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Department of the Treasury

Washington, DC 20224

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PLR-153971-12

Date:

June 06, 2013

Legend

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Business A =

Business B =

Asset A =

Asset B =

Asset C =

Asset D =

Contract =

Agreement A =

Agreement B =

Agreement C =

Agreement D =

Agreement E =

Agreement F =

State A =

\$a =

\$b =

Dear :

This letter responds to your December 12, 2012 request for rulings on certain federal income tax consequences of the proposed transaction described below (the "Proposed Transaction"). The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon 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 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. Moreover, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Distribution described in Step (vi) 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) 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 any controlled corporation (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

SUMMARY OF FACTS

Distributing is a State A corporation and is the common parent of an affiliated group of corporations that join in the filing of a consolidated federal income tax return (the “Distributing Group”). Distributing’s stock is publicly traded and widely held.

Sub 1 is a State A corporation and is a direct, wholly-owned subsidiary of Distributing and a member of the Distributing Group. Sub 1 owns all of the stock of Sub 2, Sub 3, and Sub 4, each a State A corporation.

The Distributing Group is engaged in two lines of business, Business A and Business B. Distributing and members of its “separate affiliated group” within the meaning of section 355(b)(3)(B) (the “Distributing SAG”) conduct Business A. Sub 1 and members of its SAG (after Step (v) below, the “Controlled SAG”) conduct Business B. Although held by Sub 1 until the Internal Distributions (described in Step (iii) below), Sub 2, Sub 3, and Sub 4 historically were engaged in Business A.

Financial data for Business A and Business B show each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

PROPOSED TRANSACTION

For what is represented to be valid business reasons, Distributing proposes to undertake the following:

- (i) Sub 1 will borrow between \$a and \$b from a third-party lender.

- (ii) Sub 1 will distribute between \$a and \$b of the borrowing proceeds to Distributing.
- (iii) Sub 1 will distribute all of the stock of Sub 2, Sub 3, and Sub 4 to Distributing (with Step (ii) above, the "Internal Distributions").
- (iv) Distributing will contribute Asset A, Asset B, Asset C, and Asset D (collectively the "Miscellaneous Assets") to Sub 1 (the "Sub 1 Contribution").
- (v) Distributing will contribute all of the stock of Sub 1 to a newly formed controlled corporation ("Controlled") in exchange for all of the stock of Controlled (the "Contribution").
- (vi) Distributing will distribute all of the common stock of Controlled to its shareholders pro rata (the "Distribution").
- (vii) Distributing and Controlled will enter into Agreement A, Agreement B, Agreement C, Agreement D, Agreement E, and Agreement F (collectively the "Continuing Agreements") necessary for the companies to achieve operational independence.

REPRESENTATIONS

Sub 1 Contribution

- (a) No stock or securities will be issued for services rendered to or for the benefit of Sub 1 in connection with the Sub 1 Contribution, and no stock or securities will be issued for indebtedness of Sub 1.
- (b) The Sub 1 Contribution will not be the result of a solicitation by a promoter, broker, or investment house.
- (c) None of the Miscellaneous Assets was received by Distributing as part of a plan of liquidation of another corporation.
- (d) Except for the rights Distributing will hold under the Contract, Distributing will not retain any rights in the property transferred to Sub 1.
- (e) No income items (such as accounts receivable or commissions due) are being transferred to Sub 1 in the Sub 1 Contribution.
- (f) The adjusted basis and the fair market value of the Miscellaneous Assets to be transferred by Distributing to Sub 1 in the Sub 1 Contribution will, in each

instance, be equal to or exceed the sum of the liabilities, if any, to be assumed by Sub 1 plus any liabilities, if any, to which the Miscellaneous Assets are subject.

- (g) The liabilities of Distributing to be assumed by Sub 1, if any, were incurred in the ordinary course of business and are associated with the Miscellaneous Assets to be transferred.
- (h) The Sub 1 Contribution will occur under a plan agreed upon before the Proposed Transaction in which the rights of the parties are defined.
- (i) All transfers to Sub 1 will occur on approximately the same date.
- (j) There is no plan or intention on the part of Sub 1 to redeem or otherwise reacquire any stock to be issued in the Sub 1 Contribution.
- (k) Immediately after the Sub 1 Contribution, Distributing will be in control of Sub 1 within the meaning of section 368(c).
- (l) Distributing will receive or be deemed to receive stock approximately equal in value to the fair market value of the property transferred to Sub 1.
- (m) Other than (i) trade account indebtedness created in the ordinary course of business through continuing transactions at terms comparable to those which could be obtained in an arm's-length transaction and (ii) payables under Agreement A, Agreement C, Agreement D, or Agreement E, no intercorporate debt will exist between Distributing and Sub 1 at the time of, or subsequent to, the Sub 1 Contribution.
- (n) Sub 1 will remain in existence and will retain the use of the Miscellaneous Assets transferred in the Sub 1 Contribution in a trade or business.
- (o) Sub 1 has no plan or intention to dispose of the Miscellaneous Assets transferred in the Sub 1 Contribution other than in the normal course of business operations.
- (p) Each of Sub 1 and Distributing will pay its own expenses, if any, incurred in connection with the Sub 1 Contribution.
- (q) Sub 1 will not be an investment company within the meaning of section 351(e)(1) and Treas. Reg. § 1.351-1(c)(1)(ii).
- (r) Distributing is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)).

- (s) Sub 1 will not be a “personal service corporation” within the meaning of section 269A.
- (t) The Sub 1 Contribution will be undertaken for the sole purpose of aligning the ownership of the Miscellaneous Assets with the use and physical location of those assets.
- (u) There is no regulatory, legal, contractual, or economic compulsion or requirement that Distributing make all or part of the Sub 1 Contribution as a condition to the Internal Distributions.
- (v) The aggregate fair market value of the assets contributed to Sub 1 in the Sub 1 Contribution will equal or exceed the aggregate adjusted bases of those assets.

The Contribution and the Distribution

- (w) Distributing, Controlled and the Distributing shareholders each will pay its own or their own expenses, if any, incurred in connection with the Distribution.
- (x) The receipt by Distributing shareholders of cash in lieu of fractional shares of Controlled stock is solely for the purpose of avoiding the expense and inconvenience to Controlled of issuing fractional shares and does not represent separately bargained-for consideration. It is intended that the total cash consideration received by Distributing shareholders will not exceed one percent of the total consideration that will be distributed in the Distribution.
- (y) Any indebtedness owed by any member of the Controlled SAG to any member of the Distributing SAG after the distribution of Controlled stock will not constitute stock or securities.
- (z) 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 Distributing.
- (aa) Distributing will treat all members of the Distributing SAG as one corporation in determining whether it meets the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business.
- (bb) The Distributing SAG neither acquired Business A nor acquired control of an entity conducting Business A during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized, in whole or in part, excluding in each case acquisitions that constitute expansions, as contemplated by Treas. Reg. § 1.355-3(b)(3)(ii), of Business A. Throughout the

five-year period ending on the date of the Distribution, the Distributing SAG will have been the principal owner of the goodwill and significant assets of Business A and it will continue to be the principal owner following the Distribution.

- (cc) The five years of financial information submitted on behalf of Distributing is representative of Distributing's present operation, and with regard to Distributing, there have been no substantial operational changes since the date of the last financial statements submitted.
- (dd) Controlled will treat all members of the Controlled SAG as one corporation in determining whether it meets the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business.
- (ee) Distributing has continuously owned all of the outstanding interest in Sub 1 for at least the five-year period ending on the date of the Distribution.
- (ff) The Controlled SAG neither acquired Business B nor acquired control of an entity conducting Business B during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized, in whole or in part, excluding in each case acquisitions that constitute expansions, as contemplated by Treas. Reg. § 1.355-3(b)(3)(ii), of Business B. Throughout the five-year period ending on the date of the Distribution, the Controlled SAG will have been the principal owner of the goodwill and significant assets of Business B and it will continue to be the principal owner following the Distribution.
- (gg) The five years of financial information submitted with respect to Business B is representative of the present operation of Business B, and there have been no substantial operational changes to Business B since the date of the last financial statements submitted.
- (hh) Following the transaction, the Distributing SAG and the Controlled SAG each will continue the active conduct of its business, independently and with its separate employees.
- (ii) The distribution of the stock of Controlled is carried out for the following corporate business purposes:
 - a. To allow the management team of each of Distributing and Controlled to focus on its own strategic priorities with financial targets that best fit its own market and opportunities;
 - b. To enable each of Distributing and Controlled to allocate resources and to

deploy capital in a manner consistent with its own priorities; and

- c. To enable current and prospective investors to value the two businesses based on their respective financial characteristics.

The distribution of the stock of Controlled is motivated, in whole or substantial part, by one or more of these corporate business purposes.

- (jj) The transaction is not used principally as a device for the distribution of the earnings and profits of Distributing, Controlled, or both.
- (kk) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying the aggregation rules of section 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 sections 355(d)(5) and (8)) during the five year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (ll) Immediately after the Distribution (taking into account any related transaction as defined in section 355(g)(4)), no person will hold a 50 percent or greater interest (within the meaning of section 355(g)(3)) in Distributing or Controlled.
- (mm) There is no regulatory, legal, contractual, or economic compulsion or requirement that Distributing make part or all of the Contribution as a condition to the Internal Distributions.
- (nn) The total fair market value of the assets transferred to Controlled by Distributing in the Contribution will equal or exceed the sum of: (i) the amount of any liabilities assumed (within the meaning of section 357(d)) by Controlled in connection with the Contribution, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the Contribution, and (iii) the amount of any cash and the fair market value of any other property (other than stock or securities permitted to be received under section 361(a) without recognition of gain) received by Distributing from Controlled in connection with the Contribution. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.
- (oo) The total adjusted basis of the assets to be transferred to Controlled by Distributing will equal or exceed the sum of the liabilities assumed (as determined under section 357(d)) by Controlled plus any liabilities to which the transferred assets are subject. The liabilities assumed, if any, (as determined

under section 357(d)) by Controlled will be incurred in the ordinary course of business and will be associated with the assets transferred.

- (pp) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Distribution.
- (qq) Other than (i) trade account indebtedness created in the ordinary course of business through continuing transactions at terms comparable to those which could be obtained in an arm's-length transaction, and (ii) payables under Agreement A, Agreement C, Agreement D, or Agreement E, no intercorporate debt will exist between any member of the Distributing SAG and any member of the Controlled SAG at the time of, or subsequent to, the Distribution.
- (rr) 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 Treas. Reg. § 1.1502-13 and Treas. Reg. § 1.1502-14 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, Distributing's excess loss account with respect to the Controlled stock, if any, will be included in income immediately before the Distribution (see Treas. Reg. § 1.1502-19). Immediately before the Distribution, Distributing will not have an excess loss account in the stock of Controlled or in the stock of any direct or indirect subsidiary of Controlled.
- (ss) Payments made in connection with all continuing transactions (other than any transaction described in the Continuing Agreements), if any, between any member of the Distributing SAG and any member of the Controlled SAG, will be for fair market value based on terms and conditions arrived at by parties bargaining at arm's length.
- (tt) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (uu) The Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 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 section 355(d)(4)) in Distributing or Controlled (including any predecessor or successor to any such corporation).
- (vv) Distributing has not been a United States Real Property Holding Corporation (within the meaning of section 897(c)(2)) (a "USRPHC") at any time during the five-year period ending on the date of the Distribution, and Distributing will not be a USRPHC immediately after the Distribution.

- (ww) Controlled likely is a USRPHC as of the date of the Distribution, and it is expected that Controlled will be a USRPHC immediately after the Distribution.

RULINGS

The Internal Distributions

- (1) Sub 1's distribution of Sub 2 to Distributing is a distribution to which section 301(a) applies.
- (2) Sub 1's distribution of Sub 3 to Distributing is a distribution to which section 301(a) applies.
- (3) Sub 1's distribution of Sub 4 to Distributing is a distribution to which section 301(a) applies.
- (4) Sub 1's distribution of cash to Distributing described in Step (ii) above will be a distribution to which section 301(a) applies.

The Sub 1 Contribution

- (5) Distributing will recognize no gain or loss on the Sub 1 Contribution. (Sections 351(a) and 357(a).)
- (6) Sub 1 will recognize no gain or loss on the Sub 1 Contribution. (Section 1032(a).)
- (7) The basis of each of the Miscellaneous Assets received by Sub 1 in the Sub 1 Contribution will be the same as the basis of each of the Miscellaneous Assets in the hands of Distributing immediately prior to the Sub 1 Contribution. (Section 362(a).)
- (8) The basis of the Sub 1 stock constructively received by Distributing will be the same as the basis of the Miscellaneous Assets transferred by Distributing to Sub 1, decreased by the sum of the liabilities assumed by Sub 1 (if any). (Sections 358(a)(1) and (d).)
- (9) The holding period for each of the Miscellaneous Assets received by Sub 1 will include the period during which Distributing held each of the Miscellaneous Assets. (Section 1223(2).)

The Contribution and the Distribution

- (10) The Contribution together with the Distribution will qualify as a reorganization

within the meaning of section 368(a)(1)(D). Distributing and Controlled will each be “a party to the reorganization” within the meaning of section 368(b).

- (11) Distributing will recognize no gain or loss on the Contribution. (Sections 361(a) and 357(a).)
- (12) Controlled will recognize no gain or loss on the Contribution. (Section 1032(a).)
- (13) The basis of each share of Sub 1 stock received by Controlled will be the same as the basis of the share in the hands of Distributing immediately before the Contribution. (Section 362(b).)
- (14) The holding period for each share of Sub 1 stock received by Controlled will include the period during which Distributing held the share. (Section 1223(2).)
- (15) Distributing will recognize no gain or loss on the Distribution. (Section 361(c).)
- (16) No gain or loss will be recognized (and no amount will be included in the income of) the shareholders of Distributing on the receipt of the stock of Controlled. (Section 355(a)(1).)
- (17) The basis of the Distributing stock and the Controlled stock in the hands of the shareholders of Distributing after the Distribution will be the same as the basis of the Distributing stock held by them, allocated between the Distributing stock and the Controlled stock in proportion to the fair market value of each in accordance with Treas. Reg. §§ 1.358-1(a) and 1.358-2(a)(2). (Sections 358(a) through (c).)
- (18) The holding period of the Controlled stock received by the shareholders of Distributing will include the holding period of their Distributing stock with respect to which the Distribution was made, provided that such Distributing stock is held as a capital asset on the date of the Distribution. (Section 1223(1).)
- (19) The receipt by Distributing shareholders of cash in lieu of fractional shares of Controlled stock will be treated for federal income tax purposes as if the fractional shares had been distributed to the Distributing shareholders as part of the Distribution and then had been disposed of by such shareholders for the amount of such cash in a sale or exchange. Provided the fractional share interest is a capital asset in the hands of the recipient shareholder, the gain or loss will constitute capital gain or loss subject to the provisions and limitations of Subchapter P of Chapter 1 of the Code.
- (20) As provided in section 312(h), proper allocation of earnings and profits between Distributing and Controlled will be made in accordance with Treas. Reg.

§§ 1.312-10(a) and 1.1502-33.

- (21) Any payments between Distributing and Controlled that are made after the Distribution pursuant to Agreement A, Agreement B, or Agreement E with respect to obligations that (i) have arisen or will arise for a taxable period ending on or before the Distribution or for a taxable period beginning before but ending after the Distribution, and (ii) will not become fixed and ascertainable until after the Distribution, will be treated as occurring before the Distribution. (See Arrowsmith v. Commissioner, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.)

CAVEATS

No opinion is expressed about the federal income tax consequences of the Proposed Transaction under other provisions of the Code or regulations or the federal income 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 Proposed Transaction satisfies the business purpose requirement of Treas. Reg. § 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, Controlled, or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); and
- (iii) Whether the Proposed Transaction 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 either Distributing or Controlled (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

PROCEDURAL STATEMENTS

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. 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.

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.

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

Sincerely,

Joanne M. Fay
Chief, Branch 2
Office of the Associate Chief Counsel
(Corporate)

cc: