

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

ID No.

Telephone Number:

Refer Reply To:

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PLR-143695-10

Date:

August 14, 2012

LEGEND:

Foreign Parent =

US Parent =

Distributing 2 =

Distributing 1 =

Controlled =

Shareholder =

Sub 1 =

Sub 2 =

Affiliate =

Business 1 =

Business 2 =

Agreement =

Assets =

Contracts =

Date 1 =

Date 2 =

Date 3 =

a =

b =

c =

Dear :

This letter responds to your authorized representative's letter dated October 19, 2010, requesting rulings on certain federal income tax consequences of a proposed

transaction that has since been consummated. Additional information was provided in letters dated November 8, 2010, December 15, 2010, March 15, 2011, October 7, 2011, January 5, 2012, April 13, 2012, and August 6, 2012. The information submitted in that 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 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 transactions described below: (i) satisfy the business purpose requirements of § 1.355-2(b) of the Income Tax Regulations; (ii) are being used principally as a device for the distribution of the earnings and profits of any distributing corporation or controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); or (iii) are parts 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 Distributing 1, Distributing 2, or Controlled (see § 355(e) and § 1.355-7).

FACTS

Foreign Parent indirectly owns all of the stock of US Parent, the common parent of an affiliated group of corporations that files a consolidated federal income tax return (the "US Parent Group"). Shareholder, Distributing 2, Distributing 1, Controlled, Sub 1, Sub 2, and Affiliate are all members of the US Parent Group.

Prior to the transactions described below: Approximately a percent of the common stock of Distributing 2 was owned by Shareholder and was owned by Shareholder for at least five years. The remaining common stock, some of which was owned for at least five years and some of which was not, was owned by other members of the US Parent Group. Distributing 2's two classes of non-voting preferred stock were also owned by other members of the US Parent Group. Although some non-voting preferred stock of Distributing 2 was previously held by unrelated third parties, such stock was redeemed on Date 1. Subsequent to the redemption, all of the shareholders of Distributing 2 were 100-percent direct or indirect subsidiaries of Foreign Parent.

Distributing 1 was a direct, wholly owned subsidiary of Distributing 2 engaged in Business 1. Controlled was a direct, wholly owned subsidiary of Distributing 1 engaged in Business 2. Sub 1 and Sub 2 were each direct, wholly owned subsidiaries of Controlled.

Prior to the transactions described below, Controlled did not have any employees of its own but instead relied on the employees of Distributing 1 in conducting Business 2. Distributing 2 had ultimate managerial responsibility for the performance of Controlled's Business 2. Immediately following the transactions described below, ultimate managerial and supervisory responsibility for the performance of Controlled's Business 2 was shifted to Affiliate. Certain functions related to the day-to-day management of Business 2 continue to be performed by employees of Distributing 1 under the Agreement, although the parties expect these functions will ultimately be transitioned to employees of Affiliate.

TRANSACTIONS

For what are represented to be valid business reasons, the parties have undertaken the following transactions (the "Transactions"):

- (i) On Date 2, each of Sub 1 and Sub 2 distributed newly issued shares of non-voting preferred stock to Controlled, having a face amount intended to be equal to approximately b to c percent of the fair market value of the respective issuer (the "Preferred Stock Distributions").
- (ii) On Date 3, Controlled distributed the common stock of Sub 1 and Sub 2 to Distributing 1 but retained the non-voting preferred stock of each such subsidiary.
- (iii) On Date 3, Controlled transferred Assets to Distributing 1, and Distributing 1 assumed Controlled liabilities with respect to the Contracts. (Steps (i) – (iii) together, the "Preliminary Steps.")
- (iv) On Date 3, Distributing 1 distributed all of the stock of Controlled to Distributing 2 (the "Spin-off").
- (v) On Date 3, Distributing 2 distributed all of the stock of Controlled to Shareholder in exchange for a portion of the Distributing 2 common stock held by Shareholder (the "Split-off").

REPRESENTATIONS

The following representations have been made with respect to the Preliminary Steps:

- (a) The non-voting preferred stock of Sub 1 and Sub 2 issued in the Preferred Stock Distributions is not non-qualified preferred stock described in § 351(g).
- (b) The Preferred Stock Distributions are tax-free under § 305(a).
- (c) Controlled has no plan or intention to dispose of the non-voting preferred stock of Sub 1 and Sub 2 issued in the Preferred Stock Distributions.
- (d) The total fair market value of the Assets transferred by Controlled to Distributing 1 immediately prior to the Spin-off is approximately equal to the amount of Controlled liabilities assumed by Distributing 1 with respect to the Contracts.

The following representations have been made with respect to the Spin-off:

- (e) The indebtedness, if any, owed by Controlled to Distributing 1 after the Spin-off will not constitute stock or securities.
- (f) No part of the consideration to be distributed by Distributing 1 will be received by Distributing 2 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.
- (g) The five years of financial information submitted on behalf of Business 1 conducted by Distributing 1 is representative of the present business operations of Business 1, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (h) The five years of financial information submitted on behalf of Business 2 conducted by Controlled is representative of the present business operations of Business 2, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (i) Other than for services provided by Distributing 1 to Controlled under the Agreement, following the transaction, Distributing 1 and Controlled will each continue the active conduct of its business, independently and with its separate employees (except in the case of Controlled, which will utilize the employees of Affiliate).

- (j) The Spin-off is being carried out for the following corporate business purposes: (1) to separate Business 2 from Business 1 and reduce related potential detriment to Distributing 2's balance sheet, and (2) to access Business 2 expertise that Affiliate has developed in managing US Parent's other affiliates in Business 2, many of which are subsidiaries of Shareholder. The Spin-off is motivated, in whole or substantial part, by these corporate business purposes.
- (k) The Spin-off is not used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled or both.
- (l) 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 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 1 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.
- (m) 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 1 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.
- (n) Other than payables arising in the ordinary course of business, no intercorporate debt will exist between Distributing 1 (and its subsidiaries) and Controlled (and its subsidiaries) at the time of, or subsequent to, the Spin-off.
- (o) Immediately before the Spin-off, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 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; § 1.1502-13 as published by T.D. 8597).
- (p) Payments made in connection with all continuing transactions, if any, between Distributing 1 (and its subsidiaries) and Controlled (and its subsidiaries), will be

for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

- (q) The Spin-off 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 representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 1 or Controlled (including any predecessor or successor of any such corporation).
- (r) Immediately after the Spin-off, either (i) no person will hold a 50-percent or greater interest (within the meaning of § 355(g)(3)) in the stock of Distributing 1 or Controlled who did not hold such an interest before the transaction, or (ii) neither Distributing 1 nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).
- (s) At the time of the Spin-off, no member of Distributing 1's consolidated group will have an excess loss account in Controlled's stock or in the stock of any subsidiary of Controlled.

The following representations have been made with respect to the Split-off:

- (t) The indebtedness, if any, owed by Controlled to Distributing 2 after the Split-off will not constitute stock or securities.
- (u) The fair market value of the Controlled stock to be received by Shareholder will be approximately equal to the fair market value of the Distributing 2 common stock surrendered by Shareholder in the exchange.
- (v) No part of the consideration to be distributed by Distributing 2 will be received by Shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.
- (w) The five years of financial information submitted on behalf of Business 1 conducted by Distributing 1, a member of the Distributing 2 separate affiliated group (as defined in § 355(b)(3)(B)), is representative of the present business operations of Business 1, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

- (x) The five years of financial information submitted on behalf of Business 2 conducted by Controlled is representative of the present business operations of Business 2, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (y) Other than for services provided by Distributing 1 to Controlled under the Agreement, following the transaction, Distributing 2 (through Distributing 1) and Controlled will each continue the active conduct of its business, independently and with its separate employees (except in the case of Controlled, which will utilize the employees of Affiliate).
- (z) The Split-off is being carried out for the following corporate business purposes: (1) to separate Business 2 from Business 1 and reduce related potential detriment to Distributing 2's balance sheet and (2) to access Business 2 expertise that Affiliate has developed in managing US Parent's other affiliates in Business 2, many of which are subsidiaries of Shareholder. The Split-off is motivated, in whole or substantial part, by these corporate business purposes.
- (aa) The Split-off is not used principally as a device for the distribution of the earnings and profits of Distributing 2 or Controlled or both.
- (bb) The effect of the Split-off is not to provide a disqualified person with a purchased basis in the stock of Controlled within the meaning of § 1.355-6(b)(3).
- (cc) Other than payables arising in the ordinary course of business, no intercorporate debt will exist between Distributing 2 (and its subsidiaries) and Controlled (and its subsidiaries) at the time of, or subsequent to, the Split-off.
- (dd) Immediately before the Split-off, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, and as currently in effect; § 1.1502-13 as published by T.D. 8597).
- (ee) Payments made in connection with all continuing transactions, if any, between Distributing 2 (and its subsidiaries) and Controlled (and its subsidiaries) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

- (ff) The Split-off 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 representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 2 or Controlled (including any predecessor or successor of any such corporation).
- (gg) Immediately after the Split-off, either (i) no person will hold a 50-percent or greater interest (within the meaning of § 355(g)(3)) in the stock of Distributing 2 or Controlled who did not hold such an interest before the transaction, or (ii) neither Distributing 2 nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).
- (hh) At the time of the Split-off, no member of Distributing 2's consolidated group will have an excess loss account in Controlled's stock or in the stock of any subsidiary of Controlled.

RULINGS

Based solely on the information and representations submitted, we rule as follows regarding the Spin-off:

1. No gain or loss will be recognized by Distributing 1 on its distribution of the Controlled stock in the Spin-off (§ 355(c)).
2. No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 2 upon its receipt of Controlled stock in the Spin-off (§ 355(a)).
3. The basis of the stock of Distributing 1 and Controlled in the hands of Distributing 2 after the Spin-off will be the same as the basis of the Distributing 1 stock held by Distributing 2 immediately before the Spin-off, allocated in proportion to the fair market value of Distributing 1 and Controlled in accordance with § 358(a)(1) and § 1.358-2(a)(2) (§ 358(b)(2) and (c)).
4. The holding period of the Controlled stock received by Distributing 2 in the Spin-off will include the holding period of the Distributing 1 stock with respect to which the Spin-off was made, provided that such Distributing 1 stock was held as a capital asset on the date of the Spin-off (§ 1223(1)).
5. Earnings and profits will be allocated between Distributing 1 and Controlled in accordance with § 312(h) and § 1.312-10.

Based solely on the information and representations submitted, we rule as follows regarding the Split-off:

6. No gain or loss will be recognized by Distributing 2 on its distribution of the Controlled stock in the Split-off (§ 355(c)).
7. No gain or loss will be recognized by (and no amount will be included in the income of) Shareholder upon the receipt of Controlled stock in the Split-off (§ 355(a)).
8. The basis of the Controlled stock in the hands of Shareholder immediately after the Split-off will be the same as the basis of the Distributing 2 common stock exchanged therefor (§ 358 and § 1.358-2(a)(2)).
9. The holding period of the Controlled stock received by Shareholder in the Split-off will include the holding period of the Distributing 2 common stock surrendered by Shareholder, provided that such Distributing 2 common stock was held as a capital asset on the date of the Split-off (§ 1223(1)).
10. Earnings and profits will be allocated between Distributing 2 and Controlled in accordance with § 312(h) and § 1.312-10.

CAVEATS

No opinion is expressed about the tax treatment of the 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 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:

- (i) Whether the Spin-off or Split-off satisfies the business purpose requirement of § 1.355-2(b);
- (ii) Whether the Spin-off or Split-off is used principally as a device for the distribution of the earnings and profits of any distributing corporation or controlled corporation or both (see § 355(a)(1)(B) and § 1.355-2(d)); and
- (iii) Whether the Spin-off or Split-off and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

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,

Russell P. Subin
Senior Counsel, Branch 3
Office of Associate Chief Counsel
(Corporate)

cc: