

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **201105024**

Release Date: 2/4/2011

Index Number: 355.00-00, 355.01-00, 368.00-00, 368.04-00

Third Party Communication: None  
Date of Communication: Not Applicable  
Person To Contact:

, ID No.  
Telephone Number:

Refer Reply To:  
CC:CORP:03  
PLR-135230-10  
Date:  
November 04, 2010

Legend

Distributing =  
Controlled =

Sub =

Business A =

Business B =

Activity 1 =

Year 1 =

Year 2 =

Year 3 =

State A =

Shareholder 1 =

Shareholder 2 =

Shareholder 3 =

Shareholder 4 =

Shareholder 5 =

Asset 1 =

Asset 2 =

Asset 3 =

Cash =

Dear \_\_\_\_\_ :

This letter responds to your August 25, 2010 request for rulings regarding certain federal income tax consequences of a series of proposed transactions (collectively, the Proposed Transactions). The information submitted in that request as well as subsequent correspondence dated November 2, 2010 is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties 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 on examination. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Proposed Transactions: (i) satisfy the business purpose requirement of §1.355-2(b) of the Income Tax Regulations (the regulations); (ii) are 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) of the Internal Revenue Code, as amended (the Code) and §1.355-2(d)); and (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 fifty percent (50%) or greater interest in the distributing corporation or the controlled corporation (see section 355(e) of the Code and §1.355-7 of the regulations).

### **SUMMARY OF FACTS**

Distributing, a publicly held State A corporation, is the common parent of an affiliated group of corporations that files a consolidated federal income tax return (the Distributing Group). Sub, a State A corporation, is a direct, wholly-owned subsidiary of Distributing and a member of the Distributing Group.

Distributing has only one class of voting common stock issued and outstanding. The following shareholders have filed reports with the United States Securities and Exchange Commission indicating that they own, as of the most recent required reporting dates, more than five percent of Distributing stock: Shareholder 1, Shareholder 2, Shareholder 3, Shareholder 4, and Shareholder 5. Controlled will be formed to effectuate the Proposed Transactions described below.

Since Year 1, Distributing has directly conducted Business A. Starting in Year 2, some of Distributing's Business A operations included Activity 1 and a portion of the income from Distributing's Business A operations has been derived from Activity 1 operations. Since Year 3, Distributing has directly conducted Business B, as a complement to Distributing's Business A operations. The financial information submitted by Distributing indicates that Distributing has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

The Proposed Transactions and the subsequent operation of Controlled will facilitate the full exploitation of Business B. Up to this point, certain conflicts between Distributing's other operating activities and Business B have limited the full pursuit of Business B. Due to the conflicts, Distributing is not currently pursuing Business B as aggressively as Distributing's management believes could be fruitful. The proposed separation will thereby permit the management of both Distributing and Controlled to focus without reservation on the needs, priorities and strategies of their post-Distribution operations. The separation also will enable Controlled to provide targeted equity incentives to key employees with respect to Business B.

### **PROPOSED TRANSACTIONS**

For the reasons discussed above, Distributing proposes the following Proposed Transactions:

(i) Distributing will transfer Asset 1, Asset 2, Asset 3, and Cash to Controlled in exchange for all of the Controlled stock and the assumption by Controlled of related liabilities, if any (the "Contribution").

(ii) Distributing will distribute the Controlled stock to the Distributing shareholders on a pro-rata basis (the "Distribution").

## REPRESENTATIONS

The following representations have been made with respect to the Proposed Transactions:

(a) Distributing and Controlled will each pay their own expenses, if any, incurred in connection with the Proposed Transactions.

(b) No part of the consideration to be distributed by Distributing in the Distribution will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

(c) Any indebtedness owed by Controlled to Distributing after the Distribution will not constitute stock or securities.

(d) The total fair market value of the assets that Distributing will transfer to Controlled will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of section 357(d)) by Controlled in connection with the Contribution, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the Contribution, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under section 361(a) without recognition of gain) received by Distributing from Controlled in connection with the Contribution. The aggregate fair market value of the assets contributed to Controlled in the Contribution will exceed the aggregate basis of those assets.

(e) The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.

(f) 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.

(g) Following the Distribution, Distributing and Controlled will each continue, independently and with its separate employees, the active conduct of its share of the

integrated activities of the business conducted by Distributing prior to consummation of the transaction.

(h) The Distribution is carried out for the following corporate business purposes: (i) the distribution will permit the management of each of Distributing and Controlled to focus without reservation on the needs, priorities and strategies of their separate post-Distribution operations; and (ii) the distribution will enable Controlled to provide targeted equity incentives to key employees for their efforts with respect to Business B. The Distribution is motivated, in whole or substantial part, by one or more of these corporate business purposes.

(i) Neither Business A to be conducted by Distributing nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Reg. §1.355-3) in whole or in part.

(j) Neither Business B to be conducted by Controlled nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Reg. §1.355-3) in whole or in part.

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

(l) The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing each equals or exceeds the sum of the liabilities assumed by Controlled plus any liabilities to which the transferred assets are subject; and the liabilities assumed in the transaction and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.

(m) To the extent any transfer in the Contribution or Distribution is an early disposition of property for which an investment credit has been (or will be) claimed under section 46, the income tax liability for the taxable year in which the investment credit property (including any building to which section 47(d) applies) is transferred will be adjusted pursuant to section 50(a)(1) or (a)(2) (or section 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536(1990), if applicable) to reflect the early disposition of the property.

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

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

(p) 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.

(q) The Proposed Transactions are not part of a plan or series of related transactions (within the meaning of section 355(e)) pursuant to which one or more persons will acquire directly or indirectly stock possessing 50 percent or more of the total combined voting power of all classes of stock of Distributing or Controlled, or stock possessing 50 percent or more of the total value of all classes of stock of Distributing or Controlled (other than by reason of acquisitions described in section 355(e)(3)(A)).

(r) 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.

(s) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv) or section 351(e) and §1.351-1(c)(1)(ii).

(t) Immediately after the transaction (as defined in section 355(g)(4)), neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)).

(u) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying the aggregation rules of 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 Distribution.

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

## **RULINGS**

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

- (1) The Contribution, followed by the Distribution, will qualify as a reorganization within the meaning of section 368(a)(1)(D). Distributing and Controlled will each be a “party to a reorganization” within the meaning of section 368(b).
- (2) No gain or loss will be recognized by Distributing on the Contribution. Sections 357(a) and 361(a).
- (3) No gain or loss will be recognized by Controlled on the Contribution. Section 1032(a).
- (4) The basis Controlled has in each asset received in the Contribution will equal the basis of that asset in the hands of Distributing immediately before its transfer. Section 362(b).
- (5) The holding period Controlled has in each asset received in the Contribution will include the 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 be included in the income of) Distributing’s shareholders on the Distribution. Section 355(a)(1).
- (8) The aggregate basis of the stock of Distributing and Controlled in the hands of each shareholder of Distributing immediately after the Distribution will equal the shareholder’s aggregate basis in the stock of Distributing immediately before the Distribution, allocated in proportion to the fair market value of each in accordance with §1.358-2(a)(2). Sections 358(a)(1), (b), and (c).
- (9) The holding period each Distributing shareholder has in the Controlled stock will include the holding period of the Distributing stock on which the Distribution is made, provided that the Distributing stock is 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 §1.312-10(a).

#### **CAVEATS**

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.

In particular, no opinion is expressed regarding: (i) whether the Distribution satisfies the business purpose requirement of §1.355-2(b); (ii) whether the Distribution is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled; and (iii) whether the Distribution is part of a plan (or a series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a fifty percent (50%) or greater interest in Distributing or Controlled (see section 355(e) and §1.355-7).

### **PROCEDURAL MATTERS**

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 on examination.

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 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.

Sincerely,

---

Bruce A. Decker  
Assistant Branch Chief, Branch 3  
Office of Associate Chief Counsel (Corporate)