

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:B03-PLR-160185-02

Date:

April 3, 2003

Re:

Legend

Distributing =

Controlled =

Bank =

State A =

State B =

State C =

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Business R =

X =

Dear :

This letter responds to your letter dated October 31, 2002, requesting rulings on the Federal income tax consequences of a proposed transaction. The information in that request and in the subsequent correspondence of January 6, 2003, March 6, 2003, March 10, 2003, and March 31, 2003, is substantially set forth below.

Distributing is a State A corporation using the accrual method of accounting. Distributing is the common parent of an affiliated group filing a consolidated federal income tax return. Distributing is a publicly traded holding company owning all of the outstanding stock of Bank and Controlled.

Controlled is a wholly-owned subsidiary of Distributing and is a State B corporation. Controlled joins in the consolidated federal income tax return filed by Distributing and is an accrual basis taxpayer. Controlled is engaged in Business R.

Bank is a wholly-owned subsidiary of Distributing operating under a national charter with its principal place of business in State C. Bank joins in the consolidated federal income tax return filed by Distributing and is an accrual basis taxpayer. Bank is engaged in the banking business.

Distributing has supplied information which indicates that Controlled's Business R and Bank's banking business each have had gross receipts and operating expenses representative of the active conduct of such businesses for each of the past five years.

Distributing desires to expand Bank through a borrowing or stock offering, but are unable to effectuate a borrowing or stock offering in the current structure. Distributing has demonstrated that it will be able to raise significantly more money through a borrowing or stock offering, if Bank and Controlled are separated. Therefore, Distributing has proposed the separation of Bank and Controlled by effecting a spin-off of Controlled to the shareholders of Distributing. Accordingly:

- (i) Distributing will cause Controlled to split its shares of common stock in order to avoid issuing fractional shares of Controlled to Distributing shareholders in the distribution.
- (ii) Distributing will transfer to each Distributing shareholder Controlled voting shares, pro rata according to their ownership of shares in Distributing. Distributing will not retain any stock or securities of Controlled.

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- (iii) Options to purchase Distributing stock issued to Controlled employees will be canceled or made exercisable for Controlled stock.
- (iv) Distributing will raise, within one year of the distribution, at least \$X in a borrowing and/or stock offering, with such proceeds to be used to expand Bank's business. In the case of a stock offering, the stock issued will comprise less than 50 percent of the total combined voting power of all classes of stock of Distributing entitled to vote and also less than 50 percent of the total value of all classes of stock of Distributing.

The taxpayers have made the following representations in connection with the proposed transaction:

- (a) 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 Distributing.
- (b) The five years of financial information submitted on behalf of Bank is representative of the present operations of Bank, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- (c) The five years of financial information submitted on behalf of Controlled is representative of the present operations of Controlled, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) Immediately after the distribution, at least 90 percent of the fair market value of the gross assets of Distributing will consist of the stock and securities of Bank, which will be engaged in the active conduct of a trade or business as defined in §355(b)(2).
- (e) Following the transaction, Distributing (through Bank) and Controlled will each continue the active conduct of its business, independently and with its separate employees.
- (f) The distribution of the stock of Controlled is carried out for the following corporate business purpose: to enable Distributing to achieve the expansion of Bank's business by raising capital through either a borrowing, or a stock offering, or some combination of the two. The distribution of the stock of Controlled is motivated, in whole or in substantial part, by this corporate business purpose.

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- (g) There is no plan or intention by any shareholder who owns five percent or more of the stock of Distributing, and management of Distributing, to its best knowledge, is not aware of any plan or intention on the part of any particular remaining shareholder or security holder of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in, or securities of, either Distributing or Controlled after the transaction.
- (h) There is no plan or intention by either Distributing or Controlled, directly, or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction, other than through stock purchases meeting the requirements of §4.05(1)(b) of Rev. Proc. 96-30.
- (i) There is no plan or intention to liquidate either Distributing or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the transaction except in the ordinary course of business.
- (j) There are no liabilities being assumed by Controlled in connection with the transaction.
- (k) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution of the Controlled stock.
- (l) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable inter-company transaction regulations. Further, Distributing's excess loss account, if any, with respect to Controlled stock will be included in income immediately before the Distribution.
- (m) 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.
- (n) The distribution is not part of a plan or series of related transactions within the meaning of §355(e) of the Internal Revenue Code pursuant to which one or more persons will acquire, directly or indirectly, stock possessing 50 percent or more of the total combined voting power of all classes of stock entitled to vote or stock possessing 50 percent or more of the total value of all classes of stock of Distributing or Controlled.

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

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- (1) No gain or loss will be recognized by Distributing upon the distribution of its stock in Controlled to its shareholders. Section 355(c)(1).
- (2) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing's shareholders on their receipt of the Controlled stock. Section 355(a)(1).
- (3) The aggregate basis of the Distributing stock and of the Controlled stock in the hands of Distributing shareholders after the distribution will be the same as the aggregate basis of Distributing stock in the hands of Distributing shareholders immediately prior to the distribution, allocated between the Distributing stock and the Controlled stock in proportion to the fair market value of each corporation's stock in accordance with §1.358-2(a)(2) of the Income Tax Regulations. Sections 358(a)(1), (b) and (c)).
- (4) The holding period of the Controlled stock received by each Distributing shareholder in the distribution will include the holding period of the Distributing stock held by such shareholder immediately before the distribution, provided that such shareholder held the Distributing stock as a capital asset on the date of the distribution. Section 1223(1).
- (5) Proper allocation of earnings and profits between Distributing and Controlled will be made under §§1.312-10(b) and 1.1502-33(e).

Except as expressly provided herein, we express no opinion concerning the Federal income tax consequences of any aspect of the proposed transaction, or under any other provisions of the Code or regulations, or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above rulings.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Distributing.

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. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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A copy of this letter should be attached to the Federal income tax returns of the taxpayers involved for the taxable year in which the transaction covered by this ruling letter is consummated.

Sincerely,

Ken Cohen

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Corporate)

cc: