

INTERNAL REVENUE SERVICE

Index Numbers: 0355.01-00

0368.04-00

Number: **199904013**

Release Date: 1/29/1999

CC:DOM:CORP:4 PLR-113431-98

October 28, 1998

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

LLC 1 =

LLC 2 =

FSub 1 =

PLR-113431-98

-2-

FSub 2 =

FSub 3 =

FSub 4 =

FSub 5 =

FSub 6 =

FSub 7 =

FSub 8 =

FSub 9 =

FSub 10 =

FSub 11 =

FSub 12 =

FNewco 1 =

FNewco 2 =

FNewco 3 =

FNewco 4 =

FNewco 5 =

Business A =

Business A1 =

Business B =

Business C =

Dear Mr. Cavanaugh:

We respond to your letter dated June 29, 1998 requesting rulings on certain federal income tax consequences of a proposed transaction. The information submitted is summarized below.

The rulings contained in this letter are based on the facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. Verification of this information may be required as part of the audit process.

Summary of Facts

Publicly traded Distributing is the holding company parent of a consolidated group and has only common stock outstanding. Attached to each share of common stock is a purchase right not exercisable or transferable separately from the common unless and until certain events (generally involving changes in control of Distributing) occur (cumulatively, the "Shareholder Rights").

Distributing wholly owns Controlled, Sub 1, and LLC 1. Controlled wholly owns LLC 2. Sub 1 wholly owns Sub 2, Sub 3, Sub 4, FSub 6, FSub 7, FSub 9, FSub 10, FSub 12, and, except for a nominal interest held by LLC 1, FNewco 5. Sub 2 wholly owns FSub 1. Sub 3 wholly owns FSub 2 and FSub 3. FSub 10 wholly owns FSub 4 and FSub 11. FSub 4 wholly owns FSub 5. FSub 11 wholly owns FSub 8.

Distributing conducts Business A through Controlled, Business B through LLC 1, and Business C through Sub 1. We have received financial information indicating that Business A of Controlled and Business B of LLC 1 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 and certain of its subsidiaries have employee savings programs that invest savings contributions in, among other things, Distributing stock (the "Savings Plans"). Each of the Savings Plans qualifies under § 401 of the Internal Revenue Code.

Distributing's management has determined, based on the advice of consultants and on other information, that the separation of Business A from Businesses B and C will permit the management of each to focus more efficiently on the development of its business.

Proposed Transactions

To accomplish this separation, Distributing proposes the following series of transactions:

(i) LLC 2 will transfer to Controlled the intellectual property associated with certain Business A assets.

(ii) Controlled will transfer Business A1 and the membership interest in LLC 2 to a newly formed corporation ("Newco") and distribute Newco to Distributing (the "Internal Distribution").

(iii) To facilitate the realignment of Business A under Controlled, Distributing will restructure its foreign operations by separating certain Business A stock and assets from its indirect foreign subsidiaries engaged in other businesses (the "Restructuring Steps") and transferring the stock and assets to Controlled. The Restructuring Steps will include, but not be limited to, the following:

(a) Controlled will form FNewco 1 with a cash contribution and FNewco 1 will purchase the Business A assets of FSub 1.

(b) FSub 3 will purchase the Business A assets of FSub 2.

(c) Sub 3 will distribute FSub 3 to Sub 1, Sub 1 will distribute FSub 3 to Distributing, and Distributing will contribute FSub 3 to Controlled.

(d) Controlled will purchase FNewco 3 from an unrelated third party, and FSub 12 will transfer its Business A assets to FNewco 3 in exchange for the assumption by FNewco 3 of certain FSub 12 liabilities.

(e) Controlled will form FNewco 4, and FNewco 4 will purchase the Business A assets of Sub 4.

(f) FSub 8 will purchase the Business A assets of FSub 9.

(g) Sub 1 will form FNewco 2 with a cash contribution. FSub 5 will elect under § 301.7701-3 of the Income Tax Regulations to be treated as an unincorporated division of FSub 4 and distribute cash to FSub 4. FSub 4 will sell FSub 5 to FNewco 2. Sub 1 will contribute FSub 6 and FSub 7 to FNewco 2. FSub 8 will purchase certain Business A assets from FSub 9. FSub 8 will elect under § 301.7701-3 to be treated as an unincorporated division of FSub 11 and will distribute cash to FSub 11. FSub 11 will sell its interest in FSub 8 to FNewco 2. Sub 1 will distribute FNewco 2 to Distributing, and Distributing will contribute FNewco 2 to Controlled. LLC 1 will sell its minority interest in FNewco 5 to FNewco 2, Sub 1 will distribute FNewco 5 to Distributing, and Distributing will contribute FNewco 5 to Controlled.

The Restructuring Steps that involve transfers of Business A stock and assets by Distributing to Controlled will be referred to collectively as the "Contribution."

(iv) Distributing will distribute the Controlled stock pro rata to its shareholders (the "Distribution"). Distributing shareholders will receive cash in lieu of fractional Controlled shares. Before the Distribution, Distributing and Controlled will have entered into a tax sharing agreement (the "Tax Sharing Agreement").

(v) Distributing will amend the Savings Plans to reflect the receipt of Controlled stock.

Representations

Distributing has made the following representations concerning the transactions described above in steps (iii) and (iv) (the "Transaction"):

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

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

(c) The total adjusted basis and fair market value of the assets transferred by Distributing to Controlled will, in each instance, equal or exceed the sum of (i) the liabilities assumed by Controlled, (ii) any liabilities to which the transferred assets are subject, and (iii) the fair market value of any other property (including money) distributed to Distributing shareholders under the plan of reorganization or to Distributing creditors in connection with the reorganization.

(d) The liabilities assumed by Controlled in the transaction and any liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.

(e) The Distribution is being carried out as part of a plan to allow the management of each business more efficiently to focus its efforts on the development of that business. The Distribution is motivated in whole or substantial part by this corporate business purpose.

(f) Apart from debt that will arise in the ordinary course of business between Distributing and Controlled, no debt will exist between the two corporations at the time of, or after, the Distribution.

(g) Any indebtedness owed by Controlled to Distributing after the Distribution will not be stock or securities under § 355.

(h) Neither Distributing nor Controlled is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).

(i) The five years of financial information submitted on behalf of Distributing and Controlled represent each corporation's present operations, and, regarding each corporation, there have been no substantial operational changes since the date of the last

financial statements submitted.

(j) There is no plan or intention to liquidate either Distributing or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either after the Transaction, except in the ordinary course of business.

(k) There is no plan or intention by any Distributing shareholder who owns five percent or more of the stock of Distributing, and the management of Distributing, to its best knowledge, is not aware of any plan or intention on the part of any particular remaining shareholder of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any stock in either Distributing or Controlled after the Transaction.

(l) There is no plan or intention by either Distributing or Controlled, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the Distribution other than through stock repurchases meeting the requirements of § 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696, 705, and occasional purchases from the Savings Plans.

(m) Payments made in all continuing transactions between Distributing and Controlled will be for fair market value based on terms and conditions comparable to those that would be arrived at by parties bargaining at arm's length.

(n) The payment of cash in lieu of fractional shares of Controlled is solely for the purpose of avoiding the expense and inconvenience of issuing fractional shares and does not represent separately bargained for consideration. The method used for handling fractional share interests is designed to limit the amount of cash received by any one shareholder to less than the value of one full share of Controlled common stock.

(o) If rights similar to the Shareholder Rights ("Controlled Rights") are attached to Controlled stock in the Distribution, the rights will not be traded apart from the Controlled stock before the occurrence of certain triggering events. Before the occurrence of the events to be specified, the Shareholder Rights may be redeemed by Controlled. At the time the Controlled stock is issued to Distributing, and at the time of the Distribution, the likelihood that the Shareholder Rights would be exercised will be both remote and uncertain.

(p) 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 of the Income Tax Regulations 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, any excess loss account Distributing may have in Controlled stock will be included in income immediately before the Distribution (see § 1.1502-19).

Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows on the Transaction:

(1) The Contribution, followed by the Distribution, will be a reorganization under § 368(a)(1)(D). Distributing and Controlled will each be "a party to a reorganization" under § 368(b).

(2) No gain or loss will be recognized by Distributing on the Contribution (§§ 361(a) and 357(a)).

(3) No gain or loss will be recognized by Controlled on the Contribution (§ 1032(a)).

(4) The basis of each Business A asset received by Controlled will equal the basis of that asset in the hands of Distributing immediately before its transfer (§ 362(b)).

(5) The holding period of each Business A asset received by Controlled will include the period during which that asset was held by Distributing (§ 1223(2)).

(6) No gain or loss will be recognized by Distributing on the Distribution (§361(c)(1)).

(7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the Distributing shareholders on their receipt of Controlled stock in the Distribution (§ 355(a)(1)).

(8) The aggregate basis of Distributing and Controlled stock in the hands of a Distributing shareholder after the Distribution will equal the aggregate basis of the Distributing stock held immediately before the Distribution, allocated between the Distributing stock and the Controlled stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(b)(2)).

(9) The holding period of the Controlled stock received by a Distributing shareholder will include the holding period of the Distributing stock on which the Distribution is made, provided the stock is held as a capital asset on the date of the Distribution (§ 1223(1)).

(10) As provided in § 312(h), proper allocation of earnings and profits between Distributing and Controlled will be made under § 1.312-10(a).

(11) Any payment of cash in lieu of a fractional share interest in Controlled will be treated for federal income tax purposes as if the fractional share interest had been issued in the Distribution and then had been redeemed by Controlled. The cash payment will be treated as having been received in exchange for the constructively redeemed fractional share under § 302(a) (Rev. Rul. 66-365, 1966-2 C.B. 116; Rev. Proc. 77-41, 1977-2 C.B. 574).

(12) Provided that, at the time of the Distribution, any Controlled Rights remain contingent, non-exercisable, and subject to redemption if issued, the receipt of these rights by Distributing or its shareholders will not be a distribution or receipt of property, an exchange of stock or property (either taxable or nontaxable), or any other event giving rise to the realization of gross income by either Distributing, Controlled, or the Distributing shareholders (Rev. Rul. 90-11, 1990-1 C.B. 10).

(13) Payments made by Distributing to Controlled or by Controlled to Distributing under the Tax Sharing Agreement (i) that have arisen or will arise for a taxable period ending before the Distribution or for a taxable period beginning on or before and ending after the Distribution and (ii) that will not become fixed and ascertainable until after the Distribution will be treated as occurring immediately before the Distribution.

Caveats

We express no opinion on the tax effects of the transaction under other provisions of the Code and regulations, or the tax effects of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

- (i) The Internal Distribution;
- (ii) The Savings Plan amendments under §§ 83, 162(m), or 421 through 424;
- (iii) The Restructuring Steps; or
- (iv) The validity or consequences of any election under § 301.7701-3 made by any entity involved in the Restructuring Steps.

In addition, no opinion is expressed under:

(v) Section 367(a)(1) and (b) regarding the contribution by Sub 1 of FSub 6 and FSub 7 stock to FNewco 2, or the deemed contribution of FNewco 5 stock by Distributing to FNewco 2. See § 1.367(a)-3(a) and (b) and § 1.367(a)-8;

(vi) Section 367(a) regarding contributions of cash (if the cash was appreciated foreign currency) by U.S. members of the group to foreign members;

(vii) Sections 367(b) and 1248(f) regarding the distribution of FSub 3 by Sub 3 to Sub 1 and by Sub 1 to Distributing, the distribution of FNewco 2 by Sub 1 to Distributing, or the distribution of FNewco 5 by Sub 1 to Distributing. Sections 7.367(b)-10(b) and 7.367(b)-10(d)-(f);

(viii) Section 367(b) regarding the deemed liquidation of FSub 5 into FSub 4. Sections 7.367(b)-1(c) and (d) and 7.367(b)-(5)(c);

(ix) Sections 881, 882, 897, or 951 regarding the dividend from FSub 8 to FSub 11, the sale by Sub 4 of Business A assets to FNewco 4, the sale by FSub 1 of Business A assets to FNewco 1, the sale by FSub 2 of Business A assets to FSub 3, the sale by FSub 9 of Business A assets to FSub 8, the sale of FSub 8 by FSub 11 to FNewco 2, or the sale by FSub 12 of Business A assets to FNewco 3.

Procedural Statements

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3)

provides that it may not be used or cited as precedent.

Each taxpayer involved in the transaction should attach a copy of this letter to the taxpayer's federal income tax return for the taxable year in which the transaction is completed.

In accordance with the power of attorney on file in this office, a copy of this letter is being sent to the taxpayer.

Sincerely,

Assistant Chief Counsel (Corporate)

By: _____
Wayne T. Murray
Senior Technician/Reviewer
Branch 4