Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person To Contact:
, ID No.

Telephone Number:

In Re:

Refer Reply To:
CC:CORP:B06 – PLR-145200-03

Date:
October 31, 2003

Distributing =

Controlled =

Date A =
State B =
Business 1 =
Business 2 =
Business 3 =
Asset XYZ =
Shareholder AA =
Shareholder BB =
X# =
Y# =
Z# =
P% =
Q% =

Dear :

This letter responds to your letter dated July 25, 2003, in which rulings were requested as to the federal income tax consequences of a proposed transaction. Additional information was submitted in a letter dated September 23, 2003. The information submitted for consideration is summarized below.

Distributing was incorporated as a “Subchapter C” corporation in State B on Date A. Distributing is on the cash basis of accounting and directly conducts Business 1, Business 2 and Business 3.

Distributing currently has X# shares of common stock outstanding. Y# shares (or P%) of such common stock is owned by Shareholder AA and trusts established for the benefit of the Shareholder AA family (hereinafter referred to as the "Shareholder AA Family Trusts"). Z# shares (or Q%) of such common stock is owned by Shareholder BB and trusts established for the benefit of the Shareholder BB family (hereinafter referred to as the "Shareholder BB Family Trusts"). There are no security holders of Distributing. Shareholder AA serves as the President of Distributing and Shareholder BB is the Vice President.

Financial information has been received indicating that Distributing's Business 1, Business 2 and Business 3 has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

Information has been submitted indicating that certain disagreements have arisen regarding the operations of Distributing between the families of Shareholder AA and Shareholder BB. Such disagreements have primarily involved disputes concerning the risks associated with the continued expansion of Distributing's holdings of Asset XYZ through leveraged financing, as well as operation and control of Asset XYZ. Shareholder AA and Shareholder BB, along with their respective families have very distinct and different views for the future of Distributing, and each desires to pursue different visions of the company. Differing views of how to run the businesses raise disagreements between the shareholders regarding the investments and risks associated with such actions. These disagreements adversely affect the normal operations of Distributing's businesses.

To resolve these management and systemic problems, the shareholders have decided to engage in a split-off so that the shareholders may each go their separate way.

Distributing proposes the following series of transactions:

Distributing will transfer certain assets (subject to certain liabilities) of Business 1, Business 2 and Business 3 to Controlled, a newly formed State B wholly owned Subchapter C corporation. Controlled will be on the cash basis of accounting.

It is anticipated that the assets transferred to Controlled will represent Q% of the fair market value of all the assets (net of liabilities) which it owns and manages. In exchange for such capitalization, Distributing will receive all of the Z# outstanding shares of Controlled stock.

Distributing will distribute the Controlled stock to Shareholder BB (and the Shareholder BB Family Trusts) in exchange for all of Shareholder BB's (and the Shareholder BB Family Trusts) Distributing stock.

No shareholders of Distributing will transfer or surrender any property in the transaction other than stock in Distributing.

After Controlled receives Business 1, Business 2 and Business 3 from Distributing both Distributing and Controlled will thereafter each separately and directly engage in Business 1, Business 2 and Business 3.

The following representations have been made with respect to the proposed transaction:

a) Controlled will not be indebted to Distributing after the distribution of Controlled stock.

b) The fair market value of the Controlled stock to be received by each shareholder of Distributing will be approximately equal to the fair market value of the Distributing stock surrendered by the shareholder in the exchange.

c) 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.

d) The 5 years of financial information submitted on behalf of Distributing is representative of the corporation's present operation, and with regard to Distributing, there have been no substantial operational changes since the date of the last financial statements submitted.

e) Distributing and Controlled are and will be directly engaged in the active businesses mentioned above, and neither will be engaged indirectly through ownership of stock and securities in corporations controlled by it.

f) Following the transaction, Distributing and Controlled will each 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 to consummation of the transaction. Neither Distributing nor Controlled plan or intend any substantial reduction in business activity for any of the business it will conduct.

g) The distribution of the Controlled stock to Shareholder BB and Shareholder BB's family in exchange for all of their stock is carried out for the following corporate business purpose: To separate the active business of Distributing into two portions, one to be owned and controlled by each of Shareholder BB and Shareholder BB's family and Shareholder AA and Shareholder AA's family, in order to avoid continual and ongoing disagreements concerning the operation of Distributing among its shareholders which threatens its operations and continued existence. The distribution of the Controlled stock is motivated, in whole or in substantial part, by this corporate business purpose.

h) There is no plan or intention by the shareholders of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in either Distributing or Controlled after the transaction.

i) 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 distribution, other than through stock purchases meeting the requirements of section 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696.

j) 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.

k) The income tax liability for the taxable year in which investment credit property (including any building to which §47(d) applies) is transferred will be adjusted pursuant to §50(a)(1) or (a)(2) (or §47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect an early disposition of the property.

l) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.

m) No intercorporate debt will exist between the Distributing and Controlled corporation at the time of, or subsequent to, the distribution of the Controlled stock.

n) 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.

o) No two parties to the transaction are investment companies as defined in

§ 368(a)(2)(F)(iii) and (iv).

p) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing each equals or exceeds the sum of the liabilities assumed (as determined under § 357(d)) by Controlled plus the fair market value of any other property, and the amount of any money, transferred by Controlled to Distributing that is distributed to the shareholders of Distributing, or transferred to the creditors of Distributing, pursuant to the plan of reorganization.

The sum of the liabilities assumed (as determined under § 357(d)) were incurred in the ordinary course of business and are associated with the assets being transferred.

q) The gross assets of the trades or businesses relied on to satisfy the active business requirement of § 355(b) for both Distributing and Controlled will have a fair market value that is 5 percent or more of the total fair market value of the gross assets of the corporation directly conducting the trades or businesses.

r) 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 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.

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 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 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.

s) The distribution of Controlled is not part of a plan or series of related transactions (within the meaning of § 355(e)) 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 of either Distributing or Controlled, or stock possessing 50 percent or more of the total value of all classes of stock of either Distributing or Controlled.

t) 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).

u) The expenses incurred in connection with the proposed corporate division will be paid by Distributing prior to a division of the assets, and after the division P% of the remaining assets will be retained by Distributing and Q% of the remaining assets will be transferred to Controlled. Therefore, the expenses of the proposed transaction will be shared by the parties to the transaction in accordance with their respective interests. The expenses will be borne P% by Distributing and Q% by Controlled.

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

1) The transfer by Distributing to Controlled of the assets, described above, in exchange for all of the stock of Controlled and the assumption by Controlled of certain liabilities of Distributing, followed by the distribution of the Controlled stock to Distributing's shareholders, will constitute a reorganization within the meaning of § 368(a)(1)(D).

2) Distributing will recognize no gain or loss upon the transfer of the assets subject to liabilities to Controlled in exchange for Controlled stock. §§ 357(a) and 361(a).

3) No gain or loss shall be recognized by Controlled on its receipt of the assets solely in exchange for all of the stock of Controlled. § 1032(a).

4) The basis of the assets received by Controlled shall be the same as the basis of the assets in the hands of Distributing immediately prior to the transaction. § 362(b).

5) The holding period of the Distributing assets received by Controlled shall include the period during which such assets were held by Distributing. § 1223(2).

6) No gain or loss shall be recognized by (and no amount shall be included in the income of) Shareholder BB and the Shareholder BB family upon receipt of the Controlled stock in exchange for all of their Distributing stock as described above. § 355(a)(1).

7) No gain or loss shall be recognized by Distributing upon the distribution of all of its Controlled stock. § 311(a).

8) The basis of the Controlled stock in the hands of Shareholder BB and the Shareholder BB family after the exchange shall, in each instance, be the same as the basis of the Distributing stock exchanged therefore. § 358(a)(1).

9) The holding period for the Controlled stock received by Shareholder BB and Shareholder BB's family shall include the holding period of the Distributing stock surrendered in the exchange therefore, provided that such stock is held as a capital asset on the date of the exchange. § 1223(1).

10) The proper allocation of earnings and profits between Distributing and Controlled shall be made under Treas. Reg. § 1.312-10(a). § 312(h).

Caveats

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 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.

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

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,
Steven J. Hankin
Senior Technician Reviewer
Office of Associate Chief Counsel
(Corporate)