

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:Corp:B06-PLR-144084-02

Date:

February 4, 2003

LEGEND

Distributing =

Controlled =

Parent =

State A =

Country A =

Country B =

Country C =

Business A =

Business B =

Operation A1 =

Operation B1 =

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Sub 1 =

Sub 2 =

LLC =

Corporation =

Year 1 =

Year 2 =

Year 3 =

n1 =

n2 =

n3 =

n4 =

n5 =

p1% =

p2% =

p3% =

p4% =

Dear Mr. :

We respond to your August 5, 2002 request for rulings regarding certain federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated October 23, 2002, November 5, 2002, December 13, 2002, and January 30, 2003. The information submitted for consideration is summarized below.

SUMMARY OF FACTS

Parent is a publicly traded State A corporation that was incorporated in Year 1. Parent engages in Business A and Business B directly and indirectly through its subsidiaries.

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Distributing, a wholly-owned subsidiary of Parent, is a Country A corporation that was incorporated in Year 2. Distributing engages in Operation A1, a component of Parent's Business A. Distributing has one class of stock outstanding: its common stock ("Distributing Common Stock"). Distributing has n1 shares of Distributing Common Stock issued and outstanding, all of which is owned by Parent.

Controlled is a Country B corporation that was incorporated in Year 3. Controlled engages in Operation B1, a component of Parent's Business B. Controlled has one class of stock outstanding, its common stock ("Controlled Common Stock"). Controlled has n2 shares of Controlled Common Stock issued and outstanding. Distributing owns n3 shares (approximately p1%) of the issued and outstanding Controlled Common Stock. n4 shares (approximately p2%) of Controlled are held by nominees (n5 shares each), which consist of Parent and officers of Parent (collectively, the "Nominees").

Financial information has been received that indicates that Business A, Business B, Operation A1 and Operation B1 have each had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past 5 years.

PROPOSED TRANSACTION

Parent and Corporation, a publicly traded Country C corporation unrelated to Parent, have agreed to form LLC, a newly formed U.S. limited liability company that will be treated as a partnership for U.S. federal tax purposes. Corporation conducts its own Business B independent of Parent's Business B. Both Parent and Corporation will contribute assets related to their respective Business B to LLC as part of the Proposed Transaction (defined below). Subsequent to the Proposed Transaction (defined below), LLC will perform Business B both directly and indirectly through subsidiaries (including Controlled, which will perform Operation B1 for LLC). Parent believes that the formation of the joint venture in which its Business B and Corporation's Business B will be combined will facilitate Parent's competitiveness in this market.

In order to facilitate its entry into the joint venture with Corporation, Parent proposes the following series of steps comprising an integrated transaction (collectively, the "Proposed Transaction"):

- (i) Distributing will distribute its entire interest representing p1% of the then outstanding shares of Controlled to its sole shareholder, Parent (the "Distribution"). Parent will not surrender any shares in Distributing in connection with the Distribution.
- (ii) Parent will transfer all of its stock in Controlled, stock in certain other subsidiaries engaged in Business B, and certain of its directly owned Business B assets (including certain intellectual property) to a newly formed domestic subsidiary, Sub 1, in exchange for all of the stock of Sub 1 ("Contribution 1").

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- (iii) Sub 1 will contribute all of the assets it receives in Contribution 1 to a newly formed domestic subsidiary, Sub 2, in exchange for all of the stock of Sub 2 ("Contribution 2").
- (iv) Sub 2 will contribute all of the assets it receives in Contribution 2 to LLC in exchange for a p3% interest in the profits and losses and all other tax items of LLC ("Contribution 3"). Corporation (through a subsidiary) will contribute assets relating to its Business B to LLC in exchange for the remaining p4% interest in profits and losses and all other tax items of LLC.

The Proposed Transaction will result in LLC owning p1% of Controlled and the Nominees owning the remaining p2% of Controlled.

REPRESENTATIONS

The following representations have been made in connection with the Proposed Transaction:

- (a) The 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 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (c) The 5 years of financial information submitted on behalf of Distributing is representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statement submitted.
- (d) The 5 years of financial information submitted on behalf of Controlled is representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statement submitted.
- (e) Following the Proposed Transaction, Distributing and Controlled will each continue the active conduct of its business, independently and with its separate employees.
- (f) The Distribution will be carried out to facilitate the formation of a joint venture between Parent and Corporation. The Distribution is motivated in whole by this corporate business purpose.
- (g) The Proposed Transaction will commence and be completed within one year of the date of this Private Letter Ruling.

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- (h) There is no plan or intention by the shareholders or security holders 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 except for Contribution 1, Contribution 2 and Contribution 3.
- (i) 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 transaction, other than through stock purchases meeting the requirements of §4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696.
- (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 corporation after the transaction, except for dispositions in the ordinary course of business.
- (k) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Proposed Transaction.
- (l) Except for receivables arising in the ordinary course of business, no intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.
- (m) 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.
- (n) No two parties to the transaction are investment companies as defined in Section §368(a)(2)(F)(iii) and (iv) .
- (o) For purposes of §355(d), immediately after the Distribution, no person (determined after applying §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 Distribution date.

For purposes of §355(d), immediately after the Distribution, no person (determined after applying §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 Distribution date, 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 Distribution date.

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- (p) 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 percent or more of the total combined voting power of all classes of either Distributing or Controlled stock entitled to vote or stock possessing 50 percent or more of the total value of shares of all classes of stock of either Distributing or Controlled.
- (q) Immediately after the Distribution, the gross assets of Distributing's Operation A1 will have a fair market value of at least 5 percent of the total fair market value of the gross assets of Distributing.
- (r) Immediately after the Distribution, the gross assets of Controlled's Operation B1 will have a fair market value of at least 5 percent of the total fair market value of the gross assets of Controlled.
- (s) Each of Distributing and Controlled is a foreign corporation within the meaning of §7701(a) of the Code. Distributing and Controlled each will be a controlled foreign corporation ("CFC") within the meaning of §957(a) before and immediately after the Proposed Transaction.
- (t) Neither Distributing nor Controlled is a passive foreign investment corporation (PFIC) as defined in §1297(a).
- (u) Following Distributing's distribution of the stock of Controlled to Parent, Parent will compute its pre-distribution and post-distribution amount with respect to Distributing and Controlled, as defined under §1.367(b)-5(e)(1) and (2) of the Income Tax Regulations. To the extent the pre-distribution amount exceeds the post-distribution amount with respect to either Distributing or Controlled, Parent will make basis adjustments and recognize income (if any), as required under the applicable Treasury regulations.
- (v) The contribution of Controlled Common Stock by Parent to Sub1 as part of Contribution 1 will qualify as a nonrecognition exchange under § 351.
- (w) Contribution 2 will qualify as a nonrecognition exchange under §351.
- (x) Contribution 3 will qualify as a nonrecognition exchange under §721.
- (y) At the time of the Proposed Transaction, Parent has no plan to dispose of its ownership interest in Sub 1, Sub 2 or LLC.

RULINGS

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

- (1) Distributing's transfer of the stock of Controlled to Parent is a distribution to which sections 1.367(b)-5(a) and (c) of the Income Tax Regulations apply.
- (2) Except for any income inclusion resulting from the application of sections

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- 1.367(b)-5(a) and (c) of the Income Tax Regulations, no income, gain or loss will be recognized by Parent upon its receipt of the Controlled Common Stock pursuant to the Distribution. (§355(a)(1)).
- (3) No income, gain or loss will be recognized by Distributing upon the distribution to Parent of all of its stock of Controlled pursuant to the Distribution. (§355(c)).
 - (4) The basis of the stock of Distributing and Controlled in the hands of Parent immediately after the distribution will be the same as the aggregate basis of the Distributing stock held immediately before the distribution, allocated in proportion to the fair market value of each in accordance with Treas. Reg. section 1.358-2(a), as adjusted, if necessary pursuant to the provisions of section 1.367(b)-5(c) of the Income Tax Regulations.
 - (5) The holding period of the Controlled Common Stock received by Parent will include the holding period of the Distributing Common Stock with respect to which the distribution of the Controlled Common Stock is made, provided that such Distributing Common Stock is held as a capital asset on the date of the Distribution. (§1223(1)).

CAVEAT

Except as specifically ruled above, no opinion is expressed concerning the federal income tax consequences of the proposed transaction. Specifically, no opinion is expressed regarding whether any or all of the above-referenced foreign corporations are passive foreign investment companies (within the meaning of Code section 1297(a) of the Code and the regulations to be promulgated thereunder). If it is determined that any or all of the above-described foreign corporations are passive foreign investment companies, no opinion is expressed with respect to the application of Code sections 1291 through 1298 to the proposed transactions. In particular, in a transaction in which gain is not otherwise recognized, regulations under section 1291(f) may require gain recognition notwithstanding any other provision of the Code.

Also, no opinion is expressed as to the tax treatment of the transfer of any intellectual property as part of Contribution 1, Contribution 2 or Contribution 3, including whether the items transferred constitute "property" (See Rev. Rul. 69-156, 1969-1 C.B. 101).

In addition, no opinion is expressed or implied regarding whether section 721 applies to the contributions to LLC or whether any of sections 704(c)(1)(B), 707(a)(2)(B), or 737 apply to distributions or allocations by LLC.

PROCEDURAL STATEMENTS

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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This ruling is directed only to the taxpayer(s) 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 the federal income tax return of each taxpayer involved in the taxable year in which the transaction is consummated.

Pursuant to a power of attorney on file in this office, we have sent the original of this letter to the taxpayer's representative and a copy of this letter to the taxpayer.

Sincerely yours,

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

cc: