

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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Telephone Number:

Refer Reply To:

CC:CORP:B04

PLR-147161-05

Date:

January 12, 2006

Legend

Distributing =

Controlled =

Family 1 =

Family 2 =

A =

B =

C =

D =

E =

F =

G =

H =

I =

J =

K =

L =

M =

N =

O =

P =

Q =

R =

Business X =

Asset 1 =

Asset 2 =

Asset 3 =

Asset 4 =

Asset 5 =

Asset 6 =

Asset 7 =

Asset 8 =

Asset 9 =

Asset 10 =

Asset 11 =

Asset 12 =

Asset 13 =

Dear :

This letter responds to your July 22, 2005 request for rulings on certain federal income tax consequences of a proposed transaction. The information submitted in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayers and accompanied by penalty of perjury statements executed by the appropriate parties. 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 Distribution (defined below) (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) is being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see § 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 Distributing or Controlled (see § 355(e) and § 1.355-7).

#### Summary of Facts

Distributing is a domestic corporation that engages in Business X. Its only class of stock is equally owned by Family 1 and Family 2. Family 1 consists of individuals A, B, C and D, and Family 2 consists of individuals E, F, G, H, I, J, K, L, M, N, O, P, Q, and R. Distributing owns cash as well as Asset 1, Asset 2, Asset 3, Asset 4, Asset 5, Asset 6, Asset 7, Asset 8, Asset 9, Asset 10, Asset 11, Asset 12, and Asset 13.

Financial information has been submitted indicating that Business X has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

#### The Proposed Transaction

For what are represented to be valid business reasons, the following transaction has been proposed (collectively, the "Proposed Transaction"):

(i) Distributing will transfer Asset 7, Asset 8, Asset 9, Asset 10, Asset 11, Asset 12, and Asset 13, as well as an amount of its cash, to newly formed domestic Controlled in exchange for all of the stock of Controlled and the assumption by Controlled of certain liabilities (the "Contribution").

(ii) Distributing will distribute the Controlled stock (the "Distribution") to E, F, G, H, I, J, K, L, M, N, O, P, Q, and R (referred to collectively herein as the "Exchanging Shareholders" and individually as an "Exchanging Shareholder") in exchange for all of their Distributing stock. Each Exchanging Shareholder will receive a number of Controlled shares that will be pro rata to the number of Distributing shares held by such shareholder immediately before the Distribution.

Concurrent with the Distribution, E will resign his position as officer and director of Distributing.

### Representations

The following representations have been made regarding the Contribution and the Distribution:

(a) The fair market value of the Controlled stock received by each Exchanging Shareholder will be approximately equal to the fair market value of the Distributing stock surrendered by that shareholder in the exchange.

(b) No part of the consideration distributed by Distributing will be received by the Exchanging Shareholders as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

(c) The five years of financial information submitted on behalf of Distributing is representative of Distributing's present operations, and with regard to Distributing, there have been no substantial operational changes since the date of the last financial statements submitted.

(d) Following the Proposed Transaction, Distributing and Controlled each will continue, independently and with its separate employees, the active conduct of its share of all the integrated activities of Business X conducted by Distributing prior to consummation of the Proposed Transaction.

(e) The Distribution is being carried out for the following corporate business purposes: to resolve shareholder conflict between Family 1 and Family 2, to accommodate different goals or business techniques between Family 1 and Family 2, and to maximize profit potential. The Distribution is motivated, in whole or in substantial part, by these corporate business purposes.

(f) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.

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

(h) Payments made in connection with any continuing transactions 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. It is anticipated that there will be no continuing transactions between Distributing and Controlled after the Distribution.

(i) 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.

(j) 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.

(k) Distributing, Controlled, and the Distributing shareholders will each pay their own expenses, if any, incurred in connection with the Proposed Transaction.

(l) The total fair market value of the assets that Distributing will transfer to Controlled will exceed the sum of: (a) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled in connection with the exchange, (b) the amount of any liabilities owed to Controlled by Distributing (if any) that are discharged or extinguished in connection with the exchange, and (c) the amount of any cash and the fair market value of any property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing from Controlled (if any) in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.

(m) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing will equal or exceed the sum of the liabilities assumed (as defined in § 357(d)) by Controlled plus any liabilities to which the transferred assets are subject.

(n) The liabilities to be assumed (within the meaning of § 357(d)) by Controlled were incurred in the ordinary course of business and are associated with the assets being transferred to Controlled.

(o) The aggregate fair market value of the assets contributed to Controlled in the Contribution will exceed the aggregate adjusted basis of such assets immediately after the Contribution.

(p) The Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(q) There is no acquisition of stock of Distributing or Controlled (including any predecessor or successor of any such corporation) that is part of a plan or series of related transactions (within the meaning of § 1.355-7) that includes the distribution of the Controlled stock.

(r) Distributing is not an S corporation (within the meaning of § 1361(a)), and there is no plan or intention by Distributing or Controlled to make an S corporation election pursuant to § 1362(a).

### Rulings

Based solely on the facts submitted and on the representations set forth above, and subject to the Caveats set forth below, we rule as follows regarding the Contribution and the Distribution:

(1) The Contribution, together with the Distribution, will constitute a reorganization under § 368(a)(1)(D). Distributing and Controlled will each be a party to a reorganization under § 368(b).

(2) No gain or loss will be recognized by Distributing on the Contribution (§§ 361(a) and 357(a)).

(3) No gain or loss will be recognized by Controlled on the Contribution (§ 1032(a)).

(4) The basis of each asset received by Controlled in the Contribution will be the same as the basis of that asset in the hands of Distributing immediately before the Contribution (§ 362(b)).

(5) The holding period of each asset acquired by Controlled in the Contribution will include the period during which the asset was held by Distributing (§ 1223(2)).

(6) No gain or loss will be recognized by Distributing on the Distribution (§ 361(c)(1)).

(7) No gain or loss will be recognized by (and no amount will be included in the income of) any Exchanging Shareholder upon their receipt of the Controlled stock in exchange for all of their Distributing stock (§ 355(a)(1)).

(8) Each Exchanging Shareholder's basis in a share of his or her Distributing stock (as adjusted under § 1.358-1) that is exchanged for the Controlled stock shall be allocated to the Controlled stock. If one share of Controlled stock is received in exchange for more than one share of Distributing stock, the basis of each share of Distributing stock must be allocated to the Controlled stock in a manner that reflects that, to the greatest extent possible, a share of Controlled stock received is received in exchange for shares of Distributing stock acquired on the same date and at the same price. If an Exchanging Shareholder that purchased or acquired shares of Distributing stock on different dates or at different prices is not able to identify which particular share of Controlled stock is received in exchange for a particular share of Distributing stock, the shareholder may designate which share of Controlled stock is received with respect to a particular share of Distributing stock, provided the terms of the designation are consistent with the terms of the Distribution.

(9) The holding period of the Controlled stock received by each Exchanging Shareholder will include the holding period of the Distributing stock surrendered by such shareholder in exchange therefor, provided such stock is held by the shareholder as a capital asset on the date of the Distribution (§ 1223(1)).

(10) Earnings and profits will be allocated between Distributing and Controlled in accordance with §§ 312(h) and 1.312-10(a).

#### Caveats

We express no opinion 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, we express no opinion regarding:

(i) Whether the Distribution satisfies the business purpose requirement of § 1.355-2(b);

(ii) Whether the Distribution is being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) and § 1.355-2(d)); 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 letter must be attached to any income tax return to which it is relevant. Alternatively, any taxpayer filing its return electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of this letter ruling.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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Marc A. Countryman  
Senior Technician Reviewer, Branch 4  
Associate Chief Counsel (Corporate)

cc: