the Prior Letter Ruling should be attached to the federal income tax return of each taxpayer involved for the taxable year in which the transaction is completed.

Pursuant to 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: Christopher Schoen
Assistant to the Chief, Branch 1