

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person To Contact:

, ID No.

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Refer Reply To:

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Date:

February 13, 2004

In Re:

LEGEND

Distributing =

Controlled1 =

Controlled2 =

Controlled3 =

Controlled4 =

Controlled5 =

Shareholder =
A

- Shareholder B =
- Shareholder C =
- Shareholder D =
- Shareholder E =
- Shareholder F =
- Shareholder G =
- State A =

- Business B =

- Percent1 =
- Percent2 =
- Percent3 =
- Percent4 =
- Percent5 =
- Percent6 =

Dear

This is in response to your letter dated August 6, 2003, requesting rulings under § 355 of the Internal Revenue Code (the "Code") with respect to a proposed transaction. Additional information was received in letters dated October 22, and December 19, 2003. The material information submitted is summarized below.

Distributing is a State A corporation that files its federal income tax return on a calendar year using the accrual method of accounting. Distributing has a single class of

stock and no securities outstanding. The stock of Distributing is owned Percent1 by Shareholder A, Percent2 by Shareholders B and C, and Percent3 by each of Shareholders D, E, F, and G.

Distributing is engaged in Business B. Financial information has been received indicating that Business B has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the last five years. In an effort to separately own, manage and operate Business B among its shareholders in order to resolve their differences, Distributing proposes the following steps to implement a corporate division of Business B.

1. Distributing has formed five subsidiaries, Controlled1 through Controlled5, ("the Controlled corporations") and will contribute to each of the Controlled corporations certain assets of Business B in exchange for all of the stock of the Controlled corporations and the assumption by each of the Controlled corporations of certain Distributing liabilities.
2. Distributing will distribute Percentage4, 5 and 5 of the stock of Controlled1 to each of Shareholders A, B and C, respectively, in exchange for all of their stock of Distributing. Distributing will distribute Percentage6 of the stock of Controlled2 to Shareholder D, in exchange for all of her stock of Distributing. Distributing will distribute Percentage6 of the stock of Controlled3 to Shareholder E, in exchange for all of his stock of Distributing. Distributing will distribute Percentage6 of the stock of Controlled4 to Shareholder F, in exchange all of his stock in Distributing, and Distributing will distribute Percentage6 of the stock of Controlled5 to Shareholder G in exchange for all of his stock of Distributing (collectively, the "Distributions").
3. Upon completion of the proposed transactions, Distributing intends to wind up its affairs and dissolve.

Distributing has made the following representations regarding the proposed series of transactions:

- (a) The fair market value of stock of a Controlled corporation to be received by each shareholder of Distributing will be approximately equal to the fair market value of the Distributing stock surrendered by each shareholder in the exchange.
- (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) Following the transaction, each Controlled corporation will continue, independently and with its separate employees, the active conduct of its share of all the integrated activities of the business conducted by Distributing prior thereto.
- (d) The Distribution of the stock of each of the Controlled corporations is carried out for the following corporate business purposes: to enable each of the Controlled corporations to separately own and manage its portion of Business B in order to resolve management problems of Distributing. The distribution of the stock of each of the Controlled corporations is motivated, in whole or substantial part, by these corporate business purposes.
- (e) There is no plan or intention by the shareholders or security holders of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in or securities of the Controlled corporations after the transaction.
- (f) There is no plan or intention by any Controlled corporation, 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 section 4.05(1)(b) of Rev. Proc. 96-30.
- (g) The five years of financial information submitted on behalf of Distributing is representative of Distributing's present operations, and with regard thereto, there have been no substantial operational changes since the date of the last financial statement submitted.
- (h) There is no plan or intention to liquidate any of the Controlled corporations, to merge any of those corporations with any other corporation, or to sell or otherwise dispose of the assets of any corporation after the transaction, except in the ordinary course of business.
- (i) The total adjusted bases and fair market value of the assets transferred to the Controlled corporations by Distributing each equals or exceeds the sum of the liabilities assumed by each of the Controlled corporations plus any liabilities to which the transferred assets are subject.
- (j) The liabilities assumed by each of the Controlled corporations in the transaction and the liabilities to which the assets transferred to each Controlled corporation are subject were incurred in the ordinary course of business and are associated with the assets being transferred.
- (k) No inter-corporate debt will exist between Distributing and the Controlled corporations at the time of, or subsequent to, the distribution of the Controlled corporations' stock.

(m) Payments made in connection with all continuing transactions, if any, between Distributing and the Controlled corporations (or two or more of the Controlled corporations), will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(n) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).

(o) For purposes of § 355(d), immediately after the distributions, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power 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.

(p) For purposes of § 355(d), immediately after the distributions, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power or 50 percent or more of the total value of shares of all classes of any Controlled corporations' 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 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.

(q) The Distribution is not a part of a plan or series of related transactions (within the meaning of section 355(e)), pursuant to which one or more persons will acquire (except as allowed by section 355(e)) directly or indirectly stock possessing fifty percent or more of the total combined voting power of all classes of stock of either Distributing or the Controlled corporations, or stock possessing fifty percent or more of the total value of all classes of stock of either Distributing or the Controlled corporations.

(r) Distributing neither accumulated its receivables nor made extraordinary payments of its payables in anticipation of the transaction.

(s) Distributing is an S corporation (within the meaning of section 1361 (a)). Each of the Controlled corporations will elect to be S corporations pursuant to section 1362 (a) on the first available date after the transaction. There is no plan or intent to revoke or otherwise terminate the S corporation election for any of the Controlled corporations, and Distributing will be dissolved as a part of the transaction.

(t) Distributing and each of the Controlled corporations will pay its own share of expenses incurred in connection with the transaction.

Based solely on the information provided and the representations made, we conclude as follows:

(1) The transfer of certain Business B assets by Distributing to Controlled1 through Controlled5 in exchange for all the stock of Controlled1 through Controlled5, respectively, and the assumption of certain Distributing liabilities described above, followed by the distribution of all of the: Controlled1 stock to Shareholders A, B and C, the Controlled2 stock to Shareholder D, the Controlled3 stock to Shareholder E, the Controlled4 stock to Shareholder F, and the Controlled5 stock to Shareholder G, in exchange for all of the Distributing stock owned by these Shareholders will be a reorganization within the meaning of section 368(a)(1)(D). Distributing and Controlled1 through Controlled5 will each be a "party to the reorganization" within the meaning of section 368(b).

(2) No gain or loss will be recognized by Distributing upon the transfer of certain Business B assets to Controlled1 through Controlled5, respectively, in exchange for the Controlled1 through Controlled5 stock, respectively, and assumption of certain Distributing liabilities as described above (sections 361(a) and 357(a)).

(3) No gain or loss will be recognized by Distributing upon the distribution of all the stock of Controlled1 through Controlled5, respectively (section 361(c)(1)).

(4) No gain or loss will be recognized by Controlled1 through Controlled5, respectively upon the receipt of the assets and liabilities of Business A in exchange for all the shares of the Controlled1 through Controlled5 stock, respectively (section 1032(a)).

(5) The basis of each of the assets to be received by Controlled1 through Controlled5, respectively, in the transaction will equal the basis of such asset in the hands of Distributing immediately prior to the transaction (section 362(b)).

(6) The holding period of each of the assets to be received by Controlled1 through Controlled5, respectively, will include the period during which Distributing held such assets (section 1223(2)).

(7) No gain or loss will be recognized by (and no amount will be included in the income of) Shareholders: A, B, and C upon their receipt of Controlled1 stock; D, upon the receipt of Controlled2 stock; E upon the receipt of Controlled3 stock; F upon the receipt of Controlled4 stock; and G upon the receipt of Controlled5 stock; in exchange for all their Distributing stock, respectively (section 355(a)(1)).

(8) The basis of the Controlled1 through Controlled5 stock to be received by Shareholders A, B, C, D, E, F, and G, respectively, will be the same as the basis of the Distributing stock surrendered in exchange therefor (section 358(a)(1)).

(9) The holding period of the Controlled1 through Controlled5 stock to be received by Shareholders A, B, C, D, E, F and G, respectively, will include the holding period of the Distributing stock surrendered by such shareholders in exchange therefor provided that the Distributing stock is held as a capital asset on the date of the exchange (section 1223(1)).

(10) As provided in section 312(h), proper allocation of earnings and profits, if any, between Distributing and Controlled1 through Controlled5, respectively, will be made under section 1.312-10(a).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

A copy of this letter must be attached to any income tax return to which it is relevant.

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.

Sincerely,

Gerald B. Fleming

Gerald B. Fleming

Senior Technician Reviewer

Office of Associate Chief Counsel

(Corporate)