

Internal Revenue Service

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Department of the Treasury
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PLR-138305-07

Date:
February 19, 2008

LEGEND

Parent =

Distributing 1 =

Distributing 2 =

Controlled 1 =

Controlled 2 =

Business U =

Business V =

Business W =

Business X =

Business Y =

Business Z =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

a =

Dear :

This is in response to a letter dated August 23, 2007, requesting rulings as to the Federal income tax consequences of a series of proposed transactions. The information submitted in that request and in later correspondence is summarized below.

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. 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.

Moreover, this office has not reviewed any information pertaining to, and has made no determination regarding whether each of the distributions as described below:

(i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (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 section 355(a)(1)(B) of the Internal Revenue Code (the Code) and Treas. Reg. § 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 section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

SUMMARY OF FACTS

Parent is the common parent of an affiliated group of corporations that files a consolidated federal income tax return (the "Parent Group"). Parent has two classes of common stock outstanding, voting and non-voting. All outstanding shares of Parent's voting common stock are held in a voting trust that gives the trustees unrestricted voting rights in the stock. The trustees are officers of Parent. The shares of publicly-traded non-voting common stock do not have voting rights under any circumstances.

Parent wholly owns Distributing 1, an entity treated as a corporation for Federal income tax purposes. Distributing 1 wholly owns Distributing 2, an entity treated as a corporation for Federal income tax purposes, and Controlled 1. Distributing 2 wholly owns Controlled 2.

The Parent Group is generally engaged in Business U. More specifically, Distributing 1 is directly engaged in Business V and Business W. Distributing 2, since it was formed on Date 1 (less than five years ago), has been directly engaged in Business X which until that date had been conducted principally by Distributing 1. Controlled 1 is engaged in Business Y. Controlled 2, since it was formed on Date 2 (less than five years ago), has been directly engaged in Business Z, which is the same line of business as Business V.

Financial information has been received indicating that Business V, Business W, Business X, and Business Y each has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

PROPOSED TRANSACTIONS

For what are represented to be valid business purposes, Distributing has proposed the following series of transactions (the "Proposed Transactions"):

- (i) Distributing 1 will distribute Controlled 1 to Parent (the "Controlled 1 Distribution").

- (ii) Distributing 1 will distribute Distributing 2 to Parent (the “Distributing 2 Distribution”).
- (iii) Distributing 2 will distribute Controlled 2 to Parent (the “Controlled 2 Distribution”).

Controlled 1 holds a note from Distributing 1 due on Date 3, renewable annually, with a remaining principal balance of \$c (the “Distributing 1 Note”). The note arose in a prior year based on a cash need by Distributing 1. Distributing 1 intends to pay off the principal of the note during the fiscal year ending Date 4.

REPRESENTATIONS

The Controlled 1 Distribution

Parent has made the following representations with respect to the Controlled 1 Distribution:

- (a) Any indebtedness owed by Controlled 1 to Distributing 1 after the Controlled 1 Distribution will not constitute stock or securities.
- (b) No part of the consideration to be distributed by Distributing 1 will be received by Parent as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.
- (c) The five years of financial information submitted on behalf of the business that will be conducted by Distributing 1 after the Controlled 1 Distribution is representative of its present operation, and, with regard to that business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) The five years of financial information submitted on behalf of the business that will be conducted by Controlled 1 after the Controlled 1 Distribution is representative of its present operations, and, with regard to that business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) Following the Controlled 1 Distribution, Distributing 1 will continue the active conduct of Business W, independently and with its separate employees.
- (f) Following the Controlled 1 Distribution, Controlled 1 will continue the active conduct of Business Y, independently and with its separate employees.

- (g) The Controlled 1 Distribution will be carried out for the following corporate business purposes: (i) to facilitate a shorter, less complicated monthly accounting close process with fewer levels of consolidation; (ii) to align the Parent Group's business units as first-tier subsidiaries of Parent to facilitate growth and provide management greater insight into each business unit; and (iii) to provide efficiencies in cash management. The Controlled 1 Distribution is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (h) The Controlled 1 Distribution will not be used principally as a device for the distribution of earnings and profits of Distributing 1 or Controlled 1 or both.
- (i) Distributing 1 will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the Controlled 1 Distribution.
- (j) Except for the Distributing 1 Note, no intercorporate debt will exist between Distributing 1 and Controlled 1 at the time of, or subsequent to, the Controlled 1 Distribution.
- (k) Immediately before the Controlled 1 Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. §§ 1.1502-13 and -14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13 as published by T.D. 8597). Further, any excess loss account that Distributing 1 has in the Controlled 1 stock will be included in income immediately before the Controlled 1 Distribution to the extent required by regulations (see Treas. Reg. § 1.1502-19). At the time of the Controlled 1 Distribution, Distributing 1 will not have an excess loss account in the stock of Controlled 1.
- (l) Payments made in connection with continuing transactions (if any) between Distributing 1 and Controlled 1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (m) The Controlled 1 Distribution will not be a disqualified distribution (as defined in section 355(d)(2)) because immediately after the Controlled 1 Distribution: (i) no person (determined after applying section 355(d)(7)) will hold disqualified stock (defined in section 355(d)(3)) in Distributing 1 that will constitute a 50-percent or greater interest (defined in section 355(d)(4)) in Distributing 1; and (ii) no person (determined after applying section 355(d)(7)) will hold disqualified stock (defined in section 355(d)(3)) in Controlled 1 that will constitute a 50-percent or greater interest (defined in section 355(d)(4)) in Controlled 1.
- (n) The Controlled 1 Distribution is not part of plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more

persons will acquire (other than as a result of the Controlled 1 Distribution) directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in either Distributing 1 or Controlled 1 (including any predecessor or successor of such corporation).

- (o) Immediately after the transaction (as defined in section 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3)) in Distributing 1 or Controlled 1, (ii) if any person holds a 50-percent or greater interest (within the meaning of section 355(g)(3)) in any disqualified investment corporation (within the meaning of section 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (iii) neither Distributing 1 nor Controlled 1 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).

The Distributing 2 Distribution

Parent has made the following representations with respect to the Distributing 2 Distribution:

- (p) Any indebtedness owed by Distributing 2 to Distributing 1 after the Distributing 2 Distribution will not constitute stock or securities.
- (q) No part of the consideration to be distributed by Distributing 1 will be received by Parent as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.
- (r) The five years of financial information submitted on behalf of the business that will be conducted by Distributing 1 immediately after the Distributing 2 Distribution is representative of its present operation, and, with regard to that business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (s) The five years of financial information submitted on behalf of the business that will be conducted by Distributing 2 immediately after the Distributing 2 Distribution is representative of its present operation, and with regard to that business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (t) Following the Distributing 2 Distribution, Distributing 1 will continue the active conduct of Business W, independently and with its separate employees.
- (u) Following the Distributing 2 Distribution, Distributing 2 will continue the active conduct of Business X, independently and with its separate employees.

- (v) The Distributing 2 Distribution will be carried out for the following corporate business purposes: (i) to facilitate a shorter, less complicated monthly accounting close process with fewer levels of consolidation; (ii) to align the Parent Group's business units as first-tier subsidiaries of Parent to facilitate growth and provide management greater insight into each business unit; and (iii) to provide efficiencies in cash management. The Distributing 2 Distribution is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (w) The Distributing 2 Distribution will not be used principally as a device for the distribution of earnings and profits of Distributing 1 or Distributing 2 or both.
- (x) Distributing 1 will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the Distributing 2 Distribution.
- (y) No intercorporate debt will exist between Distributing 1 and Distributing 2 at the time of, or subsequent to, the Distributing 2 Distribution.
- (z) Immediately before the Distributing 2 Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. §§ 1.1502-13 and -14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13 as published by T.D. 8597). Further, any excess loss account that Distributing 1 has in the Distributing 2 stock will be included in income immediately before the Distributing 2 Distribution to the extent required by regulations (see Treas. Reg. § 1.1502-19). At the time of the Distributing 2 Distribution, Distributing 1 will not have an excess loss account in the stock of Distributing 2.
- (aa) Payments made in connection with continuing transactions (if any) between Distributing 1 and Distributing 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (bb) The Distributing 2 Distribution will not be a disqualified distribution (as defined in section 355(d)(2)) because immediately after the Distributing 2 Distribution: (i) no person (determined after applying section 355(d)(7)) will hold disqualified stock (defined in section 355(d)(3)) in Distributing 1 that will constitute a 50-percent or greater interest (defined in section 355(d)(4)) in Distributing 1; and (ii) no person (determined after applying section 355(d)(7)) will hold disqualified stock (defined in section 355(d)(3)) in Distributing 2 that will constitute a 50-percent or greater interest (defined in section 355(d)(4)) in Distributing 2.
- (cc) The Distributing 2 Distribution is not part of plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire (other than as a result of the Distributing 2 Distribution)

directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in either Distributing 1 or Distributing 2 (including any predecessor or successor of such corporation).

- (dd) Immediately after the transaction (as defined in section 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3)) in Distributing 1 or Distributing 2, (ii) if any person holds a 50-percent or greater interest (within the meaning of section 355(g)(3)) in any disqualified investment corporation (within the meaning of section 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (iii) neither Distributing 1 nor Distributing 2 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).

The Controlled 2 Distribution

Parent has made the following representations with respect to the Controlled 2 Distribution:

- (ee) Any indebtedness owed by Controlled 2 to Distributing 2 after the Controlled 2 Distribution will not constitute stock or securities.
- (ff) No part of the consideration to be distributed by Distributing 2 will be received by Parent as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.
- (gg) The five years of financial information submitted on behalf of the business that will be conducted by Distributing 2 immediately after the Controlled 2 Distribution is representative of its present operation, and with regard to that business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (hh) The five years of financial information submitted on behalf of the business that will be conducted by Controlled 2 after the Controlled 2 Distribution (Business Z as conducted by Controlled 2 and preceding that, Business V as conducted by Distributing 1) is representative of its present operation, and with regard to that business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (ii) Following the Controlled 2 Distribution, Distributing 2 will continue the active conduct of Business X, independently and with its separate employees.
- (jj) Following the Controlled 2 Distribution, Controlled 2 will continue the active conduct of Business Z, independently and with its separate employees.

- (kk) The Controlled 2 Distribution will be carried out for the following corporate business purposes: (i) to facilitate a shorter, less complicated monthly accounting close process with fewer levels of consolidation; (ii) to align the Parent Group's business units as first-tier subsidiaries of Parent to facilitate growth and provide management greater insight into each business unit; and (iii) to provide efficiencies in cash management. The Controlled 2 Distribution is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (ll) The Controlled 2 Distribution will not be used principally as a device for the distribution of earnings and profits of Distributing 2 or Controlled 2 or both.
- (mm) Distributing 2 will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the Controlled 2 Distribution.
- (nn) No intercorporate debt will exist between Distributing 2 and Controlled 2 at the time of, or subsequent to, the Controlled 2 Distribution.
- (oo) Immediately before the Controlled 2 Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. §§ 1.1502-13 and -14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13 as published by T.D. 8597). Further, any excess loss account that Distributing 2 has in the Controlled 2 stock will be included in income immediately before the Controlled 2 Distribution to the extent required by regulations (see Treas. Reg. § 1.1502-19). At the time of the Controlled 2 Distribution, Distributing 2 will not have an excess loss account in the stock of Controlled 2.
- (pp) Payments made in connection with continuing transactions (if any) between Distributing 2 and Controlled 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (qq) The Controlled 2 Distribution will not be a disqualified distribution (as defined in section 355(d)(2)) because immediately after the Controlled 2 Distribution: (i) no person (determined after applying section 355(d)(7)) will hold disqualified stock (defined in section 355(d)(3)) in Distributing 2 that will constitute a 50-percent or greater interest (defined in section 355(d)(4)) in Distributing 2, and (ii) no person (determined after applying section 355(d)(7)) will hold disqualified stock (defined in section 355(d)(3)) in Controlled 2 that will constitute a 50-percent or greater interest (defined in section 355(d)(4)) in Controlled 2.
- (rr) The Controlled 2 Distribution is not part of plan or series of related transactions (within the meaning of Treas. Reg. section 1.355-7) pursuant to which one or more persons will acquire (other than as a result of the Distributing 2 Distribution

and the Controlled 2 Distribution) directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in either Distributing 2 or Controlled 2 (including any predecessor or successor of such corporation).

- (ss) Immediately after the transaction (as defined in section 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3)) in Distributing 2 or Controlled 2, (ii) if any person holds a 50-percent or greater interest (within the meaning of section 355(g)(3)) in any disqualified investment corporation (within the meaning of section 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (iii) neither Distributing 2 nor Controlled 2 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).

RULINGS

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

The Controlled 1 Distribution

- (1) No gain or loss will be recognized by Distributing 1 on the Controlled 1 Distribution. Section 355(c)(1).
- (2) No gain or loss will be recognized by (and no amount will be included in the income of) Parent on the Controlled 1 Distribution. Section 355(a)(1).
- (3) The aggregate basis of the stock of Distributing 1 and Controlled 1 in the hands of Parent immediately after the Controlled 1 Distribution will equal Parent's aggregate basis in the stock of Distributing 1 held immediately before the Controlled 1 Distribution. This aggregate basis will be allocated between the Distributing 1 stock and the Controlled 1 stock in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2). Section 358(a)(1), (b), and (c).
- (4) The holding period of the Controlled 1 stock received by Parent will include the holding period of the Distributing 1 stock on which the Controlled 1 Distribution is made, provided that the Distributing 1 stock is held as a capital asset on the date of the Controlled 1 Distribution. Section 1223(1).
- (5) Earnings and profits will be allocated between Distributing 1 and Controlled 1 in accordance with section 312(h), Treas. Reg. § 1.312-10(b), and Treas. Reg. § 1.1502-33(f)(2).

The Distributing 2 Distribution

- (6) No gain or loss will be recognized by Distributing 1 on the Distributing 2 Distribution. Section 355(c)(1).
- (7) No gain or loss will be recognized by (and no amount will be included in the income of) Parent on the Distributing 2 Distribution. Section 355(a)(1).
- (8) The aggregate basis of the stock of Distributing 1 and Distributing 2 in the hands of Parent immediately after the Distributing 2 Distribution will equal Parent's aggregate basis in the stock of Distributing 1 held immediately before the Distributing 2 Distribution. This aggregate basis will be allocated between the Distributing 1 stock and the Distributing 2 stock in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2). Section 358(a)(1), (b), and (c).
- (9) The holding period of the Distributing 2 stock received by Parent will include the holding period of the Distributing 1 stock on which the Distributing 2 Distribution is made, provided that the Distributing 1 stock is held as a capital asset on the date of the Distributing 2 Distribution. Section 1223(1).
- (10) Earnings and profits will be allocated between Distributing 1 and Distributing 2 in accordance with section 312(h), Treas. Reg. § 1.312-10(b), and Treas. Reg. § 1.1502-33(f)(2).

The Controlled 2 Distribution

- (11) No gain or loss will be recognized by Distributing 2 on the Controlled 2 Distribution. Section 355(c)(1).
- (12) No gain or loss will be recognized by (and no amount will be included in the income of) Parent on the Controlled 2 Distribution. Section 355(a)(1).
- (13) The aggregate basis of the stock of Distributing 2 and Controlled 2 in the hands of Parent immediately after the Controlled 2 Distribution will equal Parent's aggregate basis in the stock of Distributing 2 held immediately before the Controlled 2 Distribution. This aggregate basis will be allocated between the Distributing 2 stock and the Controlled 2 stock in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2). Section 358(a)(1), (b), and (c).
- (14) The holding period of the Controlled 2 stock received by Parent will include the holding period of the Distributing 2 stock on which the Controlled 2 Distribution is

made, provided that the Distributing 2 stock is held as a capital asset on the date of the Controlled 2 Distribution. Section 1223(1).

- (15) Earnings and profits will be allocated between Distributing 2 and Controlled 2 in accordance with section 312(h), Treas. Reg. § 1.312-10(b), and Treas. Reg. § 1.1502-33(f)(2).

CAVEATS

We express no opinion 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, we express no opinion regarding:

- (i) Whether each of the Distributions satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b);
- (ii) Whether each of the Distributions is being used principally as a device for the distribution of the earnings and profits of any of the distributing corporations or the controlled corporations (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); or
- (iii) Whether each of the Distributions 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 any of the distributing corporations or controlled corporations (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

PROCEDURAL MATTERS

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.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 11.04 of Rev. Proc. 2007-1, 2007-1 I.R.B. 1, 49. However, when the criteria in section 11.06 of Rev. Proc. 2007-1, 2007-1 I.R.B. 1, 50 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by

attaching a statement to their return that provides the date and control number of the letter ruling.

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

Sincerely,

Frances Kelly

Frances Kelly
Assistant to the Branch Chief, Branch 2
Office of Associate Chief Counsel
(Corporate)

cc: