Internal Revenue Service

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In Re:

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:BO1
PLR-133087-11
Date:

April 25, 2012

LEGEND:

Distributing =

Controlled =

Business Y =

Date 1 =

Date 2 =

a =

b =

c =

d =

Dear

This letter responds to your authorized representatives' letter dated August 3, 2011, requesting that we supplement a private letter ruling dated March 21, 2011 (the "Prior Letter Ruling"). Additional information was submitted in a letter dated March 12, 2012.

In the Prior Letter Ruling, we ruled that a series of transactions in which Business Y was contributed from Distributing to Controlled (the Contribution) followed by the distribution of Controlled stock to Distributing's shareholders (the Distribution) qualified as a tax-free corporate separation under § 368(a)(1)(D) and § 355 of the Internal Revenue Code.

Distributing is requesting supplemental rulings concerning; (a) whether liabilities that give rise to a deduction are included in "liabilities" for purposes of § 357(c) of the Internal Revenue Code as applied to the Contribution, and (b) whether certain Distributing warrants should be treated as stock for federal income tax purposes so that distributions of Controlled stock to Distributing warrant holders in the Distribution are treated as distributions with respect to stock for purposes of § 355.

Supplemental Facts

Liability Assumption Issue

The Prior Ruling contained the following representation:

(vv) The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing in the Contribution will equal or exceed the sum of: (i) the total liabilities (if any) assumed (within the meaning of § 357(d)) by Controlled, and (ii) the total amount of any money and the fair market value of any property (within the meaning of § 361(b)) received by Distributing from Controlled and transferred to Distributing's creditors in connection with the transaction, if any.

The liabilities assumed by Controlled included accrued vacation, accrued salaries and wages, and warranties relating to certain products, which Distributing refers to as the "Deductible Liabilities." Distributing makes the following representations concerning the Deductible Liabilities:

(a) The incurrence of the Deductible Liabilities did not result in the creation of, or increase in, the basis of any asset of Distributing or Controlled, or the stock of Distributing or Controlled.

(b) The Deductible Liabilities were accrued liabilities for accounting purposes by Distributing, but did not meet the timing requirements for a deduction by Distributing before the Contribution under Distributing's method of accounting. The Deductible Liabilities met the requirements for a deduction by Controlled after the Contribution under Controlled's method of accounting.

Distributing also modifies representation (vv) of the Prior Ruling to provide as follows:

(vv) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing in the Contribution will equal or exceed the sum of (a) the total liabilities assumed (within the meaning of § 357(d), but excluding any liabilities to which § 357(c))(3) applies) by Controlled, and (b) the total amount of any money and the fair market value of any property (within the meaning of § 361(b)) received by Distributing from Controlled and transferred to Distributing's creditors in connection with the transaction, if any.

Distributing requests a ruling that the Deductible Liabilities assumed by Controlled will be excluded in determining the amount of liabilities assumed by Controlled or to which property transferred to Controlled is subject for purposes of § 357(c).

Warrant Issue

On Date 1 Distributing entered into a Note and Warrant Purchase Agreement in which Distributing issued $a in senior subordinated notes (the Notes) with an interest rate of b percent, together with immediately exercisable warrants to purchase Distributing common stock at $c per share (a nominal amount). The warrants could be exercised by the warrant holders at any time until Date 2, when the warrants will expire if not exercised. At the time of their issuance, Distributing valued the warrants at a total amount of approximately d, which it reported as an increase in capital for financial reporting purposes.

The warrants provide that if Distributing pays a dividend or other distribution on its stock in cash or other property, Distributing will pay the warrant holders as if the warrants been exercised before the record date of the dividend declaration. Since the Warrants were issued, the warrant holders have shared in three dividend distributions by Distributing as if the Warrants had been exercised before the distributions. In addition, when Controlled stock was distributed to Distributing shareholders as described in the Prior Ruling, holders of the Warrants received Controlled stock in proportion to their equity interests as represented by the Warrants as if the Warrants had been exercised before that distribution.

If Distributing makes a liquidating distribution to its shareholders, the warrant holders will receive, in addition to the Distributing stock received on exercising their warrants, property as would have been payable had the warrant holders exercised their warrants before the date of their liquidating distribution.

The warrants provide that the number of Distributing shares for which the warrants may be exchanged (the Warrant Share Number) will be adjusted for various events, including a stock split, stock dividend, combination of shares, issuance of additional Distributing stock at a price below their fair market value, or issuance of additional Distributing convertible securities, warrants, options, or other similar rights to subscribe to Distributing stock at a price below fair market value.

Rulings

Based solely on the information received and the representations made, we rule as follows:

(1) The Deductible Liabilities assumed by Controlled in the Contribution will be excluded in determining the amount of liabilities of Distributing assumed by Controlled or to which property transferred to Controlled is subject for purposes of § 357(c).

(2) For purposes of the Distribution, the Warrants will be treated as stock and the distribution of Controlled stock to the warrant holders as part of the Distribution will be treated as a distribution with respect to its stock (Rev. Rul. 82-150, 1982-2 C.B. 110 and Rev. Rul. 85-87, 1985-1 C.B. 268).

Caveats

No opinion is expressed about the tax treatment of the Contribution and the Distribution 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 Contribution or the Distribution that are not specifically covered by this ruling letter or the Prior Letter Ruling. In addition to the caveats stated in the Prior Letter Ruling, no opinion is expressed as to whether the Deductible Liabilities are, in fact, liabilities that will give rise to a deduction for federal income tax purposes.

Procedural Statements

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 a Power of Attorney on file with this office, a copy of this letter had been sent to two of 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,

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

cc: