

Internal Revenue Service

Department of the Treasury
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Telephone Number:

Refer Reply To:
CC:CORP:B06
PLR-103193-08
Date:
July 15, 2008

Legend

Parent =

Corp 1 =

Corp 2 =

Corp 3 =

Distributing =

Controlled =

LLC 1 =

LLC 2 =

LLC 3 =

LLC 4 =

Business X =

Business Y =

a% =

b%

c%

d%

e%

f% =

\$x =

Date =

Dear :

This letter responds to your January 14, 2008 letter from your authorized representatives requesting rulings on certain federal income tax consequences of a proposed transaction. Additional information was received in letters dated April 30 and June 27, 2008. The information provided in these letters is summarized below.

The rulings contained in this letter are based on facts 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. In particular, this office has not reviewed any information pertaining to, and except where expressly provided has made no determination regarding, whether the Distribution (described below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the 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 (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 Distributing or Controlled (see § 355(e) and § 1.355-7).

Parent is the common parent of an affiliated group of corporations that file a consolidated Federal income tax return. Parent owns all of the stock of Corp 1 and Corp 2. Corp 1 owns the sole membership interest in LLC 1, a disregarded entity. Corp 1 (through LLC 1) and Corp 2 each own d% of LLC 2, an entity treated as a partnership for Federal income tax purposes. Corp 2 owns the sole membership interest in LLC 3,

a disregarded entity. Corp 1 (through LLC 1) owns c%, and Corp 3 owns f%, of LLC 4, an entity treated as a partnership for Federal income tax purposes. Corp 3 is unrelated to Parent.

Distributing is a corporation engaged in Business X and Business Y. Distributing has outstanding three classes of common stock, Class A, Class B and Class C, of which only Class A is voting. Corp 1 (through LLC 1) owns all of the Class A stock and Corp 2 owns all of the Class B stock. LLC 2 owns b%, Corp 2 (through LLC 3) owns e%, and LLC 4 owns a%, of the Class C stock.

Controlled is a corporation created to effectuate the described transaction. Prior to the transaction described below, the authorized capital stock of Controlled will consist of the same number and classes of stock as Distributing.

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

For what are represented to be valid corporate business purposes (see below), Distributing desires to separate Business X and Business Y. The separation is proposed to be accomplished by the following steps:

(i) Distributing will transfer the assets comprising Business Y (including cash and cash equivalents for working capital) to Controlled in exchange for all of the Controlled stock and the assumption by Controlled of the liabilities associated with the transferred assets ("Contribution"). Controlled will not transfer any cash or any other property to Distributing as part of the Contribution.

(ii) Distributing will distribute all of the Controlled stock pro rata to the Distributing shareholders, with each shareholder receiving the same number of shares of a class of the stock in Controlled as such shareholder owns of the corresponding class of the stock in Distributing ("Distribution").

The following representations are made in connection with the Contribution and Distribution:

(a) Any indebtedness owed by Controlled to Distributing after the Distribution will not constitute stock or securities.

(b) No part of the consideration to be distributed by Distributing will be received by a shareholder of Distributing as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

(c) The five years of financial information submitted by Distributing on behalf of Business X and Business Y is representative of each of their present operations and, with regard to each such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(d) Following the Distribution, Distributing and Controlled will each continue the active conduct of its respective business, independently and with its separate employees.

(e) The Distribution is carried out for the following corporate business purposes: to allow the managers of each business to focus on the development of that business; and incorporating Business Y as Controlled and having its stock held by the shareholders of Distributing will allow Controlled to offer its stock to its employees as a type of compensation. The Distribution is motivated, in whole or substantial part, by these corporate business purposes.

(f) The Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(g) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was 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.

(h) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying the aggregation rules of § 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, that was 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.

(i) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.

(j) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.

(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) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(m) No acquisition of stock of Distributing or Controlled (including any predecessor or successor of any such corporation) is part of a plan or series of related transactions (within the meaning of § 1.355-7) that includes the Distribution of Controlled stock.

(n) Immediately after the transaction (as defined in § 355(g)(4)), neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

(o) Distributing and Controlled will each pay their own respective expenses, if any, incurred in connection with the transaction.

(p) The total fair market value of the assets to be transferred to Controlled in the Contribution will exceed the sum of (i) the amount of liabilities, if any, assumed (within the meaning of § 357(d)) by Controlled in connection with the exchange, (ii) the amount of liabilities, if any, owed to Controlled by Distributing that are discharged or extinguished in connection with the exchange, and (iii) the amount of the cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without recognition of gain) received by Distributing from Controlled in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.

(q) The total adjusted bases and the fair market value of the assets to be transferred to Controlled in the Contribution each equals or exceeds the sum of (i) the total liabilities to be assumed (within the meaning of § 357(d)) by Controlled and (ii) the total amount of any money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing and transferred to its creditors in connection with the reorganization. Any liabilities to be assumed (within the meaning of § 357(d)) by Controlled in the Contribution were incurred in the ordinary course of business and are associated with the assets to be transferred.

(r) 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. (See § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing's excess loss account, if any, with respect to Controlled's stock will be included in income immediately before the Distribution. (See § 1.1502-19).

(s) All of the cash contributions made to Distributing by its shareholders within the last five years were made solely to fund the Business X or Business Y projects and activities of Distributing and will be used solely to fund the Business X or Business Y projects and activities of Distributing or Controlled, respectively.

(t) The cash contribution made by Corp 2 to Distributing of \$x on Date would have been made even if Distributing had not been contemplating a distribution of the stock of Controlled.

Based on the information submitted and the representations provided, we rule as follows in connection with the Contribution and Distribution:

1. The Contribution, followed by the Distribution, will constitute a reorganization under § 368(a)(1)(D). Distributing and Controlled will each be "a party to a reorganization" within the meaning of § 368(b).
2. Distributing will not recognize any gain or loss on the Contribution (§§ 357(a) and 361(a), (b)).
3. Controlled will not recognize any gain or loss on the Contribution (§ 1032(a)).
4. Controlled's basis in each asset received from Distributing in the Contribution will equal the basis of that asset in the hands of Distributing immediately before the Contribution (§ 362(b)).
5. Controlled's holding period in each asset received from Distributing in the Contribution will include the period during which Distributing held that asset (§ 1223(2)).
6. Earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33.
7. Distributing will not recognize any gain or loss on the Distribution (§ 361(c)).
8. The shareholders of Distributing will not recognize any gain or loss (and will not otherwise include any amount in income) on the Distribution (§ 355(a)).
9. The aggregate tax basis of the Controlled stock and the Distributing stock in the hands of a shareholder of Distributing will be the same as the aggregate tax basis of the Distributing stock held by that shareholder immediately before the Distribution, allocated in the manner described in § 1.358-2 (§ 358(a)(1), (b) and (c) and § 1.358-1(a)).
10. A Distributing shareholder's holding period in the Controlled stock received will include that shareholder's holding period for the Distributing stock with respect to which

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

No opinion is expressed 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, no opinion is expressed regarding: (i) whether the Distribution satisfies the business purpose requirement of § 1.355-2(b); (ii) whether the proposed transaction is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) and § 1.355-2(d)); and (iii) whether the proposed transaction is part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

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 ruling 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.

Sincerely,

Mary E. Goode
Senior Counsel, Branch 6
Office of Associate Chief
Counsel (Corporate)

cc: