

Shared Services =

Debt =

Dear :

This letter responds to your authorized representative's letter dated September 30, 2011, requesting rulings under sections 332 and 355 of the Internal Revenue Code (the "Code") and related provisions with respect to the Proposed Transaction (defined below) described herein. The information submitted in that request and in subsequent communications is summarized below.

The rulings contained in this letter are based on information and representations submitted by Parent and accompanied by a penalty 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 not reviewed any information pertaining to, and has made no determination regarding, whether the Distribution (defined 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 Distributing or Controlled or both (see section 355(a)(1)(B) and Treas. Reg. § 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 percent or greater interest in Distributing or Controlled (see section 355(e) and Treas. Reg. § 1.355-7).

Summary of Facts

Parent, a publicly traded corporation organized under the laws of State 1, owns all the issued and outstanding stock of Distributing, a State 2 corporation. Distributing owns all the issued and outstanding stock of Controlled, a State 3 corporation. Parent, Distributing, Controlled, and several other direct and indirect subsidiaries of Parent are members of an affiliated group that join together in filing a consolidated Federal income tax return with Parent as the common parent of the group. Parent has outstanding a debt (the "Debt") due to Controlled. Parent is solvent and able to satisfy its obligations under the Debt as they become due.

Distributing is engaged in Business A and Business B. Controlled is engaged in Business C. Parent has submitted financial information indicating that Business A and Business B conducted by Distributing have had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years. Parent also submitted financial information indicating that Business C conducted by Controlled has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

Parent files state income tax returns in combined return states and one separate return state. Controlled files state income tax returns in multiple separate return states and combined return states. The management of Parent has determined that it can achieve material state tax savings by consolidating Controlled with Parent.

Proposed Transaction

Parent has proposed the following series of transactions (the "Proposed Transaction") to achieve the desired savings:

- (i) Distributing will distribute all the issued and outstanding stock of Controlled to Parent (the "Distribution"); and
- (ii) At least a day after the Distribution, Controlled will convert under State 3 law to a limited liability company ("LLC") (the "Conversion").

Representations

Parent makes the following representations with respect to the Proposed Transaction:

The Distribution

The following representations are made regarding the Distribution:

- (a) The indebtedness, if any, owed by Controlled to Distributing after the Distribution will not constitute stock or securities.
- (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 the corporation.
- (c) The five years of financial information submitted on behalf of Distributing is representative of Distributing's present operations, and with regard to such

corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

- (d) The five years of financial information submitted on behalf of Controlled is representative of Controlled's present operations, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) Following the Distribution, no person will hold a greater than percent interest in either Distributing or Controlled (within the meaning of section 355(g)) who did not hold such an interest immediately before the Distribution.
- (f) Following the transaction, except with respect to Shared Services, Distributing and Controlled will each continue the active conduct of its respective business, independently and with its separate employees.
- (g) The Distribution will be carried out for the corporate business purpose of state income tax savings. The Distribution is motivated, in whole or substantial part, by this corporate business purpose.
- (h) The Distribution will not be used principally as a device for distributing the earnings and profits of Distributing or Controlled or both.
- (i) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing percent or more of the total combined voting power of all classes of Distributing stock entitled to vote or percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (j) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 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 sections 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 or securities that were acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.

- (k) Other than payables created through Shared Services, which reflect the fair market value of providing these services, or trade account indebtedness created in the ordinary course of business through continuing transactions, no intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.
- (l) 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 1.1502-14 as in effect before publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13 as published by T.D. 8597). Immediately before the Distribution, Distributing will not have an excess loss account (within the meaning of Treas. Reg. § 1.1502-19(a)(2)) in Controlled stock.
- (m) Payments made in connection with all continuing transactions 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.
- (n) The Distribution is 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 percent or greater interest (within the meaning of section 355(d)(4)) in Distributing or Controlled (including any predecessor or successor to any such corporation).

The Conversion

The following representations are made regarding the Conversion:

- (o) Parent and Controlled will adopt a plan of conversion under State 3 law to convert Controlled into a limited liability company ("plan of liquidation"), and the Conversion will occur pursuant to that plan of liquidation.
- (p) Parent, on the date of adoption of the plan of liquidation and at all times thereafter until the Conversion is completed, will own 100 percent of the single outstanding class of Controlled stock and Controlled has no (and will have no) outstanding warrants, options, convertible securities, or other obligations that may be classified as equity for Federal income tax purposes.
- (q) No shares of Controlled stock have been redeemed during the three years preceding the Conversion, and no shares of Controlled stock have been the subject of a prior intercompany recognition transaction under Treas. Reg. § 1.1502-13 (or its predecessor) or basis reduction under sections 108(b) and 1017 and Treas. Reg. § 1.1502-28.

- (r) Upon the Conversion, Controlled will cease to be regarded as a taxable entity separate from Parent for Federal income tax purposes.
- (s) Controlled (as a corporation) will retain no assets and cease to conduct any activities for Federal income tax purposes following the Conversion.
- (t) Controlled will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years prior to the effective time of the Conversion.
- (u) No assets of Controlled have been, or will be, disposed of by Controlled or Parent except for dispositions (i) in the ordinary course of business, (ii) which occurred more than three years prior to the effective time of the Conversion, or (iii) described in this letter that occur as part of the Proposed Transaction.
- (v) The Conversion will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation of all or a part of the businesses or assets of Controlled if the persons holding, directly or indirectly, more than percent in value of the stock of Controlled also hold, directly or indirectly, more than percent in value of the stock of the recipient corporation. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of section 318(a), as modified by section 304(c)(3).
- (w) There is no plan or intention to undertake any action (e.g., an election to be treated as an association taxable as a corporation for federal income tax purposes under Treas. Reg. § 301.7701-3, etc.), and no other circumstances will exist (e.g., the existence of a second regarded owner of a member interest), following the Conversion, that will prevent Controlled from being disregarded as an entity separate from Parent for Federal income tax purposes under Treas. Reg. §§ 301.7701-2 and 301.7701-3.
- (x) Prior to the effective time of the Conversion, no assets of Controlled will have been distributed in kind, transferred, or sold to Parent, except for (i) transactions occurring in the normal course of business, and (ii) transactions occurring more than three years prior to the effective time of the Conversion.
- (y) Controlled will report all earned income represented by assets that will be deemed to have been distributed to Parent as a result of the Conversion, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

- (z) The fair market value of the assets of Controlled will exceed its liabilities, both at the time of the adoption of the plan of liquidation and immediately before the close of the day before the effective date of the Conversion.
- (aa) The Debt is the only intercompany debt that will exist between Parent and Controlled at the time the Conversion. No intercompany debt existing between Parent and Controlled has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years prior to the effective time of the Conversion, and except for the deemed extinguishment of the Debt as a result of the Conversion.
- (bb) All of the rights and obligations under the Debt will be extinguished in the Conversion, an intercompany transaction under Treas. Reg. § 1.1502-13, and (i) all income and deduction amounts with respect to the Debt will have been taken into account before the Conversion, (ii) the fair market value of the Debt will approximately equal Parent's adjusted issue price in the Debt and Controlled's basis in the Debt, and (iii) Parent's corresponding item and Controlled's intercompany item (after taking into account the special rules of Treas. Reg. § 1.1502-13(g)(4)(i)(C)) with respect to the Debt will offset in amount.
- (cc) Parent is not an organization that is exempt from Federal income tax under section 501 or any other provision of the Code.
- (dd) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to the Conversion have been fully disclosed.

Rulings

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

- (1) No gain or loss will be recognized by (and no amount will be included in the income of) Parent upon the Distribution. Section 355(a).
- (2) No gain or loss will be recognized by Distributing upon the Distribution. Section 355(c).
- (3) The aggregate basis of the Distributing and Controlled stock in the hands of Parent immediately after the Distribution will be the same as Parent's aggregate basis in the Distributing stock held immediately before the Distribution, allocated in the manner described in Treas. Reg. § 1.358-2(a)(2), in accordance with sections 358(a) through (c).

- (4) The holding period of the Controlled stock received by Parent in the Distribution includes the holding period of the Distributing stock with respect to which the distribution was made, provided such Distributing stock is held as a capital asset by Parent on the date of the Distribution. Section 1223(1).
- (5) The earnings and profits of Distributing and Controlled will be adjusted in accordance with section 312(h) and Treas. Reg. § 1.312-10(b), as applicable.

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

- (6) The Conversion will be treated as a distribution in complete liquidation of Controlled under section 332(a).
- (7) No gain or loss will be recognized by Parent on its deemed receipt of the assets and assumption of the liabilities of Controlled in the Conversion. Section 332(a).
- (8) No gain or loss will be recognized by Controlled on the deemed distribution of its assets to, and assumption of liabilities by, Parent in the Conversion. Section 337(a).
- (9) The basis of each asset of Controlled deemed received by Parent in the Conversion will equal the basis of that asset in the hands of Controlled immediately before the Conversion. Section 334(b)(1).
- (10) The holding period of each asset of Controlled deemed received by Parent in the Conversion will include the period for which the asset was held by Controlled. Section 1223(2).
- (11) Parent will succeed to and take into account the items of Controlled described in section 381(c), subject to the conditions and limitations specified in sections 381, 382, 383, 384 and 1502, and the regulations thereunder. Section 381(a)(1) and Treas. Reg. § 1.381(a)-1.
- (12) Except to the extent Controlled's earnings and profits are reflected in Parent's earnings and profits, Parent will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Controlled as of the date of the Conversion, and any deficit in the earnings and profits of Controlled will be used only to offset earnings and profits accumulated after the date of the Conversion. Section 381(c)(2) and Treas. Reg. §§ 1.381(c)(2)-1, 1.1502-33(a)(2), and 1.1502-80(a)(2).

Caveats

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or on 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 Treas. Reg. § 1.355-2(b), (ii) whether the Distribution was used principally as a device for the distribution of earnings and profits of Distributing or Controlled or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)), or (iii) whether the Distribution was part of a plan (or series of related transactions) under section 355(e).

Procedural Statements

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,

Maury Passman
Assistant to the Branch Chief, Branch 1
Associate Chief Counsel (Corporate)