

Internal Revenue Service

Department of the Treasury

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Date:

November 9, 2001

Distributing =

Controlled =

Corp1 =

#a =

#b =

#c =

a =

Year1 =

Type A =

Date 1 =

This letter is in reply to your letter dated October 10, 2001, requesting supplemental rulings regarding the distribution by Distributing to its shareholders of the stock of Controlled, a directly wholly owned subsidiary of Distributing formed on Date 1 (the "Distribution").

The Internal Revenue Service ("IRS") issued a ruling letter, dated July 11, 2001, (the "Prior Ruling"), concerning the federal income tax consequences of the Distribution and related transactions. The Prior Ruling included rulings to the effect that Distributing would not recognize gain or loss as a result of the Contribution of property to Controlled and the Cash Distribution received from Controlled, and that the Distribution would qualify for tax-free treatment under Section 355.

All capitalized terms in this supplemental ruling request not otherwise defined

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herein have the meanings assigned to them in the Prior Ruling and all identifying and other factual information, representations and discussions of authority set forth in (the "Original Ruling request") dated December 19, 2000 are hereby incorporated by reference.

As described in the Original Ruling Request, Controlled will borrow approximately #a prior to the Distribution and will use the proceeds of this borrowing (i) to increase working capital and (ii) to distribute approximately #b to Distributing in connection with the Contribution. Distributing will use all of the proceeds of the #b distribution to pay down its existing debt, including commercial paper, and to buy back shares on the open market within a from the Distribution Date. It was expected that Controlled would borrow these funds from third parties. Accordingly, Distributing made the following representation:

No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution, other than as may arise by reason of financing activities or the provision of goods and services in the ordinary course of business at arm's length terms or under certain transition contracts between the parties. Indebtedness owed by Controlled to Distributing immediately after the Distribution, if any, will not constitute stock or securities.

Consistent with the information provided by Distributing to the IRS, Distributing and Controlled entered into negotiations with an unrelated financial institution (the "Lead Arranger") for the purpose of establishing a #a credit facility. The terms of a credit facility have been substantially negotiated. At this point, the Lead Arranger and the borrower typically would market the deal, seeking commitments from other financial institutions to participate as lenders in the credit facility. However, the Lead Arranger has recently informed Distributing that, as a reaction to the September 11, terrorist attacks in the United States, the overall credit markets for Type A credits such as the ones planned to be utilized by Controlled are, from a practical perspective, closed at this time. While it is anticipated that this is a temporary market phenomenon, Distributing's financial advisors do not believe it is likely that this disruption in the institutional lending markets will be resolved before the end of Year1. Accordingly, there is only a remote possibility that Controlled would be able to establish a credit facility with third party lenders in the next several weeks, which would be necessary in order to promptly complete the Distribution. (Distributing has publicly announced that it plans to complete the Distribution before the end of the fourth quarter of Year1.) Distributing believes that failure to complete the Distribution as promptly as possible would have significant adverse effects on Distributing.

To resolve the situation without unduly delaying the Distribution, Distributing proposes to take the following new steps.

1. On a date prior to the Distribution, Corp1 and Controlled will enter into a #a credit facility under which Controlled will borrow

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approximately #b from Corp1 (the "Loan").

2. The Loan will have (i) a non-renewable term of a, (ii) an arm's length interest rate and (iii) other terms and conditions customary in similar arm's length loans. In addition, Controlled will have a right to repay the Loan at any time without penalty and it will be required to repay the Loan as soon as it enters into a new credit facility, or otherwise refinances the loan, with unrelated parties.
3. On a date prior to the Distribution, Controlled will distribute #b to Distributing in connection with the Contribution (the "Cash Distribution").
4. As soon as practicable, but in no event later than the maturity date of the Loan, Controlled will enter into a new #a credit facility, or will otherwise refinance the Loan, with unrelated parties.
5. Immediately thereafter, Controlled will use the proceeds of this refinancing to repay the Loan.
6. Distributing will use all of the proceeds of the Cash Distribution to pay down its existing debt, including commercial paper, and to buy back shares on the open market within a from the Distribution Date.

As described in the Original Ruling Request, immediately after the Contribution, Distributing will own all of the outstanding stock of Controlled. In the Distribution, Distributing will distribute to its shareholders stock constituting control of Controlled within the meaning of section 368(c). Although Controlled will borrow from an affiliate of Distributing, such borrowing will have a term of a and will likely be repaid prior to maturity. Therefore, the Loan will not constitute a security for tax purposes. Because the Loan will not be a "security", Distributing will not own any stock or securities of Controlled after the Distribution.

Thus, the proposed transaction will meet the "control" requirements of Sections 355(a)(1)(A), 355(a)(1)(D), 368(a)(1)(D) and 368(c) of the Code.

The Distribution is not being used principally as a device for the distribution of earnings and profits of Distributing, Controlled or any other relevant corporation. The Distribution serves a valid corporate business purpose. The IRS accepted these purposes and issued a favorable Prior Ruling. The need for the Loan arises from a change in market conditions that is unrelated to the Distribution and that was not foreseen by Distributing at the time it submitted the Original Ruling Request. The purpose of this Loan is to provide temporary financing that would permit the Distribution to proceed without further delay. These factors establish the absence of a device to distribute the earnings and profits of Distributing and Controlled.

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The following additional representations have been made in connection with the proposed transaction.

- (a) The indebtedness owed by Controlled to Distributing after the Distribution of the Controlled stock will not constitute stock or securities.
- (b) Controlled will repay or otherwise refinance the Loan with unrelated parties no later than a after the Distribution of Controlled's stock. Likewise, should it become possible for Controlled to establish a multi year credit facility with third party lenders on the basis of Corp1's agreement to participate in such a credit facility, (i) Corp1 would expect to provide less than #c of the credit facility, and (ii) Corp1 will cease to be a lender under such credit facility (due to the refinancing of the credit facility to an unrelated party or Corp1's disposition of its interest in the obligation to an unrelated party) no later than a after the Distribution of Controlled's stock.
- (c) All of the representations made by Distributing contained in the ruling letter control number PLR-132455-00, other than the representation concerning indebtedness, remain true as of the current date.

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

- (1) No gain or loss will be recognized by Distributing upon the Cash Distribution followed by the transfer of the proceeds of the Cash Distribution to creditors or shareholders of Distributing. No gain or loss will be recognized by Distributing or Corp1 as a result of making the Loan or Controlled's repayment of the Loan in accordance with its terms. Section 361(b).
- (2) The Distribution will qualify as a transaction described in Section 355(a)(1) and will not constitute a "disqualified distribution" described in Section 355(d). No gain or loss will be recognized by Distributing upon the Distribution of all of its stock in Controlled. Section 361(c)(1).
- (3) No gain or loss will be recognized by (and no amount will be included in the income of) the Distributing shareholders upon their receipt of Controlled stock in the Distribution. Section 355(a)(1).

No opinion is expressed about the tax treatment of the proposed transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction that are not directly covered by the above rulings.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. A copy of this letter

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should be attached to the federal income tax returns of the taxpayers involved for the taxable year in which the transaction covered by this ruling letter is consummated.

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 yours,
Alfred C. Bishop, Jr.
Branch Chief, Branch 6
Office of Associate Chief Counsel
(Corporate)