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Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:01
PLR-148975-09

Date:
May 20, 2010

LEGEND

Distributing =

State X =

Date 1 =

a =

b =

Shareholder A =

Shareholder B =

Shareholder C =

Shareholder D =

Shareholder E =

Shareholder F =

Member 1 =

Member 2 =

Member 3 =

Member 4 =

Member 5 =

Controlled LLC =

Controlled =

Business 1 =

Year =

Y =

Z =

\$x =

W =

x% =

n =

Waiver 1 =

Waiver 2 =

Ea% =

Eb% =

Ec% =

Ed% =

Ee% =

Ef% =

Eg% =

Eh% =

Ei% =

Ej% =

Va% =

Vb% =

Vc% =

Vd% =

Ve% =

Vf% =

Vg% =

Vh% =

$V_i\%$ =

$V_j\%$ =

$V_k\%$ =

$V_l\%$ =

Dear :

This letter responds to your representative's letter dated October 30, 2009, requesting rulings as to the federal income tax consequences of the Proposed Transaction set forth below. Additional information was submitted by letters dated December 31, 2009, March 22, 2010, March 25, 2010, April 15, 2010, and May 17, 2010. The material information submitted for consideration is summarized below.

Summary of Facts

Distributing is a closely-held State X corporation that was organized as a subchapter C corporation on Date 1. Distributing has a shares of stock issued and outstanding, which consists of one class of common stock and is owned by six shareholders: Shareholder A, Shareholder B, Shareholder C, Shareholder D, Shareholder E, and Shareholder F. Shareholder A is a State X limited liability company, which is treated as a partnership for federal income tax purposes. Shareholder A is owned by: Member 1, Member 2, Member 3, Member 4, Member 5, and Distributing. Distributing wholly owns Controlled LLC, a State X limited liability company, which is treated as a disregarded entity for federal income tax purposes.

Distributing is engaged in Business 1. Distributing has submitted financial information which indicates that Business 1 has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

In Year, Distributing purchased Y out of Z total member units in Shareholder A, for approximately \$x. Distributing retained W of the Y member units purchased, with the remaining member unit being transferred to Member 5 in respect of its carry. Distributing's retained W units equate to a direct x% interest in Shareholder A and indirectly, through Shareholder A, approximately n Distributing shares. In connection with the Year purchase, Distributing and Shareholder A entered into Waiver 1 and Waiver 2. In Waiver 1, Distributing waived distribution and dividend rights with respect to its indirect ownership in n Distributing shares. In Waiver 2, Distributing waived profits and cash rights with respect to its direct x% interest in Shareholder A. Distributing

retained all voting rights with respect to the W member units. As a result of entering into Waiver 1 and Waiver 2, the members of Shareholder A and the shareholders of Distributing hold different economic and voting interests in their respective entities. (Above mentioned paragraph collectively, the “Year Steps”)

After the Year Steps, with respect to economic rights, Shareholder A is owned $E_a\%$ by Member 1, $E_b\%$ by Member 2, $E_c\%$ by Member 3, $E_d\%$ by Member 4, and $E_e\%$ by Member 5. Distributing is owned $E_f\%$ by Shareholder A, $E_g\%$ by Shareholder B, $E_h\%$ by Shareholder C, $E_i\%$ by Shareholder D, $E_j\%$ by Shareholder E, and $E_k\%$ by Shareholder F.

After the Year Steps, with respect to voting rights, Shareholder A is owned $V_a\%$ by Member 1, $V_b\%$ by Member 2, $V_c\%$ by Member 3, $V_d\%$ by Member 4, $V_e\%$ by Member 5, and $V_f\%$ by Distributing. Distributing is owned $V_g\%$ by Shareholder A, $V_h\%$ by Shareholder B, $V_i\%$ by Shareholder C, $V_j\%$ by Shareholder D, $V_k\%$ by Shareholder E, and $V_l\%$ by Shareholder F.

Proposed Transaction

To achieve what are represented to be valid corporate business purposes, Distributing has proposed the following steps (collectively, the “Proposed Transaction”):

- (i) Controlled LLC will convert from a limited liability company to a corporation (the “Conversion”) under State X Law. The Conversion will be treated as a contribution by Distributing of all the assets of Controlled LLC to Controlled in exchange for all the stock of Controlled and the assumption by Controlled of all of the liabilities associated with Controlled LLC. The authorized capital stock of Controlled will consist of one class of a shares of common stock, which will be wholly owned by Distributing.
- (ii) Distributing will contribute various assets related to the conduct of Business 1 to Controlled in exchange for b shares of the stock of Controlled and the assumption by Controlled of liabilities associated with the transferred assets (collectively, the “Contribution”).
- (iii) Distributing will distribute all of the Controlled stock received in step (ii) above, pro rata, to the Distributing shareholders (the “Distribution”). In connection with the Distribution and pursuant to a shares subscription agreement between Distributing, Controlled, and Shareholder A, Controlled will issue an additional n shares to Shareholder A for a nominal purchase price. The n shares will be subject to Waiver 1 and hold voting, but no distribution or dividend rights.

- (iv) After the Distribution, Distributing will provide administrative services, through three of its employees, to Controlled for a transitional period, at an arm's length fee.

Representations

(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 the corporation.

(b) The 5 years of financial information submitted on behalf of Distributing 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.

(c) The 5 years of financial information submitted on behalf of the business contributed to Controlled is representative of the business's present operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(d) Following the transaction, Distributing and Controlled will each continue the active conduct of its business, independently and with its separate employees, except for administrative services to be provided by Distributing to Controlled for a transitional period following the Distribution.

(e) The Distribution is carried out for the following corporate business purposes: facilitate corporate borrowings from institutional lenders, reduction of catastrophic risk from third party liabilities, separate disparate businesses to allow greater focus on objectives of independent businesses, and to allow greater employee incentives based on their core business. The distribution of the stock, or stock and securities, of the controlled corporation is motivated, in whole or substantial part, by one or more of these corporate business purposes.

(f) The Distribution is not used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both.

(g) The total fair market value of the assets that Distributing will transfer to Controlled in the Contribution will exceed the sum of: (a) the amount of liabilities (if any) assumed (within the meaning of § 357(d)) by Controlled in connection with the exchange, (b) the amount of liabilities (if any) owed to Controlled by Distributing that are discharged or extinguished in connection with the exchange, and (c) the amount of cash (if any) and the fair market value of other property (if any) (other than stock or securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing from

Controlled in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.

(h) The total fair market value of the assets transferred to Controlled by Distributing in the Contribution will equal or exceed the aggregate adjusted basis of the transferred assets.

(i) The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing in the Contribution each equals or exceeds the sum of the liabilities assumed (within the meaning of § 357(d)) by Controlled plus any liabilities to which the transferred assets are subject.

(j) The liabilities assumed (within the meaning of § 357(d)) by Controlled in the Contribution and the liabilities to which the transferred assets are subject were incurred in the ordinary course of businesses and are associated with the assets being transferred.

(k) No intercorporate debt will exist between Distributing corporation and Controlled at the time of, or subsequent to, the Distribution.

(l) Payments made in connection with all continuing transactions, if any, between Distributing (and its affiliates) and Controlled (and its affiliates) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

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

(n) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50% 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% or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50% 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 or securities that were 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) 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 possessing a 50% or greater interest (within the meaning of § 355(b)(4)) in Distributing and Controlled (including any predecessor or successor of any such corporation), taking into account the special rules of § 355(e)(3)(A).

(q) Immediately after the Distribution, neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

Rulings

(1) The Conversion, Contribution, and the Distribution, taken together, will qualify as a reorganization within the meaning of section 368(a)(1)(D). Distributing and Controlled each will be "a party to the reorganization" within the meaning of section 368(b).

(2) No gain or loss will be recognized by Distributing on the Conversion and Contribution. Sections 361(a) and 357(a).

(3) No gain or loss will be recognized by Controlled on the Conversion and Contribution. Section 1032(a).

(4) Controlled's basis in each asset received from Distributing in the Conversion and Contribution 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 asset received from Distributing in the Conversion and Contribution will include the holding period during which Distributing held that asset. Section 1223(2).

(6) No gain or loss will be recognized by Distributing on the Distribution. Section 361(c).

(7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing upon the receipt of Controlled stock in the Distribution. Section 355(a)(1).

(8) The aggregate basis of the Distributing stock and Controlled stock in the hands of the shareholders of Distributing immediately after the Distribution will equal the aggregate basis of the Distributing stock held by the shareholders of Distributing immediately before the Distribution, allocated between the stock of Distributing and Controlled in proportion to the fair market value of each in accordance with Treas. Reg. section 1.358-2(a)(2). Sections 358(a)(1), (b), and (c).

(9) The holding period of the Controlled stock received by the shareholders of

Distributing in the Distribution will include the holding period of the Distributing stock with respect to which the Distribution is made, provided that such Distributing 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), and Treas. Reg. sections 1.312-10(a) and 1.1502-33(f)(2).

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 rulings. In particular, no opinion is expressed regarding:

- (i) Whether the Distribution satisfies the business purpose requirement of Treas. Reg. section 1.355-2(b);
- (ii) Whether the Distribution 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));
- (iii) Whether the Distribution is part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii);
- (iv) The federal tax treatment of the Year Steps discussed in the Summary of Facts; and
- (v) The characterization of the interests Distributing holds in Shareholder A and indirectly in itself after the Year Steps discussed in the Summary of Facts.

Procedural Matters

The rulings contained in this letter are based on facts and representations submitted by the taxpayer (Distributing) 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 has made no determination 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 the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code (the "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 fifty percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

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. 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.

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

Sincerely,

Mark S. Jennings
Branch Chief, Branch 1
Office of Associate Chief Counsel (Corporate)