

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200632008**

Release Date: 8/11/2006

Index Numbers: 368.04-00, 355.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:BR4
PLR-124030-06

Date: May 12, 2006

a =

b =

Dear :

This letter responds to your April 18, 2006 letter requesting that we supplement our letter ruling dated July 20, 2005 (PLR-119117-05) (the "Original Ruling") and a supplemental ruling dated February 27, 2006 (PLR-145225-05) (the "First Supplemental Ruling" and together with the Original Ruling, the "Prior Rulings"). Capitalized terms not defined in this ruling have the meanings assigned to them in the Prior Rulings. The information submitted for consideration 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.

The Prior Rulings addressed certain federal income tax consequences of the Proposed Transactions under § 355, § 368, and certain other provisions of the Internal Revenue Code (the "Code").

Summary of Facts

As set forth in the Original Ruling, Controlled will issue the Controlled Securities and transfer the Controlled Cash to Distributing in partial consideration for the stock and assets to be contributed by Distributing to Controlled in the Contribution. In order to facilitate the transfer of the Controlled Securities and the Controlled Cash to Finance

Sub and the sale of the Controlled Securities, the following steps will occur in the sequence stated:

- (i) Distributing and Controlled will enter into the Separation and Distribution Agreement containing key provisions relating to the Contribution and the Distribution.
- (ii) Distributing and Finance Sub will concurrently execute (a) an exchange agreement committing the parties to the exchange of the Controlled Securities for Distributing debt held by Finance Sub on the specified terms (the "Exchange Agreement") and (b) a limited agency agreement authorizing Distributing to take certain actions with respect to the sale of the Controlled Securities (the "Limited Agency Agreement").
- (iii) At least one day before the Contribution and the Distribution, Finance Sub, Controlled (as issuer of the Controlled Securities), and a group of underwriters (the "Underwriters") will enter into a firm commitment underwriting agreement (the "Underwriting Agreement") pursuant to which Finance Sub will agree to sell to the Underwriters, and the Underwriters will agree to purchase from Finance Sub, the Controlled Securities. On this same date, the Underwriters will price the Controlled Securities for the sale to the public in a registered public offering (the "Public Offering").
- (iv) No earlier than the first business day following the execution of the Underwriting Agreement, the Contribution and the Distribution will occur. Between the time of the Distribution and the Distributing Debt Repayment (as defined below), Distributing will invest the Controlled Cash in one or more money market fund or similar short-term investment accounts. It is possible that Distributing may invest the Controlled Cash in non-segregated accounts.
- (v) On the first business day following the date of the Contribution and the Distribution, and pursuant to the Exchange Agreement, Distributing will transfer the Controlled Securities and the Controlled Cash to Finance Sub in exchange for Distributing debt held by Finance Sub (the "Distributing Debt Repayment").
- (vi) On the first business day following the date of the Distributing Debt Repayment, and pursuant to the Underwriting Agreement, Finance Sub will sell and deliver the Controlled Securities to the Underwriters and will receive payment from the Underwriters. It is expected that on this same day, the Underwriters will sell and deliver the Controlled Securities to the purchasers in the Public Offering.

Although it is anticipated that all of the Controlled Securities transferred to Finance Sub will be sold to the Underwriters, in the event that any portion of the Controlled Securities are not sold to the Underwriters, Finance Sub will dispose of any such unsold Controlled Securities within f, as stated in the Original Ruling.

No fractional shares of Controlled common stock will be distributed in the Distribution. Instead, a transfer agent will aggregate all fractional shares and sell them on the open market on behalf of those holders who otherwise would be entitled to receive a fractional share. It is expected that those sales will occur as soon as practicable after the Distribution. Those holders will then receive a cash payment in an amount equal to their pro rata share of the total net proceeds of those sales. It is expected that all fractional shares held in street name will be aggregated and sold by brokers or other nominees according to standard procedures.

Solely for U.S. Securities law reasons, it is possible that, instead of issuing additional shares of common stock to Distributing in the Contribution, immediately before the Distribution, Controlled may distribute as a dividend on its existing a shares of common stock a number of additional shares of the same class of common stock that will result in Controlled having outstanding a predetermined number of shares of common stock. That predetermined number is intended to facilitate orderly trading of Controlled common stock following the Distribution.

Representations

- (a) Except as modified herein, all of the representations made in the Original Ruling remain true and correct.
- (b) The payment of cash in lieu of fractional shares of Controlled common stock is solely for the purpose of avoiding the expense and inconvenience to Controlled of issuing and maintaining fractional shares and will not represent separately bargained-for consideration.
- (c) The total cash that will be paid in the transaction to Distributing shareholders in lieu of fractional shares of Controlled will not exceed one percent of the total value of the Controlled common stock that will be distributed in the Distribution.
- (d) The fractional share interests of each Distributing shareholder will be aggregated, and no Distributing shareholder of record will receive cash in an amount equal to or greater than the value of one full share of Controlled stock.
- (e) In the event that Distributing invests the Controlled Cash or any portion thereof in one or more non-segregated investment accounts (as described

above), Distributing will withdraw the Controlled Cash from such account(s) no later than the b business day following the Distribution.

Rulings

Based solely on the information and representations set forth herein and submitted with the Prior Rulings, we reaffirm the rulings and caveats set forth in the Prior Rulings, except that: (i) caveat (iv) and rulings (13), (14), and (21), as well as the third sentence of ruling (1) of the Original Ruling are no longer relevant insofar as all of the Distributing Preferred V stock has been redeemed, and (ii) the Prior Rulings are expanded by the addition of the following new ruling:

- (1) A Distributing shareholder who receives cash in lieu of a fractional share of Controlled common stock will recognize gain or loss measured by the difference between the amount of cash received and the adjusted basis of the fractional share (as determined under ruling (11) of the Original Ruling) (§ 1001). If the fractional share interest is a capital asset in the hands of the Distributing shareholder, then gain or loss will be capital gain or loss, subject to the conditions and limitations of Subchapter P, Chapter 1 of the Code (§§ 1221 and 1222).

Caveats

No opinion is expressed about the tax treatment of the Proposed Transactions 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 Transactions that are not specifically covered by the above ruling and the rulings contained in our Prior Rulings. Specifically, no opinion is expressed as to the federal income tax consequences of the redemptions of the Distributing Preferred V stock.

Procedural Statements

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

A copy of this ruling letter must be attached to the federal income tax return of each taxpayer involved in the Proposed Transactions for the taxable year in which the Proposed Transactions are completed. Alternatively, any taxpayer filing its return electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of this letter.

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

Sincerely,

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

cc: