

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Refer Reply To:
CC:CORP:4-PLR-121815-02
Date:
September 12, 2002

Legend

Company 3 =

Company 4 =

Date J =

Date K =

Date L =

Date M =

Dear :

This responds to your April 12, 2002 request that we supplement our letter ruling dated May 29, 2001 (PLR-100633-01) (the "Prior Letter Ruling"). Capitalized terms not defined in this ruling have the meanings originally assigned them in the Prior Letter Ruling.

The Prior Letter Ruling addresses, in part, the transfer of certain assets and liabilities by Distributing to Controlled in constructive exchange for Controlled Common Stock (the "Contribution"), the mandatory exchange of Distributing Class A Common Stock for shares of Controlled Common Stock (the "Split-Off"), and the pro rata distribution to holders of Distributing Common Stock of Distributing's remaining interest in Controlled (the "Spin-Off")(the Spin-Off and the Split-Off, together, the "Splint-Off"). The Prior Letter Ruling held that the Contribution and the Splint-Off qualified as tax-free under §§ 355 and 368(a)(1)(D) of the Internal Revenue Code. The Splint-Off was completed on Date J.

Supplemental Facts

Distributing has been restructuring under a plan, formally announced on Date A and Date B, that is intended to result in four separate, publicly-traded companies: (1) Company 1, which conducts Business E was distributed on Date K; (2) Controlled, which conducts Business D, was distributed on Date J; (3) Company 2, which was intended to conduct Business A and Business B; and (4) Distributing, which was intended to conduct Business C. Distributing obtained separate private letter rulings with respect to the separation of Business E (PLR-130376-00)(the “Business E Ruling”) and the separation of Business A and Business B from Business C (PLR-127793-01)(the “Business C Ruling”).

On Date L, Company 3 made an unsolicited offer to combine with Business C. On Date M, Distributing and Company 3 boards of directors approved definitive agreements to combine Company 4, a newly formed company that will own the assets and liabilities of Business C with Company 3 (the “Merger”).

As a result of the Merger, the separation of Distributing and Business C will not be completed in the manner described in the Business C Ruling. Instead of distributing Company 2 (which was intended to conduct Business A and Business B), Distributing will distribute Company 4 (which will conduct Business C). As a result of the distribution of Company 4, Distributing will cease to be engaged in Business C but will continue to be engaged in the active conduct of Business A and Business B. Distributing previously relied upon Business A and Business B to satisfy the active trade or business requirement in connection with the Business C Ruling.

Representations

Distributing reaffirms all of the representations and statements made in the Prior Letter Ruling, except that the following representations are revised, as of the date of the Splint-Off, to read in their entirety as follows:

(c) The five years of financial information submitted on behalf of Distributing (regarding Business A and Business B) and Controlled (regarding Business D as conducted by Sub C1, Sub C2, and Sub C3 before the Controlled Restructuring) represents each corporation’s present operation, and with regard to each corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(d) Following the Splint-Off and excluding the assets to be disposed of by Distributing in the Other Transactions, the gross assets of Business A and Business B directly conducted by Distributing will have a fair market value equal to at least five percent of the total fair market value of the gross assets of Distributing.

(f) Following the Splint-Off, Distributing and Controlled each will continue, independently and with its separate employees, the active conduct of Business A and Business B, and Business D, respectively.

Rulings

Based on the information and representations submitted with the original and supplemental requests, we reaffirm the rulings and caveats set forth in the Prior Letter Ruling.

Procedural Statements

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 supplemental letter to the taxpayer's federal income tax return, as appropriate, for the taxable year in which the transaction is consummated. Under a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Lewis K Brickates
Acting Chief, Branch 4
Office of Associate Chief Counsel
(Corporate)