

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201315009**
Release Date: 4/12/2013
Index Numbers: 355.01-00, 368.05-00

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

Refer Reply To:
CC:CORP:B06
PLR-143051-12
Date:
January 14, 2013

Legend

Distributing =

Controlled =

Business A =

Business B =

Business C =

Business D =

Business E =

Business F =

Business G =

Business H =

State A =

Date 1 =

Date 2 =

Executive 1 =

Executive 2 =

Dear

This letter responds to your September 28, 2012 request for rulings on certain federal income tax consequences of the Proposed Transactions (as defined below). The information provided 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 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 earnings and profits of the distributing corporation or the controlled corporation or both (§355(a)(1)(B) of the Internal Revenue Code 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 controlled corporation (§355(e) and §1.355-7).

Summary of Facts

Distributing is a widely held and publicly traded State A corporation. Distributing has one class of voting common stock outstanding (“Distributing Common stock”). Based on Schedules 13D and 13G filings with the Securities and Exchange Commission, as of Date 1, Distributing had six shareholders that owned % or more of the outstanding Distributing Common stock. However, other than Executive 1, the Executive Chairman of Distributing, such shareholders do not actively participate in the management of Distributing.

Distributing owns all of the outstanding stock of Controlled, a State A corporation and a member of the affiliated group of corporations of which Distributing 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. Except as noted below, prior to the Recapitalization (as defined below), the outstanding stock of Controlled consisted of Class B common stock, Series A preferred stock and Series B preferred stock, all of which was held by Distributing. On Date 2, pursuant to the Series B

Preferred Stock Exchange Agreement, Distributing transferred half of its Controlled Series B preferred stock to Controlled in partial satisfaction for the use by the U.S. Consolidated Group of certain tax attributes of Controlled, and Controlled repurchased the balance of its Series B preferred stock owned by Distributing for cash.

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

In connection with the Distribution (defined below), the Distributing SAG will rely upon Business B as its five-year active trade or business for purposes of §355(b), and the Controlled SAG will rely upon Business A as its five-year active trade or business for purposes of §355(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.

The holders of outstanding restricted shares of Distributing Common Stock (except as mentioned below) will receive a fully vested share of Controlled Common Stock in the Distribution for each restricted share of Distributing Common Stock held prior to the Distribution. No elections under section 83(b) have been made with respect to any restricted shares of Distributing Common Stock.

In connection with the Distribution, due to the size of the grants and the proximity of the grants to the anticipated date of the Distribution, Distributing restricted stock awards granted to the CEO and CFO of Controlled on Date 2 will be converted into Controlled restricted stock awards. All other terms of these awards, including vesting schedule, will remain the same. No elections under section 83(b) will be made with respect to such Controlled restricted stock awards.

Outstanding stock options to purchase shares of Distributing Common Stock granted to employees of Distributing and its subsidiaries (other than Controlled and its subsidiaries) under the Share Incentive Plans will be adjusted to reflect the change in value in Distributing Common Stock following the Distribution and any such options to purchase shares of Distributing Common Stock granted to employees of Controlled or its subsidiaries will be exchanged for options to purchase shares of Controlled Common Stock. The options to purchase Distributing Common Stock or Controlled Common Stock, as applicable, held by such employees after the Distribution will have an aggregate value equivalent in value to the options to purchase Distributing Common Stock held by such employees prior to the Distribution.

Outstanding restricted stock units with respect to Distributing Common Stock granted to employees of Distributing and its subsidiaries under the Share Incentive Plans will be adjusted to reflect the change in value in Distributing Common Stock following the Distribution. No restricted stock units with respect to Distributing Common Stock were issued to employees of Controlled and its subsidiaries.

Following the Distribution, Controlled expects to adopt an employee equity plan and to grant any or all of the of the following types of equity awards under such a plan: (1) stock options, including non-qualified stock options and incentive stock options; (2) SARS; (3) stock awards and restricted stock awards; and (4) restricted stock units.

Following the Distribution, each of the Distributing SAG and the Controlled SAG will have its own officers, directors and employees (other than Executive 1, Executive Chairman of Distributing, who will also be the Non-Executive Chairman of Controlled's Board of Directors and Executive 2, Chief Executive Officer of Distributing, who will also be a Non-Executive Member of Controlled's Board of Directors).

Proposed Transactions

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

- (i) Controlled will effect a recapitalization ("Recapitalization") by issuing to Distributing, common stock ("Controlled Common stock") in exchange for all of Controlled's currently outstanding Class B common stock and Series A preferred stock currently owned by Distributing.
- (ii) Immediately after the Recapitalization, Distributing will distribute all of the outstanding Controlled Common stock pro rata to the shareholders of Distributing (the "Distribution").

Representations

The Recapitalization

- (a) None of the Class B Common stock and Series A preferred stock to be exchanged in the Recapitalization will be "§ 306 stock" within the meaning of §306(c).
- (b) The only stock that will be exchanged in the Recapitalization will be the Class B common stock and Series A preferred stock, and the only ownership interests that will be issued by Controlled in the Recapitalization will be the Controlled Common stock.

- (c) The Recapitalization will occur under a plan agreed upon before the Recapitalization.
- (d) The exchanges contemplated by the Recapitalization will occur on its effective date.
- (e) The fair market value of the Controlled Common stock issued in the Recapitalization will be approximately equal to the fair market value of the outstanding Class B common stock and Series A preferred stock immediately before the Recapitalization.
- (f) The purpose of the Recapitalization is to provide Controlled with a capital structure that will facilitate the Distribution.
- (g) Immediately after the Recapitalization, the Controlled SAG will continue in the same business, Business A, that the Controlled SAG conducted before the Recapitalization.
- (h) Immediately after the Recapitalization, Controlled will continue to own substantially all of the assets and liabilities that were held by Controlled prior to the Recapitalization.
- (i) Each party will pay its own expenses, if any, incurred in connection with the Recapitalization.
- (j) The Recapitalization is not part of a plan to increase periodically the proportionate interest of any person in the assets or earnings and profits of Controlled.
- (k) No fractional shares or interests in Controlled will be issued or exchanged in the Recapitalization.
- (l) At the time of the Recapitalization, Controlled will not be under the jurisdiction of a court in a Title 11 or similar case within the meaning of §368(a)(3)(A).

The Distribution

- (m) 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 Distribution will not constitute stock or securities.
- (n) No part of the consideration distributed to the shareholders of Distributing will be

received as a creditor, employee, or in any capacity other than that of a shareholder of Distributing (other than shareholders holding restricted shares of Distributing Common stock for which a §83(b) election has not been made).

- (o) The five years of financial information submitted for Business B, conducted by the Distributing SAG, and for Business A, 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.
- (p) The Distributing SAG will continue the active conduct of Business B, independently and with its separate employees, following the Distribution.
- (q) The Controlled SAG will continue the active conduct of Business A, independently and with its separate employees, following the Distribution.
- (r) 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, except in the case of certain transitional services, which will be charged at a fixed price intended to reflect cost plus a markup.
- (s) 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 Distribution 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 Distribution, the Distributing SAG will have been the principal owner of the goodwill and significant assets of Business B and will continue to be the principal owner following the Distribution.
- (t) Neither Business A nor control of an entity conducting Business A 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 in whole or in part. Throughout the five-year period ending on the date of the Distribution, the Controlled SAG will have been the principal owner of the goodwill and significant assets of Business A, and the Controlled SAG will continue to be the principal owner following the Distribution.
- (u) The Distribution is being carried out to: (1) allow Distributing and Controlled to use equity that relates solely to Distributing's businesses and Business A, respectively, to undertake desired acquisitions, (2) enhance Controlled's ability to attract, retain, and properly incentivize key employees with Controlled equity-based compensation and (3) facilitate focused management of each of Controlled and

Distributing by reducing the competition for capital allocations. The Distribution is motivated in whole or substantial part by these corporate business purposes.

- (v) The Distribution will not be used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (w) 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 Distribution, other than intercompany open account balances that have arisen, or will arise, in the ordinary course of business.
- (x) 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)).
- (y) For purposes of §355(d), immediately after the Distribution, 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 Distribution.
- (z) For purposes of §355(d), immediately after the Distribution, 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 Distribution 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 Distribution.
- (aa) 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 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).

- (bb) 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 Distribution, and neither will be a U.S. real property holding corporation immediately after the Distribution.
- (cc) 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 Treas. Reg. §1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; Treas. Reg. §1.1502-13 as published by T.D. 8597). Further, any excess loss account that Distributing has in the stock of Controlled or the stock of any direct or indirect subsidiary of Controlled will be included in income immediately before the Distribution to the extent required by regulations (see Treas. Reg. §1.1502-19). At the time of the Distribution, Distributing will not have an excess loss account in the stock of Controlled or the stock of any direct or indirect subsidiary of Controlled.
- (dd) The outstanding restricted shares of Distributing Common Stock represent less than 20% of the outstanding shares of Distributing Common stock.

Rulings

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

Recapitalization

- (1) The Recapitalization will qualify as a “reorganization” within the meaning of §368(a)(1)(E).
- (2) Distributing will not recognize any gain or loss on the Recapitalization (§354(a)(1)).
- (3) Controlled will not recognize any gain or loss on the Recapitalization (§1032(a)).
- (4) The basis of the Controlled Common Stock received in the Recapitalization will equal the basis of Controlled Class B common stock and Series A preferred stock surrendered in exchange therefor (§358(a)(1)).
- (5) Distributing’s holding period in the Controlled Common Stock received in the Recapitalization will include the period Distributing held the Class B common stock and the Series A preferred stock (§1223(1)).

The Distribution

- (6) No gain or loss will be recognized by (and no amount will be included in the income of) the Distributing shareholders on the receipt of the Controlled stock in the Distribution (§355(a)(1)).
- (7) No gain or loss will be recognized by Distributing on the distribution of the Controlled stock in the Distribution (§355(c)(1)).
- (8) The basis of the stock of Distributing and Controlled in the hands of the Distributing shareholders 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) (§358(b)(2), (c)).
- (9) The holding period of Controlled Common stock received by the Distributing shareholders in the Distribution will include the holding period of the Distributing Common stock on which the Distribution is made, provided the Distributing Common stock is held as a capital asset on the date of the Distribution (§1223(1)).
- (10) Earnings and profits, if any, will be allocated among Distributing and Controlled in accordance with §312(h) and Treas. Reg. §§1.312-10(b) and 1.1502-33(e)(3).

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:

- (i) Whether the Distribution satisfies the business purpose requirement of Treas. Reg. §1.355-2(b);
- (ii) Whether the Distribution is used principally as a device for the distribution of earnings and profits of the distributing corporation or the controlled corporation or both; and
- (iii) Whether the Distribution 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 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,

Grid R. Glycer _____

Grid R. Glycer

Assistant to the Branch Chief, Branch 4

Office of Associate Chief Counsel (Corporate)