

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Refer Reply To:

CC:CORP:1 – PLR-111376-05

Date:

June 28, 2005

In Re:

Distributing =

Controlled =

Shareholder A =

Shareholder B =

Sub A =

Sub B =

Sub C =

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Sub D =

Sub E =

Sub E LLC =

Business A =

Business B =

Business C =

Business D =

a =b =c =d =

F Agreement =

G Agreement =

H Agreement =

I Agreement =

J Agreement =

K Agreement =

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L Agreement =

Continuing Relationships = (

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State X =

Dear

This letter responds to your letter dated February 27, 2005, requesting rulings as to the federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated June 2, June 13, and June 22, 2005. The information submitted is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty 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. Moreover, no information provided by the taxpayer has been reviewed and no determination has been made regarding whether the proposed transaction: (i) satisfies the business purpose requirement of section 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) of the Internal Revenue Code and Treas. Reg. section 1.355-2(d); and (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see section 355(e)(2)(A)(ii) and Treas. Reg. section 1.355-7).

Distributing is a publicly traded holding company with a single class of voting common stock outstanding. Distributing is the common parent of an affiliated group of corporations that files a consolidated federal income tax return (the "Distributing Group"). Shareholders A and B each own more than five percent of the Distributing stock, but neither shareholder has a representative on Distributing's board of directors or participates actively in the management of Distributing.

Distributing owns all of the outstanding stock of Controlled, Sub A, Sub B, and Sub C. Controlled owns all of the outstanding stock of Sub E. Sub C owns all the outstanding stock of Sub D. Distributing, Controlled, Sub A, Sub B, Sub D, and Sub E also own the stock of various other subsidiaries. Controlled has a single class of voting common stock outstanding.

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Distributing conducts Business A, Business B, Business C, and Business D through its wholly owned subsidiaries. Sub A directly engages in Business A. Sub B directly engages in Business B. Sub C conducts Business C through Sub D, which directly engages in Business C. Controlled directly engages in Business D. Sub E also directly engages in Business D.

The taxpayer has submitted financial information which indicates that each of Business A, Business B, Business C, and Business D, as conducted by Distributing and its relevant subsidiaries, including Controlled, has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing has proposed separating Business D from Business A and the other businesses conducted by the Distributing Group in order to address certain “fit and focus” problems that currently impede the optimal development and performance of both Business A and Business D. In particular, the distribution is being undertaken to resolve systemic issues related to the allocation of capital and management resources between Business A and Business D. Distributing believes that, as a result of the distribution, Controlled, together with its subsidiaries (the “Controlled Group”), will have greater flexibility to manage, invest in, and expand its businesses, including Business D, while Distributing, together with its remaining subsidiaries (the “Residual Distributing Group” and, together with the “Controlled Group,” the “Groups”) will be better able to focus its time and resources on the development of its businesses, including Business A.

To accomplish this goal, the following transactions have been proposed:

- (i) Distributing will contribute approximately \$a of cash to Controlled.
- (ii) Sub E will convert to a State X limited liability company that does not elect to be treated as an entity separate from Controlled for U.S. tax purposes.
- (iii) Controlled will transfer its portion of Business D to Sub E LLC.
- (iv) Distributing will distribute all of the Controlled common stock pro rata to the shareholders of Distributing common stock, other than shareholders of unvested Distributing restricted stock. Distributing shareholders of record will receive cash in lieu of fractional shares, if any (the “Distribution”).
- (v) Holders of unvested Distributing restricted stock who are employees of the Residual Distributing Group will receive additional unvested Distributing restricted stock, and holders

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of unvested Distributing restricted stock who are employees of the Controlled Group will generally have their unvested Distributing restricted stock converted to a greater amount of new unvested Controlled restricted stock.

In connection with the Distribution, the Groups will enter into a number of agreements, including an F Agreement, a G Agreement, one or more H Agreements, an I Agreement, a J Agreement, a K Agreement, and various L Agreements (collectively, the "Agreements"). The Agreements will govern the terms of the Distribution and various indemnities and continuing relationships between the Groups after the Distribution. Under the Agreements and otherwise, the Groups will maintain the Continuing Relationships, which consist of twelve principal categories of continuing relationships after the Distribution.

In connection with the I Agreement, certain intellectual property rights will be assigned or licensed, generally on a royalty-free basis by the Residual Distributing Group to the Controlled Group and vice versa prior to the Distribution. The K Agreement will allocate liabilities and obligations and, in certain instances, assets, relating to employee compensation and benefits plans and programs in connection with the Distribution, including with respect to various Residual Distributing Group and Controlled Group's retirement, welfare, incentive compensation, and employee benefits plans. In addition, the Controlled Group may assume existing deferred compensation liabilities relating to certain current employees of the Residual Distributing Group who will become employees of the Controlled Group in connection with the Distribution, and vice versa. Such assumptions may be offset by corresponding transfers of cash. (The transactions described in this paragraph are hereinafter collectively referred to as the "Miscellaneous Transactions.")

Except with respect to certain Continuing Relationships, each of the Continuing Relationships will have a limited initially agreed duration of no more than c months following the Distribution. Certain Continuing Relationships will be subject to automatic renewal unless either party elects in its sole discretion not to renew. All of the Continuing Relationships are designed to facilitate, rather than impede, the separation of Business A and Business D.

The following representations have been made regarding the Distribution and the related transactions:

- (a) Except for (i) contingent liabilities and accounts payable arising from the Agreements and other agreements entered into in the ordinary course of business; (ii) up to b of intercompany debt currently owed by the Controlled Group to the Residual Distributing Group that will be repaid within d days of the Distribution; and (iii) up to b of backup new intercompany debt under a backup bridge financing facility that the Controlled Group may enter into with the

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Residual Distributing Group as lender solely to facilitate an offering of debt securities by the Controlled Group to third party investors and/or the establishment of other appropriate third party funding, no intercorporate debt will be outstanding between Distributing and Controlled at the time of, or subsequent to, the Distribution. In this regard, the backup bridge financing facility described in (iii) would be utilized by the Controlled Group only in the event that the Controlled Group were unable, after making diligent efforts, to borrow an equivalent amount on reasonably acceptable market terms from third party lenders and no debt would be outstanding under such facility at the same time as any debt described in (ii). Any 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 Distributing shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing, except for shares of Distributing and Controlled restricted stock received by shareholders of Distributing restricted stock.
- (c) Immediately after the Distribution, at least 90 percent of the fair market value of the gross assets of Distributing will consist of the stock and securities of controlled corporations, Sub A, Sub B, and Sub C. Sub A and Sub B are each directly engaged in the active conduct of a trade or businesses as defined in section 355(b)(2). Immediately after the Distribution, at least 90 percent of the fair market value of the gross assets of Sub C will consist of the stock and securities of Sub D, a controlled corporation that is directly engaged in the active conduct of a trade or business as defined in section 355(b)(2).
- (d) The 5 years of financial information submitted on behalf of Controlled, Sub A, Sub D, and Sub E are representative of each corporation's present operations and, with regard to each such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) Following the Distribution, Distributing (indirectly through Sub A, Sub B, and Sub D) and Controlled (directly) will each continue the active conduct of its business, independently and with its separate employees.
- (f) The Distribution will be carried out for the following corporate business purpose: to enhance fit and focus. The Distribution is motivated, in whole or substantial part, by such corporate business purpose.
- (g) The Distribution will not be used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

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- (h) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing each equals or exceeds the sum of the liabilities assumed (within the meaning of section 357(d)) by Controlled and the liabilities assumed (within the meaning of section 357(d)) by Controlled in the transaction were incurred in the ordinary course of business.
- (i) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Distribution.
- (j) 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 Treas. Reg. sections 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; Treas. Reg. section 1.1502-13, as published by T.D. 8597). Furthermore, Distributing's excess loss account, if any, with respect to Controlled, and any excess loss account in any direct or indirect subsidiary of Controlled, will be included in income immediately before the Distribution. (See Treas. Reg. section 1.1502-19.)
- (k) 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 (either with respect to an individual continuing transaction, or considering two or more continuing transactions in the aggregate).
- (l) Neither Distributing nor Controlled is an investment company as defined in section 368(a)(2)(F)(iii) and (iv).
- (m) Any payment of cash in lieu of fractional shares of Controlled stock in the Distribution will be solely for the purpose of avoiding the expense and inconvenience to Controlled of issuing fractional shares and will not represent separately bargained for consideration. The total of any cash paid in the Distribution to shareholders of record in lieu of fractional shares of Controlled stock will not exceed one percent of the total consideration that will be distributed in the Distribution. The fractional share interests, if any, of each Distributing shareholder of record will be aggregated, and no Distributing shareholder of record will receive cash in lieu of fractional shares in an amount equal to or greater than the value of one full share of Controlled stock.
- (n) The Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. section 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of section 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).

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

- (1) The contribution of cash and other assets, if any, by Distributing to Controlled and the assumption by Controlled of Distributing's liabilities in connection with the Distribution, followed by the distribution of the Controlled common stock, will, collectively, qualify as a "reorganization" within the meaning of section 368(a)(1)(D), and Distributing and Controlled will each be a "party to a reorganization" within the meaning of section 368(b).
- (2) No gain or loss will be recognized by Distributing with respect to the contributions and assumptions described in ruling (1) (sections 357 and 361(a)).
- (3) No gain or loss will be recognized by Controlled with respect to the contributions described in ruling (1) (section 1032(a)).
- (4) Controlled's basis in each applicable asset contributed by Distributing to Controlled, as described in ruling (1), will equal the basis of that asset in the hands of Distributing immediately before the contribution (section 362(b)).
- (5) Controlled's holding period for each applicable asset contributed by Distributing to Controlled, as described in ruling (1), will include the period during which Distributing held that asset (section 1223(2)).
- (6) No gain or loss will be recognized by Distributing with respect to the distribution of the Controlled common stock to shareholders of Distributing common stock (sections 355(c) and 361(c)(1)).
- (7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the shareholders of Distributing common stock on the receipt of the Controlled common stock in the Distribution (section 355(a)(1)). Section 355(a)(3)(B) will not treat as "other property" any part of the Controlled common stock constructively issued by Controlled to Distributing in exchange for any intellectual property rights transferred to Controlled pursuant to the I Agreement.
- (8) The aggregate basis of the Distributing common stock and the Controlled common stock (including any fractional interest in the Controlled common stock) in the hands of shareholders of Distributing common stock immediately after the Distribution will be the same as the aggregate basis of the Distributing common stock held by such shareholders immediately before the Distribution, allocated in proportion to the fair market value of each in accordance with Treas. Reg. section 1.358-2(a)(2) (section 358(a)(1), (b), and (c)).
- (9) The holding period of the Controlled common stock received by each shareholder of the Distributing common stock in the Distribution will include the holding

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period of the Distributing common stock with respect to which the Distribution was made, provided that the Distributing common stock was held as a capital asset on the date of the Distribution (section 1223(1)).

- (10) Earnings and profits will be allocated between Distributing and Controlled in accordance with section 312(h), Treas. Reg. section 1.312-10(a), and Treas. Reg. section 1.1502-33(e)(3).
- (11) Payments made between any of Distributing and Controlled or their subsidiaries and successors under tax sharing agreements, if any, between them with respect to tax liabilities that (i) have arisen or will arise for taxable periods ending before the proposed transaction, and (ii) will not become fixed and ascertainable until after the proposed transaction will be treated as occurring immediately before the Distribution.
- (12) A shareholder who receives cash in lieu of fractional shares of Controlled stock will recognize gain or loss measured by the difference between the basis of the fractional share received, as determined above in ruling (8), and the amount of cash received (section 1001). If the fractional share interest qualifies as a capital asset in the hands of the shareholder, the gain or loss will be a capital gain or loss subject to the provisions of Subchapter P of Chapter 1 of the Code.

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 regarding: (i) whether the Distribution satisfies the business purpose requirement of section 1.355-2(b); (ii) whether the proposed transaction is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) and Treas. Reg. section 1.355-2(d)); and (iii) whether the Distribution and an acquisition or acquisitions are part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii). We also express no opinion regarding (i) any tax effects of Treas. Reg. section 1.1502-13(g), (ii) whether the transfer of any intellectual property rights pursuant to the I Agreement constitutes a transfer of property (see Rev. Rul. 69-156, 1969-1 C.B. 101) or (iii) any other tax effects of the Miscellaneous Transactions.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant.

In accordance with the power of attorney on file in this office, a copy of this ruling letter will be forwarded to the taxpayer and other authorized representatives.

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Sincerely,

By: _____
Michael J. Wilder
Senior Technician Reviewer, Branch 1
Associate Chief Counsel (Corporate)

cc: