

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

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Refer Reply To:

CC:CORP:B04 – PLR-129161-03

Date:

September 05, 2003

Legend

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

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Purchaser Parent =

Purchaser =

Merger Sub =

Purchaser Sub =

Business A =

Business B =

Business C =

Distributing Class A  
common stock =

Distributing Class B  
common stock =

Controlled Class A =

common stock

Controlled Class B  
common stock =

Purchaser Parent ADRs =

a =

b =

c =

d =

e =

Dear :

This letter responds to your May 1, 2003 request for rulings regarding certain federal income tax consequences of a proposed transaction. The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials 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.

### **Summary of Facts**

Distributing is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Distributing is engaged, directly and indirectly, in Business A, Business B, and Business C.

Distributing has two classes of voting common stock outstanding, Distributing Class A common stock and Distributing Class B common stock, both of which are publicly traded.

Controlled has two classes of voting common stock outstanding, Controlled Class A common stock and Controlled Class B common stock. Distributing directly owns all of the stock of Controlled and Sub 1. Controlled directly owns all of the equity interests of Sub 2. Sub 2 directly owns all of the equity interests of Sub 3. Sub 3 directly owns all of the equity interests of Sub 4. Sub 2, Sub 3, and Sub 4 are limited liability companies that are disregarded entities for federal income tax purposes.

Distributing conducts Business A, directly and through controlled entities. Controlled conducts Business B, directly and through controlled entities, including Sub 2, Sub 3, and Sub 4. Sub 1 conducts Business C directly and through controlled entities.

Financial information has been received indicating that both Business A and Business B have had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Purchaser is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Purchaser owns all of the stock of Merger Sub, a corporation formed for the purposes of effectuating the Merger (as defined below). All of the stock of Purchaser is owned (directly and indirectly) by Purchaser Parent.

The transaction is structured to enable Purchaser Parent to acquire an interest in Controlled as a separate publicly owned company.

### **Proposed Transaction**

To accomplish the separation of Controlled from Distributing and the merger of Merger Sub into Controlled, Distributing has proposed the following transaction (the "Proposed Transaction"):

- (i) Controlled will declare and pay a cash dividend of \$a to Distributing with respect to the outstanding Controlled Class A common stock and Controlled Class B common stock (the "Dividend").
- (ii) Following step (i), Distributing will contribute to Controlled excess shares of Controlled Class A common stock and Controlled Class B common stock so that after the contribution (A) the number of shares of Controlled Class A common stock equals the number of outstanding shares of Distributing Class B common stock and (B) the number of shares of Controlled Class B common stock equals the number of shares of such stock that Distributing will sell to Purchaser pursuant to step (iii) below. Immediately after the adjustment described above, the Controlled Class A common stock will represent an amount of Controlled stock constituting control within the meaning of § 368(c).
- (iii) Following step (ii), Distributing will distribute one share of Controlled Class A common stock in redemption of and in exchange for each outstanding share of Distributing Class B common stock (the "Split-Off").

Simultaneously with and as a condition to the Split-Off, Distributing will sell all of the Controlled Class B common stock to Purchaser for approximately \$b, of which c percent will be paid in cash with the balance paid in cash and/or Purchaser Parent ADRs at Purchaser Parent's election (the "Stock Sale").

- (iv) Immediately following step (iii), Merger Sub will merge with and into Controlled, with Controlled as the surviving corporation (the

“Merger”). Pursuant to the terms of the Merger Agreement: (A) each share of Controlled Class B common stock (all of which will be held by Purchaser) will remain outstanding; (B) all of the stock of Merger Sub will be converted into a number of shares of Controlled Class A common stock such that Purchaser owns, together with the Controlled Class B common stock acquired in the Stock Sale, d percent of the Controlled common stock outstanding immediately following the Merger; and (C) the shares of Controlled Class A common stock distributed in the Split-Off will be converted into e percent of the shares of Controlled Class A common stock outstanding immediately following the Merger and the right to receive from Purchaser an amount of cash, Purchaser Parent ADRs or a combination of both (with the determination of whether to pay cash, Purchaser Parent ADRs or some combination at the option of Purchaser Parent).

- (v) Immediately following step (iv), pursuant to the terms of the Controlled charter as amended in connection with the Merger, each share of Controlled Class B common stock will be converted into one share of Controlled Class A common stock.
- (vi) After step (v), Purchaser will transfer its Controlled Class A common stock to Purchaser Sub, through a series of transfers among wholly owned subsidiaries of Purchaser, in exchange for promissory notes and additional shares of Purchaser Sub stock. Following these transactions, Controlled will have only one class of stock outstanding, Controlled Class A common stock, which will be owned d percent by Purchaser Sub and e percent by the former holders of Distributing Class B common stock.

### **Representations**

The taxpayer has made the following representations concerning the Split-Off:

- (a) The Distributing Class B common stock is stock of Distributing for federal income tax purposes.
- (b) The fair market value of the Controlled Class A common stock to be received by each holder of Distributing Class B common stock pursuant to the Split-Off will be approximately equal to the fair market value of the Distributing Class B common stock surrendered by the shareholder in the exchange.
- (c) No part of the consideration to be distributed by Distributing to Distributing shareholders will be received by a shareholder as a

creditor, employee, or in any capacity other than that of a shareholder of Distributing.

- (d) The five years of financial information submitted on behalf of Distributing is representative of Distributing's present operations, and with regard to Distributing, there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) The five years of financial information submitted on behalf of Controlled is representative of Controlled's present operations, and with regard to Controlled there have been no substantial operational changes since the date of the last financial statements submitted.
- (f) Following the Proposed Transaction, each of Distributing and Controlled will continue the active conduct of its business independently and with its separate employees.
- (g) Immediately after the Split-Off, the gross assets of the businesses actively conducted (as defined in section 355(b)) by each of Distributing and Controlled (either directly or through entities that are disregarded for federal income tax purposes) will have a fair market value equal to at least five percent of the total fair market value of the corporation's gross assets.
- (h) The Split-Off is being carried out to facilitate Purchaser's acquisition of Controlled. The Split-Off is motivated, in whole or substantial part, by this corporate business purpose and other corporate business purposes.
- (i) Other than pursuant to the Merger, the contemplated transfer of Controlled Class A common stock to Purchaser Sub by Purchaser and through ordinary market trading, there is no plan or intention by any shareholder owning five percent or more of Distributing, and the Distributing management, to its best knowledge, is not aware of any plan or intention on the part of any particular remaining shareholder or security holder of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, Distributing or Controlled after the Split-Off.
- (j) 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 Proposed Transaction, other than through stock purchases meeting the requirements of §4.05(1)(b) of Rev. Proc. 96-30, 1996-1C.B. 696, 705.

- (k) 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 Split-Off, except pursuant to the Merger or in the ordinary course of business.
- (l) For purposes of § 355(d), immediately after the Split-Off, 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 date of the Split-Off.
- (m) For purposes of § 355(d), immediately after the Split-Off, 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 date of the Split-Off 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 date of the Split-Off.
- (n) The Split-Off 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 (other than as a result of the Split-Off) directly or indirectly stock possessing 50 percent or more of the total combined voting power of all classes of stock of Distributing or Controlled or stock possessing 50 percent or more of the total value of all classes of stock of Distributing or Controlled.
- (o) No intercorporate debt will exist between Distributing and Controlled at the time of, or after the distribution of the stock of Controlled, other than payables and receivables that arise in the ordinary course of business.
- (p) Immediately before the Split-Off, 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 as in effect before the publication of T.D. 8597, 1995-32

I.R.B. 6 and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, any excess loss account Distributing may have with respect to the Controlled stock will be included in income immediately before the distribution (see § 1.1502-19).

- (q) Other than royalty-free licenses for unidentified, incidental intellectual property covered by an intellectual property agreement between Distributing and Controlled, payments made in connection with all continuing transactions, if any, between Distributing and Controlled, will be made for fair market value based on the terms and conditions arrived at by the parties bargaining at arm's length.
- (r) Neither Distributing nor Controlled is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).

### **Rulings**

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

- (1) No gain or loss will be recognized by Distributing upon the distribution of Controlled Class A common stock to holders of Distributing Class B common stock in exchange for their Distributing Class B common stock (§ 355(c)).
- (2) No gain or loss will be recognized by (and no amount will be included in the income of) the holders of Distributing Class B common stock upon the receipt of Controlled Class A common stock pursuant to the Split-Off (§ 355(a)(1) and (2)).
- (3) The aggregate basis of the Controlled Class A common stock received by each holder of Distributing Class B common stock pursuant to the Split-Off will be equal to such holder's adjusted basis in the shares of Distributing Class B common stock exchanged therefor (§ 358(a)(1)).
- (4) The holding period of the Controlled Class A common stock received by each holder of Distributing Class B common stock pursuant to the Split-Off will include the holding period of the Distributing Class B common stock surrendered in exchange therefor, provided that such Distributing Class B common stock is held as a capital asset on the date of the Split-Off (§ 1223(1)).
- (5) As provided in Code § 312(h), proper allocation of earnings and profits between Distributing and Controlled will be made under Treas. Reg. § 1.312-10(b) and Treas. Reg. § 1.1502-33(e)(3).



**Caveats**

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code or regulations or the 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 on (i) whether the Distributing Class B common stock is stock of Distributing for federal income tax purposes; and (ii) the federal income tax consequences of the Merger.

**Procedural Statements**

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

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

Under a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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Richard K. Passales  
Senior Counsel, Branch 4  
Office of Associate Chief Counsel  
(Corporate)

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cc: