

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:03

PLR-103637-08

Date:

May 13, 2008

Distributing =

Controlled =

Business 1 =

Business 2 =

Officer A =

Officer B =

Officer C =

X =

Y =

Z =

Dear

We respond to your request dated January 16, 2008, for rulings on the Federal income tax consequences of a proposed transaction. The information submitted in that letter 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. 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 §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 any distributing corporation or controlled corporation (see §355(a)(1)(B) of the Internal Revenue Code and §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 any distributing corporation or controlled corporation (see §355(e)(2)(A)(ii) and §1.355-7).

Distributing is the common parent of an affiliated group of corporations that files a consolidated Federal income tax return. Distributing has one class of stock issued and outstanding. Distributing is directly engaged in Business 1.

Distributing wholly owns Controlled, which has one class of stock issued and outstanding. Controlled is directly engaged in Business 2.

Financial information has been received that indicates that Business 1 and Business 2 each has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

For what are represented to be valid business purposes, Distributing proposes to distribute pro rata all of its Controlled stock to its shareholders (the "Distribution").

The following representations have been made in connection with the proposed transaction:

- (a) 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.
- (b) The five years of financial information submitted on behalf of Distributing regarding Business 1 is representative of the present operations of Business 1, and there have been no substantial operational changes since the date of the last financial statements submitted.
- (c) The five years of financial information submitted on behalf of Controlled regarding Business 2 is representative of the present operations of Business 2, and there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) Following the Distribution, Distributing and Controlled will each continue the active conduct of its business, independently and with its separate employees, except that x employees and Officers A, B, and C will perform services for both Distributing and Controlled. The sharing of x employees will continue for no longer than y months. Officers A, B, and C will be shared for no longer than z months.
- (e) If an employee is shared by Distributing and Controlled, such employee's compensation will be charged as an expense to Distributing and Controlled in proportion to the amount of time the employee expends in each business.
- (f) The Distribution is being carried out to comply with regulatory restrictions and prohibitions. The Distribution is motivated, in whole or substantial part, by this corporate business purpose.
- (g) The Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (h) 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 Distribution except in the ordinary course of business.
- (i) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, 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. Further, Distributing's excess loss

account (if any) with respect to the Controlled stock will be included in income immediately before the Distribution.

- (k) 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.
- (l) No two parties to the transaction are investment companies as defined in §368(a)(2)(F)(iii) and (iv).
- (m) The Distribution is not part of a plan or series of related transactions (within the meaning of §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 §355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (n) 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 date of the Distribution.
- (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 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 Distribution 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 Distribution.
- (p) Immediately after the transaction (as defined in §355(g)(4)), either (1) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of §355(g)(2)), or (2) no person will hold a 50 percent or greater interest (within the meaning of §355(g)(3)) in the stock of Distributing or Controlled.

- (q) There is no plan or intention by Distributing shareholders to sell, transfer, or otherwise dispose of any of the Distributing or Controlled stock following the transaction.

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

- (1) No gain or loss will be recognized by Distributing upon the distribution of its stock in Controlled to its shareholders (§355(c)).
- (2) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing's shareholders on their receipt of Controlled stock (§355(a)(1)).
- (3) The aggregate basis of the Controlled stock and Distributing stock in the hands of the shareholders of Distributing after the Distribution will, in each instance, be the same as the aggregate basis of the shareholders in the Distributing stock immediately before the Distribution, allocated in proportion to the fair market value of each in accordance with §1.358-2(a)(2) (§358(a)(1), (b), and (c)).
- (4) The holding period of the Controlled stock received by the shareholders of Distributing as a result of the Distribution will, in each instance, include the holding period of the Distributing stock with respect to which the Controlled stock was received, provided that such Distributing stock is held as a capital asset on the date of the Distribution (§1223(1)).
- (5) As a result of the Distribution, earnings and profits will be allocated between Distributing and Controlled in accordance with to §§312(h), 1.312-10(b), and 1.1502-33(e).

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.

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.

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

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.

Sincerely,

Ross E. Poulsen
Assistant to the Branch Chief, Branch 3
Office of Associate Chief Counsel (Corporate)