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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B06
PLR-107771-12

Date:
April 25, 2012

Legend

Distributing =

Controlled =

U.S. Parent =

U.S. Sub 1 =

U.S. Sub 2 =

U.S. Sub 3 =

PLR-107771-12

2

U.S. Sub 4 =

U.S. Sub 5 =

U.S. Sub 6 =

FSub 1 =

FSub 2 =

FSub 3 =

FSub 4 =

Fsub 5 =

FSub 6 =

FSub 7 =

FSub 8 =

DRE 1 =

DRE 2 =

DRE 3 =

DRE 4 =

DRE 5 =

DRE 6 =

DRE 7 =

Partnership 1 =

Partnership 2 =

Partnership 3 =

Business A =

Business B =

Business C =

Business D =

Business E =

Entity Type A =

Entity Type B =

Country A =

State A =

State B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

a =

b =

c =

d =

e =

x =

y =

Dear :

This letter responds to your request for rulings dated February 17, 2012 (together with supplemental information, the "Ruling Request") regarding certain Federal income tax consequences, under the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, of a proposed spin-off (the "Spin-off") and certain related transactions. The information provided in the Ruling Request 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 material submitted in support of the Ruling Request. 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 Spin-off: (i) satisfies the business purpose requirement of § 1.355-2(b); (ii) is used principally as a device for the distribution of earnings and profits of the distributing corporation or the controlled corporation or both (§ 355(a)(1)(B) 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 (§ 355(e) and § 1.355-7).

Summary of Facts

Distributing is a Country A entity that is classified as a corporation for Federal income tax purposes. U.S. Sub 1 owns all of the outstanding stock of Distributing (which consists of Class A and Class B shares) for Federal income tax purposes.

Approximately a percent of the outstanding Distributing stock, consisting of both Class A and Class B shares, is held by DRE 1. DRE 1 is a direct Country A subsidiary of DRE 2 (which, in turn, is a direct Country A subsidiary of U.S. Sub 1), and both DRE 1 and DRE 2 are disregarded as entities separate from U.S. Sub 1 for Federal income tax purposes. The remaining approximately b percent of the outstanding Distributing stock, consisting solely of Class A shares, is held directly by U.S. Sub 1 as a result of the U.S. Sub 1 Contribution (as defined below).

U.S. Sub 1 is a State A limited liability company that is classified as a corporation for Federal income tax purposes. U.S. Sub 1 is an indirect wholly-owned subsidiary of U.S. Parent (a widely held, publicly traded State B corporation) and a member of the affiliated group of corporations of which U.S. Parent is the common parent (the "U.S. Consolidated Group"). The members of the U.S. Consolidated Group join in the filing of a consolidated Federal income tax return. The outstanding stock of U.S. Sub 1 consists of one class of preferred stock and three classes of tracking stock. Each class of U.S. Sub 1 tracking stock is held by a different member of the U.S. Consolidated Group (U.S. Sub 2, U.S. Sub 3, and U.S. Sub 4, respectively). U.S. Sub 4, U.S. Sub 5, and U.S. Sub 6, which are members of the U.S. Consolidated Group that indirectly own the stock of Distributing, also have tracking stock outstanding. U.S. Parent and U.S. Sub 3 also are parties to an internal agreement (the "Agreement")

Distributing is engaged, directly and through other members of its separate affiliated group, as defined in § 355(b)(3)(B) ("SAG"), in the conduct of Business A, Business B, Business C, Business D, and Business E.

Distributing owns all of the outstanding stock of Controlled, a Country A entity that is classified as a corporation for Federal income tax purposes. As a result of the Controlled Contribution (as defined below), Controlled owns (directly and through DRE 3) all of the outstanding stock of FSub 1 and all of the outstanding equity interests in DRE 4. Before the Controlled Contribution (as defined below), Controlled had been an inactive entity since its formation by Distributing on or around Date 6.

The Controlled SAG is engaged in the conduct of Business B through FSub 1 and certain subsidiary entities of FSub 1 that are classified as partnerships for Federal income tax purposes (Partnership 1, Partnership 2, and Partnership 3). FSub 1 owns approximately c percent, d percent, and e percent of the outstanding equity interests in Partnership 1, Partnership 2, and Partnership 3, respectively. The Controlled SAG is also engaged in the conduct of Business C through DRE 4. In connection with the conduct of Business B, each of FSub 1, Partnership 1, Partnership 2, and Partnership 3 utilizes the services of certain individuals employed by DRE 5 and DRE 6, both of which are disregarded as entities separate from FSub 2 (a direct Country A subsidiary of DRE 2) for Federal income tax purposes.

DRE 1 holds greater than d percent of the outstanding stock of FSub 3, which owns interests in a number of different subsidiary entities, including all of the outstanding stock of FSub 4 and FSub 5 and all of the outstanding equity interests in DRE 7.

In connection with the Spin-off, the Distributing SAG will rely upon Business A as its five-year active trade or business for purposes of § 355(b), and the Controlled SAG will rely upon Business B as its five-year active trade or business for purposes of § 355(b). Business B does acquire and dispose of business assets in the ordinary course of business (and has done so from time to time during the five-year period) in order to pursue growth opportunities and eliminate underperforming assets, consistent with the objectives and activities of Business B.

The taxpayer has submitted financial information indicating that Business A and Business B have each had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

Proposed Transactions

For what are represented to be valid business purposes, Distributing has undertaken, or proposes to undertake, the following steps (the "Proposed Transactions"):

- (i) On or around Date 1, U.S. Sub 1 distributed approximately x in cash to U.S. Sub 4 (the "U.S. Sub 1 Cash Distribution").
- (ii) On or around Date 2, Distributing purchased all of the outstanding stock of Controlled from DRE 2 for approximately y in cash (the "Controlled Stock Purchase").
- (iii) On or around Date 3, U.S. Sub 4 contributed to U.S. Sub 1 its shares of Distributing stock (consisting solely of Class A shares and representing approximately b percent of the total Distributing stock outstanding) in exchange for Class C tracking stock of U.S. Sub 1 having a fair market value approximately equal to that of the contributed shares of Distributing stock (the "U.S. Sub 1 Contribution").
- (iv) On or around Date 4, Distributing contributed to Controlled (i) the shares of FSub 1 stock held directly by Distributing, (ii) the equity interests in DRE 4 held directly by Distributing, and (iii) all of the outstanding equity interests in DRE 3 (collectively, the "Contributed Assets") in exchange for Controlled stock having a fair market value approximately equal to that of the Contributed Assets (the "Controlled Contribution").
- (v) Effective Date 5, DRE 4 was converted from an Entity Type A into an Entity Type B under Country A law. DRE 4 made a check-the-box election, effective as of Date 5, to be classified as a corporation for Federal income tax purposes.

- (vi) Pursuant to the Spin-off, Distributing will distribute all of the outstanding Controlled stock pro rata to U.S. Sub 1 and DRE 1 based on the number of shares of Distributing stock held by each of them.
- (vii) After the Spin-off, Distributing's articles of incorporation will be amended in order to effect a recapitalization of Distributing's outstanding Class A and Class B shares into a single class of ordinary stock.
- (viii) U.S. Sub 1 will contribute to DRE 2 the shares of Controlled stock held directly by U.S. Sub 1 (representing approximately percent of the total Controlled stock outstanding).
- (ix) FSub 5 will make a check-the-box election to be classified as an entity disregarded as separate from FSub 3 for Federal income tax purposes.
- (x) All of the outstanding Distributing stock and certain other assets of DRE 1 will be transferred to FSub 3 pursuant to the following steps: (a) U.S. Sub 1 will contribute to DRE 2 the shares of Distributing stock held directly by U.S. Sub 1, (b) DRE 2 will contribute the Distributing stock received from U.S. Sub 1 to FSub 3, (c) FSub 3 will contribute the Distributing stock received from DRE 2 to FSub 5, and (d) DRE 1 will contribute to FSub 3 the shares of Distributing stock held directly by DRE 1.
- (xi) FSub 3 will cause Distributing, FSub 4, and DRE 7 to be combined (with Distributing surviving).
- (xii) DRE 1 may merge with and into DRE 2.

Representations

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

- (a) The total adjusted basis and the fair market value of the Contributed Assets equaled or exceeded the sum of (i) the total amount of any liabilities assumed (as determined under § 357(d)) by Controlled and (ii) the total amount of any money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing and transferred to its creditors in connection with the reorganization.
- (b) Any liabilities assumed (as determined under § 357(d)) by Controlled in the Controlled Contribution were incurred in the ordinary course of business and were associated with the Contributed Assets.

- (c) The total fair market value of the Contributed Assets exceeded the sum of (i) the amount of any liabilities assumed (as determined under § 357(d)) by Controlled in connection with the Controlled Contribution, (ii) the amount of any liabilities owed to Controlled by Distributing that were discharged or extinguished in connection with the Controlled 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 § 361(a) without the recognition of gain) received by Distributing in connection with the Controlled Contribution. The fair market value of the assets of Controlled exceeded the amount of its liabilities immediately after the Controlled Contribution.
- (d) The aggregate fair market value of the Contributed Assets equaled or exceeded the aggregate adjusted basis of those assets at the time of the Controlled Contribution.
- (e) Neither Distributing nor Controlled is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).
- (f) Any indebtedness owed by Controlled (or any entity controlled directly or indirectly by Controlled) to Distributing (or any entity controlled directly or indirectly by Distributing) after the Spin-off will not constitute stock or securities.
- (g) No part of the consideration distributed to U.S. Sub 1 and DRE 1 will be received as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (h) The five years of financial information submitted for Business A, conducted by the Distributing SAG, and for Business B, conducted by the Controlled SAG, is representative of the present operation of each business, and there have been no substantial operational changes in either business since the date of the last financial statements submitted, other than changes made in the ordinary course of business and, with respect to Business B, certain operational changes relating to increased digitization and utilization of web-enabled programs.
- (i) The Distributing SAG will continue the active conduct of Business A, independently and with its separate employees, following the Spin-off.
- (j) The Controlled SAG will continue the active conduct of Business B, independently and with its separate employees, following the Spin-off, except that the Controlled SAG will continue to utilize the services of certain employees of DRE 5 and DRE 6 after the Spin-off in connection with the conduct of Business B.

- (k) Payments made in connection with all continuing transactions, if any, between Distributing (or any entity controlled directly or indirectly by Distributing) and Controlled (or any entity controlled directly or indirectly by Controlled) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (l) Neither Business A nor control of an entity conducting Business A other than FSub 6, FSub 7, and FSub 8 will have been acquired during the five-year period ending on the date of the Spin-off in a transaction in which gain or loss was recognized in whole or in part. Throughout the five-year period ending on the date of the Spin-off, the Distributing SAG will have been the principal owner of the goodwill and significant assets of Business A and will continue to be the principal owner following the Spin-off.
- (m) Neither Business B nor control of an entity conducting Business B will have been acquired during the five-year period ending on the date of the Spin-off in a transaction in which gain or loss was recognized in whole or in part (other than the Controlled Stock Purchase). Throughout the five-year period ending on the date of the Spin-off, the Distributing SAG will have been the principal owner of the goodwill and significant assets of Business B, and the Controlled SAG will continue to be the principal owner following the Spin-off.
- (n) The Spin-off is being carried out to: reduce any perceived risk that Distributing's liabilities will taint U.S. Sub 3's Country A operations
- .” The Spin-off is motivated in whole or substantial part by these corporate business purposes.
- (o) The Spin-off will not be used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (p) No intercorporate debt will exist between Distributing (or any entity controlled directly or indirectly by Distributing) and Controlled (or any entity controlled directly or indirectly by Controlled) at the time of, or subsequent to, the Spin-off, other than intercompany loans or other obligations that have arisen, or will arise, in the ordinary course of business.
- (q) Immediately after the transaction (as defined in § 355(g)(4)), either (i) if any person holds a 50-percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (ii) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

- (r) For purposes of § 355(d), immediately after the Spin-off, 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 Spin-off. This representation is based on the determination that, as a result of § 355(d)(7)(A), neither the outstanding tracking stock of U.S. Sub 1 and other members of the U.S. Consolidated Group held solely by members of the U.S. Consolidated Group nor the Agreement will cause § 355(d)(6) to apply to the Spin-off.
- (s) For purposes of § 355(d), immediately after the Spin-off, 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 Spin-off 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 Spin-off. This representation is based on the determination that, as a result of § 355(d)(7)(A), neither the outstanding tracking stock of U.S. Sub 1 and other members of the U.S. Consolidated Group held solely by members of the U.S. Consolidated Group nor the Agreement will cause § 355(d)(6) to apply to the Spin-off.
- (t) The Spin-off 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 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).
- (u) There was no regulatory, legal, contractual or economic compulsion or requirement that U.S. Sub 4 make all or part of the U.S. Sub 1 Contribution as a condition to the U.S. Sub 1 Cash Distribution.
- (v) Neither Distributing nor Controlled will have been a U.S. real property holding corporation (as defined in § 897(c)(2)) at any time during the five-year period preceding the Spin-off, and neither will be a U.S. real property holding corporation immediately after the Spin-off.
- (w) The notice requirements of § 1.367(b)-1(c)(1) will be met with respect to the Spin-off.

- (x) Immediately before and after the Controlled Contribution and the Spin-off, Distributing and Controlled each will be a CFC (within the meaning of section 957(a)) with respect to which U.S. Sub 1 will be a section 1248 shareholder (within the meaning of Treas. Reg. § 1.367(b)-2(b)).
- (y) At all times before and immediately after the Controlled Contribution and the Spin-off, neither Distributing nor Controlled has been or will be a PFIC (within the meaning of section 1297(a)).
- (z) Distributing will not transfer any United States real property interests (as defined in Treas. Reg. § 1.897-1(c)) during the Controlled Contribution.
- (aa) The Controlled Contribution is not an exchange described in Treas. Reg §§ 1.367(b)-4(b)(1)(i), 1.367(b)-4(b)(2)(i), or 1.367(b)-4(b)(3).
- (bb) The Controlled Contribution will not include the transfer of stock in any corporation that has been 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 and 1.367(a)-8.

Rulings

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

- (1) The Controlled Contribution, followed by the Spin-off, will be a reorganization under § 368(a)(1)(D). Distributing and Controlled will each be a "party to the reorganization" within the meaning of § 368(b).
- (2) No gain or loss will be recognized by Distributing on the Controlled Contribution (§§ 361(a) and 357(a)).
- (3) No gain or loss will be recognized by Controlled on the Controlled Contribution (§ 1032(a)).
- (4) The basis of each asset received by Controlled in the Controlled Contribution will equal the basis of that asset in the hands of Distributing immediately before the Controlled Contribution (§ 362(b)).
- (5) The holding period of each asset received by Controlled in the Controlled Contribution will include the period during which Distributing held that asset (§ 1223(2)).

- (6) No gain or loss will be recognized by Distributing on the Spin-off (§ 361(c)).
- (7) No gain or loss will be recognized by (and no amount will be included in the income of) U.S. Sub 1 on the Spin-off (§ 355(a)(1)).
- (8) The basis of the stock of Distributing and Controlled in the hands of U.S. Sub 1 after the distribution will be the same as the basis of the Distributing stock held immediately before the distribution, allocated in proportion to the fair market value of Distributing and Controlled in accordance with § 358(a)(1) and Treas. Reg. §1.358-2(a). Section 358(b)(2), (c).
- (9) The holding period of the Controlled stock received by U.S. Sub 1 in the Spin-off will include the holding period of the Distributing stock on which the Spin-off is made, provided the Distributing stock is held by U.S. Sub 1 as a capital asset on the date of the Spin-off (§ 1223(1)).
- (10) Earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with § 312(h) and Treas. Reg. § 1.312-10(a).
- (11) The Spin-off will be an exchange to which § 1.367(b)-1(c), § 1.367(b)-5(a), and § 1.367(b)-5(c) apply. If U.S. Sub 1's post-distribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(2)) with respect to Distributing or Controlled is less than its pre-distribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(1)) with respect to Distributing or Controlled, U.S. Sub 1's basis in such stock immediately after the Spin-off must be reduced by the amount of the difference. However, U.S. Sub 1's basis in such stock must not be reduced below zero, and to the extent the foregoing reduction would reduce its basis below zero, U.S. Sub 1 must instead include such amount in income as a deemed dividend from such corporation. If U.S. Sub 1 reduces the basis in the stock of Distributing or Controlled (or has an inclusion with respect to such stock), U.S. Sub 1 must increase its basis in the stock of the other corporation to the extent provided in Treas. Reg. § 1.367(b)-5(c)(4).
- (12) The Controlled Contribution will be an exchange to which § 1.367(b)-1(c) and § 1.367(b)-4(a) apply. No amount will be included in income as a deemed dividend equal to the section 1248 amount under section 367(b) as a result of the Controlled Contribution.

Caveats

No opinion is expressed about the tax treatment of the Proposed Transactions 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 Transactions that are not specifically covered by the above rulings. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Spin-off: (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is used principally as a device for the distribution of earnings and profits of Distributing and Controlled or both; or (iii) is part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

In addition, no opinion is expressed regarding the Federal income tax treatment of steps (i)-(iii), (v) and steps (vii)-(xii) of the Proposed Transactions.

Procedural Statements

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter must be attached to any income tax return to which it is relevant. Alternatively, any taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to the returns that provides the date and control number of this letter ruling.

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

Sincerely,

Isaac W. Zimbalist
Isaac W. Zimbalist
Senior Technician Reviewer, Branch 5
Associate Chief Counsel (Corporate)