

**Internal Revenue Service**

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Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

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PLR-100146-07

Date:

February 28, 2007

Distributing =

Controlled =

Subsidiary =

State X =

State Y =

Business A =

Business B =

Date 1 =

☐ =

Holding Company =

Year =

PLR-100146-07

2

Target 1

=

Target 2

=

Dear

We respond to your December 27, 2006, request for rulings on certain Federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated January 22, February 5, February 9, February 12, and February 27, 2007. The information submitted is summarized below.

The rulings contained in this letter are based upon 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 material 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 not reviewed any information pertaining to, and has made no determination regarding, whether any distribution described below satisfies the business purpose requirement of §1.355-2(b) of the Income Tax Regulations, whether any distribution described below is used principally as a device for the distribution of earnings and profits of Distributing or Controlled or both (see §355(a)(1)(B) of the Internal Revenue Code and §1.355-2(d)), or whether any distribution described below 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 Distributing or Controlled (see §355(e) and §1.355-7).

### **Summary of Facts**

Distributing, a State X corporation, owns all of the stock of Subsidiary, a State Y corporation. Distributing and Subsidiary file a consolidated federal tax return using a Date 1 fiscal year end based upon an accrual method of accounting. Distributing has two classes of common stock outstanding, consisting of one class of voting common stock and one class of non-voting common stock. All of the shares of Distributing common stock are closely held by approximately c shareholders.

Distributing conducts Business A and Subsidiary conducts Business B. The financial information submitted by Distributing and Subsidiary indicates that Business A and Business B each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing wishes to separate Business B from Business A so as to facilitate Distributing's possible acquisition of a corporation (Target 1) and a partnership (Target 2). Target 1 and Target 2 are engaged in Business A, and Distributing believes that the managements of Target 1 and Target 2 would not be interested in combining with Distributing if Distributing is engaged in Business B as well as Business A. Thus, Distributing proposes to separate all of the assets and liabilities associated with Business A from Business B. Specifically, the following transaction has been proposed:

- (i) Distributing will organize Controlled as a State X corporation with the same two classes of voting and non-voting common stock outstanding that correspond to Distributing's outstanding classes of common stock. Distributing will transfer all of its Business A assets to Controlled in exchange for all of the Controlled stock and Controlled's assumption of Distributing's Business A liabilities (the "Contribution"). Distributing will retain the stock of Subsidiary.
- (ii) Distributing will distribute all of the two classes of Controlled common stock pro rata to its shareholders (the "Distribution") based on the shareholders' holdings of Distributing's two classes of common stock.
- (iii) Distributing will change its name to Holding Company and Controlled will change its name to Distributing's original name (before Distributing changed its name to Holding Company).
- (iv) It is anticipated that Controlled will acquire Target 1 and Target 2 in Year.

### **Representations**

- (a) The Distribution was neither (i) made pursuant to an agreement that was binding on May 17, 2006, and at all times thereafter; (ii) described in a ruling request submitted to the Internal Revenue Service on or before May 17, 2006; nor (iii) described on or before May 17, 2006, in a public announcement or in a filing with the Securities and Exchange Commission.

- (b) 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.
- (c) The five years of financial information submitted on behalf of the businesses conducted by Distributing and Subsidiary are representative of the present operation of each business and there have been no substantial operational changes in any business since the date of the last financial statements submitted. Distributing and Subsidiary are, and immediately after the Distribution will be, affiliated in a manner that satisfies §1504(a), without regard to §1504(b).
- (d) Following the transaction, Distributing (through Subsidiary, part of the Distributing's separate affiliated group) and Controlled each will continue the active conduct of its businesses, independently and with its separate employees.
- (e) The Distribution is being carried out for the following business purpose: to facilitate an acquisition by Controlled by enabling Controlled to use its own stock to make acquisitions in its expansion efforts. The Distribution is motivated, in whole or substantial part, by this corporate business purpose.
- (f) The transaction is not being used principally as a device for the distribution of earnings and profits of Distributing, Controlled or both.
- (g) The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing each equals or exceeds the sum of the liabilities assumed (within the meaning of §357(d)) by Controlled.
- (h) The liabilities assumed (within the meaning of § 357(d)) were incurred in the ordinary course of business and are associated with the assets being transferred.
- (i) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.
- (j) 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, Distributing's excess loss account with respect to the Controlled stock, if any, will be included in income immediately before the Distribution (see §1.1502-19).

- (k) 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.
- (l) For purposes of §355(d), immediately after the Distribution, no person (determined after applying §355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock that was either (i) acquired by purchase (as defined in §355(d)(5) and (8)) during the five-year period (determined after applying §355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in §355(d)(5) and (8)) during the five-year period (determined after applying §355(d)(6)) ending on the date of the Distribution.
- (m) The Distribution is not part of a plan or series of related transactions (within the meaning of §1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of §355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (n) No two parties to the transaction are investment companies as defined in §368(a)(2)(F)(iii) and (iv).
- (o) Controlled will not be a disqualified investment corporation (within the meaning of §355(g)(2)). Immediately after the transaction, no person will hold a 50 percent or greater interest in Distributing or Controlled if such person did not hold such an interest in Distributing or Controlled immediately before the transaction.
- (p) The transactions described in paragraph (iii) above are intended to qualify as reorganizations within the meaning of §368(a)(1)(F).

### **Rulings**

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

- (1) The Contribution by Distributing to Controlled, followed by the pro-rata distribution of the Controlled stock to Distributing shareholders, will qualify as a reorganization within the meaning of §368(a)(1)(D). Distributing and

Controlled each will be a party to the reorganization within the meaning of §368(b).

- (2) No gain or loss will be recognized by Distributing on the Contribution in exchange for Controlled stock and the assumption of liabilities by Controlled (§§361(a) and 357(a)).
- (3) No gain or loss will be recognized by Controlled on the Contribution in exchange for Controlled stock (§1032(a)).
- (4) The basis of each asset received by Controlled in the Contribution will equal the basis of that asset in the hands of Distributing immediately before the Contribution (§362(b)).
- (5) The holding period of each asset received by Controlled in the Contribution will include the holding period of that asset in the hands of Distributing (§1223(2)).
- (6) Distributing will recognize no gain or loss on the Distribution (§361(c)).
- (7) No gain or loss will be recognized by (and no amount will be included in the income of) the Distributing shareholders on the receipt of the Controlled stock in the Distribution (§355(a)(1)).
- (8) The aggregate basis of the Distributing stock and the stock of Controlled in the hands of each Distributing shareholder after the Distribution will equal the basis of the Distributing stock held by the shareholder immediately before the Distribution. This aggregate basis will be allocated between the Distributing and Controlled stock in proportion to the fair market values of the Distributing and Controlled stock immediately after the Distribution in accordance with §1.358-2(a)(2) (§358(a)(1), (b) and (c)).
- (9) The holding period of the Controlled stock received by each Distributing shareholder in the Distribution will include the holding period of the Distributing stock on which the Distribution will be made, provided the Distributing stock is held as a capital asset on the date of the Distribution (§1223(1)).
- (10) Proper allocation of earnings and profits between Distributing and Controlled will be made under §§1.312-10(a) and 1.1502-33.

We express no opinion about the tax treatment of any transaction described above under other provisions of the Code and regulations or the tax

treatment of any condition existing at the time of, or effect resulting from, any of these transactions that is not specifically covered by the above rulings. In particular, no opinion is requested and no opinion is expressed regarding the change of names described in paragraph (iii) above, the acquisition of Target 1 and Target 2 as described in paragraph (iv) above, whether the Distribution satisfies the business purpose requirement of §1.355-2(b), whether the transaction 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) and §1.355-2(d)), and whether the Distribution and the 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 who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

It is important that a copy of this ruling letter be attached to the Federal income tax return of each party involved for the taxable year in which the transaction covered by this letter is consummated. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their returns that provides the date and control number of the letter ruling.

Pursuant to the power of attorney on file in this Office, a copy of this letter is being sent to Distributing's authorized representative.

Sincerely yours,

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