

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Partnership =

Regulator =

Business J =

Exchange =

State W =

State X =

State Y =

State Z =

Day H =

a =

b =

c =

d =

e =

f =

Dear :

This letter responds to a request for rulings dated August 3, 2007 regarding certain federal income tax consequences of a series of proposed transactions. Additional information was submitted in letters dated September 11, 2007, September 24, 2007, October 21, 2007 and November 29, 2007. The information submitted is summarized below.

The rulings contained in this letter are based upon 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 material 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.

In particular, this office has made no determination regarding whether the distributions described below: (i) satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b), (ii) are being used principally as a device for the distribution of the earnings and profits of any distributing or controlled corporation (see Code § 355(a)(1)(B) of the Internal Revenue Code and Treas. Reg. § 1.355-2(d)), or (iii) are 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 or any of the controlled corporations (see section 355(e) and Treas. Reg. § 1.355-7).

Facts

Parent, a State W corporation, is the common parent of a group of affiliated corporations that files a consolidated income tax return (the "Parent Group"). The members of the Parent Group compute their U.S. federal income tax liability using the accrual method of accounting and each member has a taxable year ending on Day H. Parent has only common stock outstanding, which is publicly traded and listed on the Exchange. Among other interests, Parent directly owns all of the outstanding stock in each of Distributing, a State X corporation, and Sub 1, a State W corporation, both of which are members of the Parent Group. In addition, Parent wholly owns two State X limited liability companies, LLC 1 and LLC 2, each a business entity (as defined in § 301.7701-2(a) of the Procedure and Administration Regulations) that is disregarded for tax purposes as separate from its owner.

LLC 1 wholly owns Sub 2, a State X limited liability company that has elected under § 301.7701-3 of the Procedure and Administration Regulations to be classified as

an association taxed as a corporation for U.S. federal tax purposes. Sub 2 and LLC 2 are the general partner and limited partner, respectively, of Partnership, a State X partnership. Sub 2 and LLC 2 own a% and b% percent of Partnership, respectively.

Distributing has owned all of the stock of Sub 3 and Sub 4, both of which are State Y corporations, for more than five years, during which time each corporation has been a member of a Distributing separate affiliated group (within the meaning of section 355(b)(3)(B)) (the “DSAG”).

Distributing has also owned for more than five years all of the outstanding common stock of each of Controlled 1, a State X corporation, Controlled 2, a State Z corporation, and Controlled 3, a State X corporation (collectively, the “Controlled Corporations”). In addition to their outstanding common stock, each of Controlled 1 and Controlled 2 also has preferred shares of stock currently outstanding. Controlled 1 has outstanding c classes of non-voting cumulative preferred stock that is owned by various persons. In the past five years, Controlled 1 has redeemed d% of its preferred stock, none of which was held by Distributing. Controlled 2 has outstanding e classes of non-voting cumulative preferred stock that is owned by various persons. In the past five years, Controlled 2 has redeemed f% of its preferred stock, none of which was held by Distributing. Controlled 3 has only had common stock outstanding, all of which is owned by Distributing.

Parent and its direct and indirect subsidiaries are engaged in Business J both domestically and abroad. Distributing and its subsidiaries (other than Controlled 1, Controlled 2, and Controlled 3) are engaged in Business J in State Y. Partnership is also engaged in Business J in State Y.

Parent has supplied information indicating that each of the DSAG, Controlled 1, Controlled 2, and Controlled 3 has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

The Proposed Transactions

For what are represented to be valid business purposes, Parent has proposed the following series of transactions (the “Proposed Transactions”):

The Recapitalizations

(i) Distributing will cause Controlled 1 to convert each class of its non-voting preferred stock into voting preferred stock with identical terms other than its voting rights (“Recapitalization 1”). Following Recapitalization 1, Distributing will have control of at least 80% of the total combined voting power of all classes of Controlled 1 stock entitled to vote and at least 80% of the total number of shares of all other classes of stock of

Controlled 1. Recapitalization 1 is intended to qualify as a reorganization under section 368(a)(1)(E).

(ii) Distributing will cause Controlled 2 to convert each class of its non-voting preferred stock into voting preferred stock with identical terms other than its voting rights ("Recapitalization 2"). Following Recapitalization 2, Distributing will have control of at least 80% of the total combined voting power of all classes of Controlled 2 stock entitled to vote and at least 80% of the total number of shares of all other classes of stock of Controlled 2. Recapitalization 2 is intended to qualify as a reorganization under section 368(a)(1)(E).

The Spin-Offs

(iii) Distributing will distribute all of the common stock of the three Controlled Corporations to Parent (collectively, the "Spin-Offs"). Distributing will not retain any stock in the Controlled Corporations after the Spin-Offs.

The Transfer

(iv) Following the Spin-Offs, Parent will transfer all of the membership interests in LLC 1 and LLC 2 to Distributing (the "Transfer").

Representations

Parent makes the following representations in connection with the Proposed Transactions:

In connection with the Recapitalizations, Parent represents that:

(a) There is no plan or intention to alter the capital structure of Controlled 1 or Controlled 2 after the Proposed Transactions.

In connection with the Spin-Offs, Parent represents that:

(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 the DSAG 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 statements submitted.

(d) The 5 years of financial information submitted on behalf of Controlled 1 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 statements submitted.

(e) The 5 years of financial information submitted on behalf of Controlled 2 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 statements submitted.

(f) The 5 years of financial information submitted on behalf of Controlled 3 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 statements submitted.

(g) Following the transaction, the DSAG, Controlled 1 and Controlled 2 will each continue the active conduct of its business, independently and with its separate employees, and Controlled 3 will continue the active conduct of its business through employees of Sub 1.

(h) The distribution of the stock of the Controlled Corporations will be carried out for the following corporate business purposes: to allow Distributing to focus on its State Y Business J operations. Specifically, after the Spin-Offs and the Transfer, Distributing will own all of Parent's Business J operations under the jurisdiction of Regulator. The distribution of the stock of the Controlled Corporations is motivated, in whole or substantial part, by this corporate business purpose.

(i) The transaction is not used principally as a device for the distribution of the earnings and profits of Distributing or the Controlled Corporations or both.

(j) For purposes of section 355(d), immediately after the Spin-Offs, no person (determined after applying section 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 section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Spin-Offs.

(k) For purposes of section 355(d), immediately after the Spin-Offs, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of any of the Controlled Corporations' stock entitled to vote, or 50 percent or more of the total value of shares of all classes of any of the Controlled Corporations' stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Spin-Offs or (ii) attributable to distributions on Distributing stock or securities that were acquired by

purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Spin-Offs.

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

(m) No intercorporate debt will exist between Distributing and the Controlled Corporations at the time of, or subsequent to, the distribution of the Controlled Corporations' stock.

(n) 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. § 1.1502-13 and Treas. Reg. § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B., and as currently in effect; Treas. Reg. § 1.1502-13 as published by T.D 8597. Immediately after the Spin-Offs, Distributing and the Controlled Corporations will each continue to be a member of the Parent Group.

(o) At the time of the Spin-Offs, Distributing will not have an excess loss account in the stock of any of the Controlled corporations.

(p) Payments made in connection with all continuing transactions, if any, between Distributing and the Controlled Corporations, or solely among the Controlled Corporations, will be based on terms and conditions arrived at by the parties bargaining at arm's length.

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

(r) The Spin-Offs are not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 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 1, Controlled 2, and Controlled 3 (including any predecessor or successor of any such corporation).

(s) None of Distributing, Controlled 1, Controlled 2, and Controlled 3 is a "disqualified investment corporation" as defined in section 355(g)(2)(A).

In connection with the Transfer, Parent represents that:

(t) No stock or securities will be issued for services rendered to or for the benefit of Distributing in connection with the proposed transaction. No stock or securities will be issued for indebtedness of Distributing that is not evidenced by a security or for interest on indebtedness of Distributing which accrued on or after the beginning of the holding period of Parent for the debt.

(u) The Transfer is not the result of the solicitation by a promoter, broker, or investment house.

(v) Parent will not retain any rights in the property transferred to Distributing.

(w) The value of the stock received in exchange for accounts receivable will be equal to the net value of the accounts transferred, i.e. the face amount of the accounts receivable previously included in income less the amount of the reserve for bad debts.

(x) Any debt relating to the stock being transferred that is being assumed (as determined under section 357(d)) was incurred to acquire such stock and was incurred when such stock was acquired, and each transferor is transferring all of the stock for which the acquisition indebtedness being assumed (as determined under section 357(d)) was incurred.

(y) The fair market value of the assets to be transferred by Parent to Distributing will, in each instance, be equal to or exceed the sum of the liabilities to be assumed (as determined under section 357(d)) by Distributing.

(z) The liabilities of Parent to be assumed (as determined under section 357(d)) by Distributing were incurred in the ordinary course of business and are associated with the assets to be transferred.

(aa) There is no indebtedness between Distributing and Parent and there will be no indebtedness created in favor of Parent as a result of the transaction.

(bb) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.

(cc) All exchanges will occur on approximately the same date.

(dd) There is no plan or intention on the part of Distributing to redeem or otherwise reacquire any stock or indebtedness to be issued in the proposed transaction.

(ee) Taking into account any issuance of additional shares of Distributing stock; any issuance of stock for services; the exercise of any Distributing stock rights, warrants, or subscriptions; a public offering of Distributing stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of Distributing to be received in the exchange, Parent will be in "control" of Distributing within the meaning of section 368(c) of the Code.

(ff) In connection with the Transfer, Parent will be deemed to receive stock approximately equal to the fair market value of the property transferred to Distributing or for services rendered or to be rendered for the benefit of the transferee.

(gg) Distributing will remain in existence and retain and use the property transferred to it in a trade or business.

(hh) There is no plan or intention by Distributing to dispose of the transferred property other than in the normal course of business operations.

(ii) Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the proposed transaction.

(jj) Distributing is not and will not be an investment company within the meaning of section 351(e)(1) and Treas. Reg. § 1.351-1(c).

(kk) Neither Parent, nor Distributing was, or is, under the jurisdiction of a court in a Title 11 or similar case (within the meaning of section 368(a)(3)(A)) and the stock received in the exchange will not be used to satisfy the indebtedness of such debtor.

(ll) Distributing is not and will not be a "personal service corporation" within the meaning of section 269A.

(mm) Immediately following the Transfer, the fair market value of the assets of Distributing will exceed the sum of the Distributing's liabilities.

(nn) Immediately prior to the Transfer, the fair market value of Parent's assets will exceed the sum of Parent's liabilities.

(oo) The fair market value of the assets transferred to Distributing will exceed the Parent's aggregate tax basis in those assets immediately before the Transfer.

Rulings

Based solely on the information submitted, we rule as follows with respect to the Proposed Transactions:

The Distributions

- (1) The Spin-Offs will be distributions described in section 355(a).
- (2) Distributing will recognize no gain or loss upon the distribution of the common stock of Controlled 1 to Parent. Section 355(c)(1).
- (3) Distributing will recognize no gain or loss upon the distribution of the common stock of Controlled 2 to Parent. Section 355(c)(1).
- (4) Distributing will recognize no gain or loss upon the distribution of the common stock of Controlled 3 to Parent. Section 355(c)(1).

- (5) Parent will not recognize any gain or loss (and no amount will be included in its income) upon its receipt of the common stock of Controlled 1, Controlled 2, and Controlled 3 from Distributing. Section 355(a)(1).
- (6) Parent's aggregate basis in the common stock of Controlled 1, Controlled 2, and Controlled 3 and the stock of Distributing will be the same as Parent's basis in the stock of Distributing immediately before the Spin-Offs, allocated among the common stock of Controlled 1, Controlled 2, and Controlled 3 and the common stock of Distributing in proportion to the respective fair market values of each in accordance with Treas. Reg. § 1.358-2(a)(2). Section 358(a), (b), and (c).
- (7) Parent's holding period of the common stock of Controlled 1, Controlled 2, and Controlled 3 received in the Spin-Offs will include Parent's holding period of the shares of Distributing with respect to which the Spin-Offs will be made, provided that such shares are held as capital assets on the date of the Spin-Offs. Section 1223(1).
- (8) Proper allocation of earnings and profits between Distributing, on the one hand, and Controlled 1, Controlled 2, and Controlled 3, on the other hand, will be made in accordance with section 312(h), Treas. Reg. § 1.312-10(b) and Treas. Reg. § 1.1502-33(e)(3).

The Transfer

- (9) For U.S. federal income tax purposes, as a consequence of LLC 1 and LLC 2 being disregarded from its owner for Federal income tax purposes, Parent will be treated as directly transferring to Distributing all of the stock of Sub 2 and a b% interest in Partnership. Treas. Reg. § 301-7701-3.
- (10) No gain or loss will be recognized by Parent upon the transfer of its interest in Sub 2 and Partnership to Distributing in constructive exchange for Distributing stock. Sections 351(a) and 357(a), Treas. Reg. § 1.1502-80(d), and Rev. Rul. 80-323, 1980-2 C.B. 124.
- (11) The basis of Parent's stock in Distributing after the Spin-Offs will be increased by the basis of Parent's interests in Sub 2 and Partnership that was transferred to Distributing, subject to appropriate adjustments. Section 358(a) and (d), and Treas. Reg. § 1.1502-32.
- (12) No gain or loss will be recognized by Distributing on the receipt of Parent's interests in Sub 2 and Partnership in constructive exchange for shares of Distributing stock. Section 1032(a).

- (13) The basis of each asset received by Distributing will, in each instance, equal the basis of that asset in the hands of Parent immediately before the Transfer. Section 362(a).
- (14) The holding period of each asset received by Distributing in the Transfer will, in each instance, include the period during which Parent held that asset. Section 1223(2).

Caveats

No opinion is expressed about the federal 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. In particular, no opinion is expressed regarding: (i) whether the Distributions satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) whether the Proposed Transactions are used principally as a device for the distribution of the earnings and profits of Distributing or any of the three Controlled Corporations (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); or (iii) whether the Proposed Transactions are part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

Other than the specific rulings numbered (9) through (14) above with respect to the Transfer, no opinion is provided with respect to the treatment of, or consequences resulting from, the contribution of the Partnership to Distributing in the Transfer.

No rulings are provided with respect to the Recapitalizations.

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

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling, including, but not limited to, Prop. Reg. § 1.355-3 (Published in 72 Fed. Reg. 26012 (No. 88), (May 8, 2007)), have not yet been adopted. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 11.04 of Rev. Proc. 2007-1, 2007-1 I.R.B. 1, 49. However, when the criteria in section 11.06 of Rev. Proc. 2007-1, 2007-1 I.R.B. 1, 50 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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 upon examination.

Sincerely,

Steven J. Hankin
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
(Corporate)

CC: