

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:1- PLR-136365-02

Date:
November 5, 2002

Legend

Distributing =

Controlled =

Subsidiary 1 =

Subsidiary 2 =

Subsidiary 3 =

Subsidiary 4 =

Subsidiary 5 =

Subsidiary 6 =

Subsidiary 7 =

Subsidiary 8 =

LLC 1 =

Partnership 1 =

Partnership 2 =

Business 1 =

Business 2 =

Date A =

o =

p =

q =

r =

s =

t =

u =

v =

w =

x =

State A =

State B =

Dear :

This letter responds to your letter dated June 28, 2002, in which supplemental rulings were requested with respect to our initial ruling letter dated May 22, 2002. Additional information was submitted in letters dated September 12, September 27, October 10, and October 29, 2002. The information submitted for consideration is summarized below.

Distributing is an accrual basis State A corporation and the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Distributing is indirectly engaged through its direct and indirect subsidiaries and partnerships in Business 1 and Business 2. Distributing wholly owns, directly or indirectly, a number of entities, including Subsidiary 1, Subsidiary 2, Subsidiary 3, Subsidiary 4, Subsidiary 5, Subsidiary 6, and Subsidiary 7. Distributing owns an o% limited partnership interest in Partnership 1 and Subsidiary 3 owns the remaining p% general partnership interest in Partnership 1. Subsidiary 6 owns, directly and through a related partnership, an approximately q% interest in the general partner that operates Partnership 2; Subsidiary 6 also owns, directly and through a single-member limited liability company, an r% limited partnership interest in Partnership 2.

As of Date A, Distributing had outstanding approximately s shares of a single class of common stock, which is widely held and publicly traded, and t shares of a single class of convertible redeemable preferred stock, which is privately held. As long as all cumulative cash dividends are paid timely (which will be the case immediately prior to the proposed spin-off), the holders of the preferred stock are not entitled to vote on or participate in the distribution. Upon a distribution of a subsidiary's stock, the conversion price of the preferred stock is adjusted to reflect the fair market value of the distributed subsidiary stock, so that the preferred shareholders' proportionate ownership interest in the Distributing group is maintained.

Prior to the transaction described below, Distributing was indirectly engaged in Business 1 through Subsidiary 1, Subsidiary 2, Subsidiary 3, Subsidiary 4, and Partnership 1. Distributing was indirectly engaged in Business 2 through Subsidiary 4 and also through its interests in Partnership 2.

Controlled is an accrual basis corporation formed under the laws of State A. Controlled will have outstanding solely common stock. Employees of Controlled have been issued shares of restricted common stock.

Financial information has been submitted indicating that Distributing's Business 1 and Business 2 each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Financial information, including a detailed opinion from an independent investment advisor, has been submitted indicating that a separation of Business 1 and Business 2 will enable Distributing and Controlled to obtain significant cost savings through access to capital to fund operations, capital expenditures, acquisitions and other business needs at a reduced borrowing cost.

Accordingly, the following transaction has been proposed:

(i) Subsidiary 4 will convert to a single-member limited liability company and will be renamed LLC 1. LLC 1 will elect pursuant to Treas. Reg. § 301.7701-3 to be disregarded for federal income tax purposes.

(ii) Partnership 1 will change its name and incorporate Subsidiary 8 by contributing nominal cash in exchange for all of its stock.

(iii) Partnership 1 will elect to be classified as an association under Treas. Reg. § 301.7701-3 and will be treated as contributing all of its assets and liabilities to a new corporation ("Controlled") in exchange for Controlled stock and, immediately thereafter, liquidating by distributing the stock of Controlled to its partners. It has been represented that the conversion of Partnership 1 into Controlled will qualify as a tax-free transaction under §§ 351 and 731 of the Internal Revenue Code.

(iv) Subsidiary 3 will adopt a plan of complete liquidation and will distribute all of its assets to Distributing with the exception of its interest in Partnership 1 (which will be treated as a stock interest for federal tax purposes).

(v) Distributing will contribute to Controlled: (1) all of the stock that it owns in Subsidiary 1, Subsidiary 2, Subsidiary 5, and Subsidiary 7, (2) all assets and liabilities related to the operations of Business 1 that Distributing holds directly, and (3) the outstanding intercompany indebtedness owed to Distributing by subsidiaries engaged in

Business 1 (the "Contribution").

(vi) Partnership 1 will be converted under State A and State B law into a corporation.

(vii) Subsidiary 3 will complete its plan of liquidation into Distributing by distributing its interest in former Partnership 1.

(viii) Controlled may, depending on public market conditions, sell to the public, an initial public offering shares of common stock in an amount slightly less than v% of the total shares of Controlled common stock, measured in terms of both vote and value, outstanding after such sale.

(ix) If Controlled does not conduct the public offering prior to the Distribution (defined below), Distributing may contribute up to \$w to the capital of Controlled for Controlled to pay down its debt.

(x) Distributing will distribute to the holders of Distributing common stock approximately one share of Controlled common stock held by Distributing for each share of Distributing common stock (the "Distribution"). Cash will be paid in lieu of any fractional share interests in Controlled.

(xi) If Controlled does not conduct the public offering prior to the Distribution, Controlled may sell, depending on market conditions, common stock in a secondary offering within twelve (12) months after the Distribution.

The following representations have been made with respect to the transactions described in steps (v), (viii), (ix), and (x) above:

(aa) Any indebtedness between Distributing and Controlled after the Distribution will not constitute stock or securities.

(bb) Except to the extent that the receipt of Controlled restricted stock by a certain holder of Distributing restricted stock may constitute compensatory income for federal tax purposes, no part of the consideration to be distributed in the Distribution will be received by a Distributing common shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing

(cc) The five years of financial information submitted on behalf of Subsidiary 4 is representative of the corporation's present operations, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(dd) The five years of financial information submitted on behalf of Subsidiary 3

and Partnership 1 is representative of the entities' present operations, and with regard to such entities, there have been no substantial operational changes since the date of the last financial statements submitted.

(ee) Following the Distribution, Distributing (through LLC 1) and Controlled will each continue the active conduct of its respective business or businesses, independently and with separate employees, except that the two corporations will share the services of x individuals. Any amounts paid to common officers and directors by Controlled or Distributing will be paid on an arm's length basis by the corporation receiving such services.

(ff) The Distribution is to be carried out for the following corporate business purpose: cost savings. The Distribution is motivated, in whole or substantial part, by this corporate business purpose.

(gg) There is no plan or intention by any shareholder who owns 5% 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 (except for one shareholder who may sell shares of Distributing stock either before or after the spin) or security holder of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, either Distributing or Controlled after the Distribution.

(hh) 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 purchases meeting the requirements of section 4.05(1)(b) of Rev. Proc. 96-30.

(ii) 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 corporation after the transaction, except in the ordinary course of business.

(jj) The total adjusted bases and the fair market values of the assets transferred to Controlled by Distributing in the Contribution each equals or exceeds the sum of the liabilities assumed (as determined under § 357(d)).

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

(ll) The income tax liability for the taxable year in which investment credit property (including any building to which § 47(d) applies) is transferred will be adjusted pursuant to § 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law

101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect an early disposition of the property.

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

(nn) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution other than any indemnification payments incurred under a tax sharing agreement and any indebtedness that may arise in connection with any transitional services or other intercompany agreements. Certain subsidiaries of Distributing will be indebted to Controlled after the Distribution.

(oo) 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. Furthermore, Distributing's excess loss account, if any, with respect to the stock of Controlled or any direct or indirect subsidiaries of Controlled will be included in income immediately before the Distribution.

(pp) Payments made in connection with all continuing transactions 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.

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

(rr) The payment 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. The total cash consideration that will be paid instead of issuing fractional shares of Controlled stock will not exceed 1% of the total consideration that will be issued pursuant to the Distribution. The fractional share interests will be aggregated, and no holder of Distributing common stock will receive cash in an amount greater than the value of one full share of Controlled stock.

(ss) The Distribution is not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire directly or indirectly stock possessing 50% or more of the total combined voting power of all classes of stock of either Distributing or Controlled, or stock possessing 50% or more of the total value of all classes of stock of either Distributing or Controlled.

(tt) At the time of the Distribution, Distributing will own stock of Controlled constituting "control" as defined in § 368(c).

Based solely on the facts submitted and the representations made above, it is

held as follows:

- (1) The Contribution and Distribution will, collectively, qualify as a “reorganization” within the meaning of § 368(a)(1)(D). Distributing and Controlled will each be “a party to a reorganization” within the meaning of § 368(b).
- (2) Distributing will recognize no gain or loss upon the transfer of the assets of Business 1 (including the subsidiaries engaged in Business 1) to Controlled in exchange for Controlled stock and the assumption of liabilities (§§ 361(a) and 357(a)).
- (3) Controlled will recognize no gain or loss on the receipt of assets in exchange for Controlled stock and the assumption of liabilities (§ 1032(a)).
- (4) Controlled’s basis in each asset received from Distributing will be equal to the basis of such asset in the hands of Distributing immediately prior to the transfer of assets to Controlled (§ 362(b)).
- (5) Controlled’s holding period for each asset received from Distributing will include the period during which Distributing held such asset (§ 1223(2)).
- (6) Distributing will recognize no gain or loss upon the distribution of Controlled to the Distributing shareholders (§§ 355(c) and 361(c)).
- (7) Distributing shareholders will recognize no gain or loss (and no amount will be included in the income of the Distributing shareholders) upon receipt of the Controlled stock (§ 355(a)(1)).
- (8) The aggregate basis of the Distributing stock and the Controlled stock held by each Distributing common shareholder will equal the aggregate basis of such shareholder’s Distributing stock 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 Treas. Reg. § 1.358-2(a)(2) (§ 358(a)(1) and (b)).
- (9) The holding period of the Controlled stock received by Distributing’s shareholders will include the holding period of the Distributing stock with respect to which the Distribution is made, provided that such Distributing 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 in accordance with Treas. Reg. §§ 1.312-10 and 1.1502-33(e).
- (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 redeemed by Controlled. The cash payment will be treated as having been received in exchange for the constructively redeemed fractional share under § 302(a).

No opinion is expressed about the tax treatment of the 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 transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed (and no ruling was requested) regarding the following:

- (a) The validity of any election under Treas. Reg. § 301.7701-3 made with respect to LLC 1;
- (b) The tax consequences of the transactions described in steps (iii), (iv), and (vii); and
- (c) Any tax effects of Treas. Reg. § 1.1502-13(g).

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 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.

The rulings contained in this letter are predicated upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by the appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as part of the audit process.

Pursuant to the power of attorney on file in this office, a copy is being sent to your representatives.

Sincerely,

Associate Chief Counsel (Corporate)

By _____

Michael J. Wilder

Senior Technician Reviewer, Branch 1