

Internal Revenue Service

Number: **200435005**

Release Date: 8/27/04

Index Number: 355.01-00

Department of the Treasury
Washington, DC 20224

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CC:CORP:B03 – PLR-137131-03

Date:

April 30, 2004

Exempt Parent =

Exempt 1 =

Exempt 2 =

Distributing =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Controlled A =

Controlled B =

Controlled Bsub =

Business 1 =

Business 2 =

Business 3 =

Business 4 =

Business 5 =

Business 6 =

Business 7 =

Business A =

Business B =

State X =

State Y =

Item A =

Activities Group =

Activities =

Dear

This letter responds to your letter dated June 10, 2003, requesting rulings as to the federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated August 4, 2003, September 10, 2003, October 31, 2003, December 29, 2003, January 14, 2004, March 2, 2004, March 22, 2004, and April 9, 2004. By letter dated March 22, 2004, you withdrew some of the rulings requested in your original submission.

Exempt Parent, Exempt 1, and Exempt 2 are all organizations described in § 501(c)(3) of the Internal Revenue Code and are either corporations or treated as corporations under § 301.7701. Exempt 1 and Exempt 2 are both supporting organizations (§ 509(a)(3))

of Exempt Parent. It has been represented that Exempt Parent has the exclusive right to the management, profits, and ultimate assets of Exempt 1 and Exempt 2.

Exempt 1 holds all of the outstanding stock of Distributing, a State X Corporation. Distributing is the common parent of an affiliated group that files a consolidated federal income tax return. Distributing is engaged indirectly in active businesses through the ownership and operation of several direct, wholly-owned subsidiaries as follows: Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, and Sub 7 (collectively Subs 1-7), are engaged in Business 1, Business 2, Business 3, Business 4, Business 5, Business 6, and Business 7, respectively (collectively Businesses 1-7).

Distributing also owns all of the outstanding stock of Controlled A, a State X corporation, which is actively engaged, directly and indirectly, in Business A. Exempt 2 leases Item A to Controlled A. Distributing also owns all of the outstanding stock of Controlled B, a State Y corporation, which is engaged in providing Business B to Exempt 2 and other customers through its wholly owned subsidiary, Controlled Bsub. Controlled A and Controlled B are collectively referred to as the Controlled.

We have received financial information which indicates that Businesses 1 - 7, Business A, and Business B have each had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

Because of Exempt Parent's purposes, Exempt Parent has organized an Activities Group to exercise oversight over the Activities of certain entities controlled directly or indirectly by Exempt Parent, including the Activities of Exempt 2, Controlled A, and Controlled B. As a result, the Controlled are required to coordinate the

Activities with both Distributing and the Activities Group. This dual control over the Controlled's through Distributing and the Activities Group has created managerial inefficiencies by requiring duplicative management reporting channels and decision making processes. Furthermore, the Controlled's are also subject to dual financial reporting requirements.

In order to enhance the success of the businesses by enabling the corporations to resolve management, systemic, or other problems that arise (or are exacerbated) from the current control, management, and reporting structure, the following transaction has been proposed.

- (i) All of the outstanding stock of the Controlled's will be distributed by Distributing to Exempt 1.
- (ii) All of the outstanding stock of the Controlled's will be transferred to Exempt 2.

The following representations have been made in connection with the proposed transaction:

- (a) No part of the consideration to be distributed by Distributing will be received by a shareholder 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 and its subsidiaries (Subs 1-7, Controlled A, and Controlled B (including Controlled Bsub)) is representative of their present operations, and there have been no substantial operational changes since the date of the last financial statements submitted.
- (c) Immediately after the distribution, at least 90 percent of the fair market value of the gross assets of Distributing will consist of the stock and securities of controlled corporations that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).
- (d) Immediately after the distribution, at least 90% of the fair market value of the gross assets of Controlled B will consist of the stock and securities of controlled corporations that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).
- (e) Following the transaction, Subs 1-7, Controlled A, and Controlled B (including Controlled Bsub) will each continue the active conduct of its business, independently and with its separate employees.
- (f) The distribution of the stock of the Controlled's is carried out for the following corporate business purpose: to enhance the success of the businesses by

enabling the corporations to resolve management, systemic, or other problems that arise (or are exacerbated) from the current control, management, and reporting structure. The distribution of the stock of the Controlled is motivated, in whole or substantial part, by this corporate business purpose.

- (g) Except for the planned transfer of the stock of the Controlled to Exempt 2, there is no plan or intention by Exempt 1 to sell, exchange, transfer by gift, or otherwise dispose of any of the stock in Distributing or the Controlled after the transaction.
- (h) There is no plan or intention by Exempt 2 to sell, exchange, transfer by gift, or otherwise dispose of any of the stock of the Controlled after the transaction.
- (i) There is no plan or intention by either Distributing or the Controlled, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction.
- (j) There is no plan or intention to liquidate either Distributing or the Controlled, to merge any of these corporations with any other corporation, or to sell or otherwise dispose of the assets of any of these corporations after the transaction, except in the ordinary course of business.
- (k) No intercorporate debt will exist between Distributing or its subsidiaries, on the one hand, and the Controlled or their respective subsidiaries, on the other hand, at the time of, or subsequent to, the distribution of the Controlled stock.
- (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. Further, any excess loss account in the stock of the Controlled, or in any direct or indirect subsidiary of the Controlled, will be included in income immediately before the distribution.
- (m) Payments made in connection with all continuing transactions, if any, between Distributing or its subsidiaries, on the one hand, and the Controlled or their respective subsidiaries, on the other hand, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (n) The distributions are 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 stock of either Distributing or the Controlled entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either Distributing or the Controlled.

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

- (1) No gain or loss will be recognized by Distributing upon the distribution of all the stock of the Controlled(s) (§ 355(c)).
- (2) The subsequent transfer of the stock of the Controlled(s) to Exempt 2 will not adversely affect Ruling 1, above.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant.

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. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Richard E. Coss
Senior Counsel, Branch 3
Office of Associate Chief Counsel (Corporate)

cc: