

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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CC:CORP:B06  
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Date:  
October 29, 2008

Legend

Distributing =

Controlled =

Holdings =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Parent =

Corp =

Country X =

Country Y =

Business 1 =

Business 2 =

Business 3 =

Business 4 =

Agreement 1 =

Agreement 2 =

Business  
Purpose 3 =

Contract =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

\$a =

\$b =

\$c =

\$d =

\$e =

\$f =

\$g =

x =

y =

a% =

Dear :

This letter responds to your April 30, 2008 letter from your authorized representatives requesting rulings on certain federal income tax consequences of a proposed transaction. Additional information was received subsequently. The information provided in these letters 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. In particular, this office has not reviewed any information pertaining to, and except where expressly provided has made no determination regarding, whether the distribution (described below): (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 the

distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); or (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 § 355(e) and § 1.355-7).

Distributing is a Country X corporation whose stock is publicly-traded. As of Date 3, Distributing has outstanding x shares of common stock, of which Corp owns y shares (approximately a%). Corp purchased the Distributing stock on Date 1 (which is less than five years from the date of this letter) by paying Distributing \$e in cash upon the exercise of warrants for Distributing stock. Parent indirectly owns all of the stock of Corp.

Distributing is the parent of a group of domestic and foreign corporations engaged primarily in Business 1, Business 2, Business 3 and Business 4. Distributing is treated for Federal income tax purposes as a corporation. It is a holding company and is not engaged in a trade or business in the United States (within the meaning of § 864(b)).

Distributing owns all of the stock of Holdings, a Country X corporation. Holdings is treated for Federal income tax purposes as a corporation. It is a holding company and is not engaged in a trade or business in the United States (within the meaning of § 864(b)).

Holdings owns all of the stock of Controlled and Sub 1. Holdings indirectly owns all of the stock of Sub 2. Sub 2 owns all of the stock of Sub 3 and Sub 9. Holdings also indirectly owns all of the stock of Sub 4. Sub 4 owns all of the stock of Sub 5 and Sub 10. Sub 5 owns all of the stock of Sub 6, Sub 7, and Sub 8. Sub 7 is a Country Y corporation that has elected under § 953(d) to be treated as a domestic corporation for Federal income tax purposes. Sub 3, Sub 5, Sub 6, Sub 7 and Sub 8 are each engaged in Business 1.

Pursuant to Agreement 1, and for valid corporate business purposes described herein, Distributing desires to undertake the following steps (the "Proposed Transaction"):

- (i) Holdings will contribute to Controlled approximately \$g of cash.
- (ii) Controlled will transfer \$d in cash to Sub 1 in exchange for two notes issued by Sub 1. One note will have principal amount of \$a ("Note 1") and the other note will have a principal amount of \$c ("Note 2"). The notes are intended to bear a market rate of interest.
- (iii) Controlled will acquire all of the stock of Sub 5 from Sub 4 in exchange for Note 1 and will acquire all of the stock of Sub 3 from Sub 2 in exchange for Note 2 and incurring liability under Agreement 2.

Pursuant to Agreement 2, Controlled must reimburse Sub 2 for certain payments Sub 2 makes under a contingent purchase price note agreement it entered into in connection with the Year 1 acquisition of Sub 3. Agreement 2 will also create a back-to-back arrangement for certain rights and obligations under certain contracts to which Sub 3 is a party that remain outstanding from the purchase by Sub 2 of Sub 3 in Year 1 to the extent that Sub 2 cannot assign such agreements to Controlled prior to the consummation of the Proposed Transaction.

(iv) Holding will liquidate into Distributing in accordance with the corporate laws of Country X (the "Holdings Liquidation").

(v) Distributing will contribute to Controlled approximately \$b of cash.

Thus, immediately after step (v) of the Proposed Transaction, Controlled will hold approximately \$f of cash and, directly or indirectly, the stock of Sub 3, Sub 5, Sub 6, Sub 7 and Sub 8. However, if certain circumstances described in Agreement 1 are present, the amount of cash that Controlled would hold could be less than \$f. Further, after the Proposed Transaction, amounts may be payable from Sub 9 to Sub 6 pursuant to the Contract.

(vi) Distributing will distribute all of the Controlled stock to Corp in exchange for an amount of the Distributing stock owned by Corp approximately equal in value to such Controlled stock (the "Distribution").

The following representations have been made in connection with the portion of the Proposed Transaction described in steps (v) and (vi):

(a) The indebtedness, if any, owed by Controlled to Distributing after the consummation of the proposed Transaction will not constitute stock or securities.

(b) The fair market value of Controlled stock to be received by Corp will be approximately equal to the fair market value of the Distributing stock to be surrendered by Corp in the exchange. The fair market values referred to in this representation are calculated as of Date 2, the day on which the parties agreed on the value of Controlled for purposes of the Proposed Transaction.

(c) No part of the consideration to be exchanged by Distributing will be received by Corp 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 operation and, with regard to Distributing, there have been no substantial operational changes since the date of the last financial

statements submitted. This representation is made with respect to Business 2, Business 3 and Business 4 of Distributing.

(e) The five years of financial information submitted on behalf of Controlled with respect to Business 1 is representative of Controlled's present operation and, with regard to Controlled, there have been no substantial operational changes since the date of the last financial statements submitted. In the ordinary course of business, the assets and liabilities of Business 1 have declined during the five-year period ending on the date of the Distribution, as reflected in the five years of financial information submitted.

(f) Following the consummation of the Proposed Transaction, Distributing and Controlled will each continue the active conduct of its business, independently and with its separate employees.

(g) The Proposed Transaction is being carried out for the following corporate business purposes: (i) redeeming a large block of Distributing stock on favorable economic terms, (ii) averting a potentially disruptive scenario in which two of Distributing's largest shareholders each seek to sell their Distributing stock within a relatively short span of time, (iii) Business Purpose 3, and (iv) providing Distributing with a clean and final exit from potential adverse development of certain liabilities of Sub 3 and Sub 5. The Proposed Transaction is motivated, in whole or substantial part, by these corporate business purposes.

(h) The Proposed Transaction is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(i) No property will be transferred by Distributing to Controlled for which an investment credit allowed under § 46 has been or will be claimed.

(j) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Proposed Transaction.

(k) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the distribution of the Controlled stock, other than amounts that may be payable after the consummation of the Proposed Transaction by Controlled to Sub 2 pursuant to Agreement 2, and by Sub 9 to Sub 6 pursuant to the Contract.

(l) 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. This representation is made with respect to any transactions entered into while Agreement 1 was being negotiated or after it was entered into. The terms of any other transactions between Parent and its affiliates (excluding Controlled, Sub 3, Sub 5, Sub 6, Sub 7 and Sub 8) on the one hand, and Distributing and its affiliates (including Controlled, Sub 3, Sub 5, Sub 6, Sub 7 and

Sub 8) on the other hand, were set without contemplation of the Proposed Transaction and were not subsequently changed in contemplation of the Proposed Transaction.

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

(n) Distributing, Controlled, and Corp will each pay its own respective expenses, if any, incurred in connection with the Proposed Transaction.

(o) No cash or other assets have been or will be contributed in anticipation of the Proposed Transaction by Distributing, Controlled or any member of the Distributing group to Sub 3, Sub 6 or Sub 7.

(p) Following the Distribution, Controlled will not make any loans to Parent, or any affiliate of Parent (except subsidiaries of Controlled), for two years. Further, following the Distribution, Controlled will not purchase stock in Parent, or any affiliate of Parent (except subsidiaries of Controlled), for two years.

(q) Following the Distribution, Parent has no plan or intention to liquidate Controlled.

The taxpayer makes the following additional representations:

(aa) Neither Distributing nor Controlled (i) was or will be a United States real property holding corporation (as defined in Code § 897(c)(2)) at any time during the 5-year period ending on the date of the Distribution or (ii) will be a United States real property holding corporation immediately after the Distribution. Distributing is not aware of any foreign shareholder who currently holds 5% or more of any class of Distributing stock, or will hold 5% or more of any class of Distributing stock, either immediately before or immediately after the Distribution.

(bb) Distributing will not be a controlled foreign corporation, within the meaning of Code § 957(a), immediately before or after the Distribution.

(cc) Holdings and Distributing will not be passive foreign investment companies (PFICs) within the meaning of Code § 1297(a) immediately before or after the Holdings Liquidation.

(dd) Distributing will not be a PFIC within the meaning of Code § 1297(a) immediately before or after the Distribution.

(ee) Distributing will not hold any United States real property interests (USRPIs) within the meaning of Code § 897(c)(1) immediately before or after the Distribution.

(ff) No USRPIs within the meaning of Code § 897(c)(1) will be distributed by Holdings in connection with the Holdings Liquidation.

(gg) The Holdings Liquidation will not include the transfer of any property used by Holdings in the conduct of a U.S. trade or business as described in Treas. Reg. § 1.367(e)-2(c)(2)(i).

(hh) The Holdings Liquidation will not include the transfer of stock of any corporation that has been a U.S. transferor, the transferee foreign corporation, or the transferred corporation with respect to any unexpired 'gain recognition agreement' within the meaning of Treas. Reg. §§ 1.367(a)-3, 1.367(a)-8, and 1.367(a)-8T.

(ii) The Distribution will not include the transfer of stock of any corporation that has been a U.S. transferor, the transferee foreign corporation, or the transferred corporation with respect to any unexpired 'gain recognition agreement' within the meaning of Treas. Reg. §§ 1.367(a)-3, 1.367(a)-8, and 1.367(a)-8T.

Based on the information submitted and the representations provided, we rule as follows in connection with the portion of the Proposed Transaction described in steps (v) and (vi):

1. The transfer by Distributing of cash to Controlled, followed by the Distribution, pursuant to the Proposed Transaction will constitute a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled will each be "a party to a reorganization" within the meaning of § 368(b).
2. Distributing will not recognize any gain or loss on the receipt of the Controlled stock pursuant to the Proposed Transaction (§ 361(a)).
3. Controlled will not recognize any gain or loss on the receipt of cash from Distributing pursuant to the Proposed Transaction (§ 1032(a)).
4. Corp will not recognize any gain or loss (and will not otherwise include any amount in income) upon the receipt of the Controlled stock in exchange for an amount of the Distributing stock, equivalent in value to the Controlled stock received, pursuant to the Proposed Transaction (§ 355(a)).
5. Corp's aggregate basis in the Controlled stock received pursuant to the Proposed Transaction will equal its basis in the Distributing stock surrendered in exchange therefore (§ 358).
6. Corp's holding period in the Controlled stock received pursuant to the Proposed Transaction will include its holding period for the Distributing stock surrendered in



exchange therefore, provided that the Distributing stock is held as a capital asset on the date of the Proposed Transaction (§ 1223(1)).

7. The Distribution will not qualify under § 361(c)(2) (§ 355(d)(1)). Thus, Distributing will recognize any gain (but not loss) upon the Distribution (§ 311(b)(1)).

8. Earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with § 312(h) and § 1.312-10(a).

9. Controlled will not be a disqualified investment company immediately after the consummation of the Proposed Transaction (§ 355(g)(2)).

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 § 1.355-2(b);

(ii) Whether the Proposed Transaction is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) and § 1.355-2(d));

(iii) Whether the Proposed Transaction is part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii);

(iv) To the extent not otherwise specifically ruled upon above, the adjustments to earnings and profits or deficits in earnings and profits, if any, in any of the transactions to which section 367 applies;

(v) To the extent not otherwise specifically ruled upon above, any other consequences under section 367 on any internal restructuring transaction in this ruling letter; and

(vi) Whether any or all of the above-referenced foreign corporations are PFICs within the meaning of section 1297(a). If it is determined that any such corporations are PFICs, no opinion is expressed with respect to the application of sections 1291 through 1298 to the Proposed Transaction. In particular, in a transaction in which gain is not otherwise recognized, regulations under section 1291(f) may require gain recognition notwithstanding any other provisions of the Code.

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,

Alfred C. Bishop, Jr.  
Chief, Branch 6  
(Corporate)

cc: