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May 03, 2013

LEGEND

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

DRE 1 =

DRE 2 =

FSub 1 =

FSub 2 =

FSub 3 =

Date 1 =

Date 2 =

Date 3 =

Business A =

Business B =

State X =

a =

b =

c =

d =

N =

Dear _____ :

This letter responds to a letter dated October 31, 2012 requesting rulings as to certain federal income tax consequences to the proposed transaction described below (the "Proposed Transaction"). The information submitted in that request and in subsequent correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty 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 this 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 Proposed Transaction: (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 (see section 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 the controlled corporation (see section 355(e) and § 1.355-7).

SUMMARY OF FACTS

Distributing is the common parent of an affiliated group of corporations that files a consolidated U.S. federal income tax return (the "Distributing Group"). Distributing has two classes of common stock outstanding (Class A and Class B). Each class has equal rights as to dividend distributions and liquidation proceeds. Distributing's Class A shares have a votes per share; Distributing's Class B shares, which are publicly traded, have b votes per share.

Distributing directly owns all of the outstanding stock in Sub 1, Sub 2, Sub 3, Sub 4, Controlled, and FSub 1. Distributing also directly owns all of the outstanding membership interests in DRE 1 and DRE 2, each a State X limited liability company treated as an entity disregarded from its owner, and thus as a branch or division of Distributing, for U.S. federal income tax purposes. DRE 1 directly owns all of the stock of Sub 5. On Date 3, Sub 1 converted into a State X limited liability company treated as disregarded from its owner, and thus as a branch or division of Distributing, for U.S. federal income tax purposes. Each of Sub 2, Sub 3, Sub 4, Sub 5, and Controlled is a member of the Distributing Group. FSub 1 directly and wholly owns FSub 2, and Sub 4 directly and wholly owns FSub 3.

Distributing operates two principal lines of business, Business A and Business B. Distributing has submitted financial information indicating that the operations of each of Business A and Business B has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing and the members of its “separate affiliated group” within the meaning of section 355(b)(3)(B) (the “Distributing SAG”) directly conduct Business A and Business B prior to the Proposed Transaction. Controlled and the members of its “separate affiliated group” within the meaning of section 355(b)(3)(B) (the “Controlled SAG”) will directly conduct Business B after the Proposed Transaction.

PROPOSED TRANSACTION

For what are represented to be valid business reasons, Distributing proposes to undertake the following Proposed Transaction:

- (i) Immediately prior to the Distribution, it is expected that there will be a stock split of Controlled shares as part of the transaction so that sufficient shares are available to effect the Distribution.
- (ii) FSub1 will contribute Business A assets to FSub2.
- (iii) Distributing will purchase the stock of FSub2 from FSub1 for cash.
- (iv) Distributing will contribute FSub 1 to Controlled.
- (v) DRE 1 will contribute Business A assets to Sub 5.
- (vi) DRE 1 will distribute the stock of Sub 5 to Distributing.
- (vii) Distributing will contribute to Controlled all Business B assets it owns directly, all Business B assets owned by Sub 1 (after Sub 1’s conversion to a disregarded LLC), the membership interests in DRE 1, the stock of Sub 3 and the stock of Sub 4 (the “Contribution”).
- (viii) Distributing will distribute all of its Controlled common stock to its shareholders on a pro rata basis (the “Distribution”). It is expected that pursuant to the terms of the Distribution, a holder of Distributing common stock will receive a share of Controlled Class A stock for each N shares of Distributing Class A stock held and a share of Controlled Class B stock for each N shares of Distributing Class B stock held. Distributing will not distribute any fractional shares in connection with the Distribution. Instead, any shareholder who would be entitled to receive a fractional share of Controlled common stock will instead receive a cash payment in

lieu of such fractional share. Distributing will not retain any Controlled stock following the Distribution.

Steps (i) through (vi) comprise the “Internal Restructuring.”

Immediately prior to the Distribution, Distributing might advance \$c (but in no event more than \$d) to Controlled as an intercorporate debt (the “Loan”). The Loan will be evidenced by a written agreement and will include arm’s-length interest and other terms.

REPRESENTATIONS

Distributing makes the following representations regarding the Proposed Transaction:

- (a) 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 (including the Loan) 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) Distributing and Controlled will treat all members of its respective separate affiliated group as defined in section 355(b)(3)(B) as one corporation in determining whether it meets the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business.
- (d) The five years of financial information submitted on behalf of Business A (as conducted by the Distributing SAG) is representative of Business A’s present operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) The five years of financial information submitted on behalf of Business B (as conducted by the Distributing SAG, and which will be conducted by the Controlled SAG), is representative of Business B’s present operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (f) Neither Business A conducted by the Distributing SAG nor control of an entity conducting this business 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

preceding the Distribution, the Distributing SAG will have been the principal owner of the goodwill, if any, and significant assets of Business A. Following the Distribution, the Distributing SAG will continue to be the principal owner of the goodwill, if any, and significant assets of Business A.

- (g) Neither Business B conducted by the Distributing SAG prior to the Distribution and to be conducted by Controlled nor control of an entity conducting this business 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 preceding the Distribution, the Distributing SAG will have been the principal owner of the goodwill, if any, and significant assets of Business B. Following the Distribution, the Controlled SAG will be the principal owner of the goodwill, if any, and significant assets of Business B.
- (h) Following the Distribution, the Distributing SAG and the Controlled SAG will each continue the active conduct of its business, independently and with separate employees, except for certain transition services to be provided by the Distributing SAG to the Controlled SAG for a limited time.
- (i) The total adjusted basis and fair market value of the assets transferred to Controlled by Distributing in the Contribution each will equal or exceed the sum of (i) the total liabilities assumed by Controlled (as determined under section 357(d)) and (ii) the total amount of any money and the fair market value of any other property (within the meaning of section 361(b)) received by Distributing.
- (j) The total fair market value of the assets transferred to Controlled by Distributing in the Contribution will exceed the sum of: (i) the amount of any liabilities assumed (as determined under section 357(d)) by Controlled in the Contribution, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the Contribution, and (iii) the amount of any cash and the fair market value of any other property (within the meaning of section 361(b)) received by Distributing in connection with the Contribution. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.
- (k) Any liabilities assumed (as determined under section 357(d)) by Controlled in the Contribution were incurred in the ordinary course of business and are associated with the assets transferred.
- (l) The Distribution is carried out for the following corporate business purposes: (i) to allow Controlled's management to focus more narrowly on

the historic Business B; (ii) to attract employees and investors who wish to be employed by, or invest in, one business without having to invest in (or hold employee equity incentives in) the other, as the businesses are at different stages in their lifecycles, and (iii) to offer equity compensation and employment packages tailored directly for Business B executives and employees. The Distribution is motivated, in whole or substantial part, by one or more of these corporate business purposes.

- (m) The transaction is not used principally as a device for the distribution of earnings and profits of Distributing or Controlled or both.
- (n) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.
- (o) 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 § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing's excess loss account with respect to the Controlled stock, if any, will be included in income immediately before the distribution (See § 1.1502-19).
- (p) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 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 the shares of all classes of Distributing stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (q) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 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 the shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in section 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 section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.

- (r) The Distribution 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 section 355(d)(4)) in Distributing or Controlled (including any predecessor or success of any such corporation).
- (s) Immediately after the transaction (as defined in section 355(g)(4)), either (1) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3)) in Distributing or Controlled, (2) if any person holds a 50-percent or greater interest (within the meaning of section 355(g)(3)) in any disqualified investment corporation (within the meaning of section 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (3) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (t) Payments made in connection with all continuing transactions, if any, 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.
- (u) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (v) The payment of cash in lieu of fractional shares of Controlled is solely for the purpose of avoiding the expense and inconvenience of issuing fractional shares and does not represent separately bargained-for consideration. The fractional share interests of each Distributing shareholder will be aggregated and no Distributing shareholder of record will receive cash in an amount equal to or greater than the value of one full share of Controlled.
- (w) The income tax liability for the taxable year in which investment credit property (including any building to which section 47(d) applies) is transferred will be adjusted pursuant to section 50(a)(1) or (a)(2) to reflect an early disposition of property.

RULINGS

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

- (1) The Contribution and the Distribution, taken together, will qualify as a reorganization within the meaning of section 368(a)(1)(D). Distributing and Controlled each will be a party to the reorganization within the meaning of section 368(b).

- (2) Distributing will not recognize any gain or loss on its transfer of assets to Controlled in exchange for Controlled stock and Controlled's assumption of liabilities in the Contribution. Sections 361(a) and 357(a).
- (3) Controlled will not recognize any gain or loss on its receipt of assets from Distributing in exchange for Controlled stock and Controlled's assumption of liabilities in the Contribution. Section 1032(a).
- (4) Controlled's basis in each asset received from Distributing in the Contribution will equal the basis of that asset in Distributing's hands immediately before the Contribution. Section 362(b).
- (5) Controlled's holding period in each asset received from Distributing in the Contribution will include the period during which Distributing held that asset. Section 1223(2).
- (6) Distributing will not recognize any gain or loss upon its distribution of Controlled stock to its shareholders in the Distribution. Section 361(c).
- (7) No gain or loss will be recognized by (and no amount will be included in the income of) the Distributing shareholders upon the receipt of shares of Controlled stock in the Distribution. Section 355(a)(1).
- (8) The basis of the Distributing stock and the Controlled stock in the hands of each Distributing shareholder after the Distribution will equal the basis of the Distributing stock held by the shareholder immediately prior to the Distribution, allocated in proportion to the fair market values of the Distributing stock and the Controlled stock immediately after the Distribution in accordance with section 358(a)(1) and § 1.358-2(a)(2). Section 358(a)(1), (b) and (c).
- (9) The holding period of the Controlled stock received by each Distributing shareholder in the Distribution will include the holding period of the Distributing stock on which the Distribution is made, provided that the Distributing stock is held as a capital asset on the date of the Distribution. Section 1223(1).
- (10) Earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with section 312(h) and §§ 1.312-10(a) and 1.1502-33(e)(3).

CAVEATS

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or 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 Proposed Transaction satisfies the business purpose requirement of § 1.355-2(b); (ii) whether the Proposed Transaction is used primarily as a device for the distribution of earnings and profits of Distributing or Controlled or both (see section 355(a)(1)(B) and § 1.355-2(d)); (iii) whether the Proposed Transaction 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 either Distributing or Controlled (see section 355(e)(2)(A)(ii) and § 1.355-8); and (iv) any of the transactions that comprise the Internal Restructuring.

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.

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 (PLR-147505-12) of this 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 yours,

Maury Passman
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel
(Corporate)

cc: