

**Internal Revenue Service**

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Department of the Treasury  
Washington, DC 20224

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Refer Reply To:  
CC:CORP:05  
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Date:  
August 14, 2007

**Legend:**

Distributing2

A

B

Business1

Business2

Distributing1

Sub1

Sub2

Controlled1

Controlled2

Controlled3

Controlled4

Dear :

This letter responds to your request dated April 5, 2007 for rulings concerning the Federal income tax consequences of a series of proposed transactions (the "Proposed Transaction"). The information submitted in that letter and in later correspondence is summarized below. Unless otherwise indicated, references herein to code sections and regulation sections are to the applicable Internal Revenue Code and Income Tax Regulations.

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 the information, representations, and other data may be required as part of the audit process. In particular, no information provided by the taxpayer has been reviewed and no determination has been made regarding whether the proposed transaction: (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (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 § 355(a) of the Internal Revenue Code and Treas. Reg. § 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.

### **Summary of Facts**

Distributing2 is a widely held publicly traded corporation and the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Distributing2 has outstanding a single class of common stock ("Distributing2 Common Stock"). Distributing2 conducts Business1, Business2, and certain other businesses

directly and indirectly through its subsidiaries. There are two institutional shareholders, A and B, that may own more than five percent of Distributing2's Common Stock. To the best knowledge of Distributing2, the remainder of Distributing2 Common Stock is held by less than five-percent shareholders.

Financial information has been submitted which indicates that Business1 and Business2, as conducted by Distributing2 and its relevant subsidiaries, has each had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing2 wholly owns Distributing1, Sub1 and Sub2. Distributing1 newly formed Controlled1 and wholly owns the common stock of Controlled1 ("Controlled1 Common Stock"). Controlled1 newly formed and wholly owns Controlled2, Controlled3, and Controlled4.

Distributing2 Common Stock and Controlled1 Common Stock may be issued to service providers in exchange for services and subject to risk of forfeiture and restrictions on transferability ("Restricted Stock").

### **Proposed Transaction**

For what are represented to be valid business reasons, the following series of transactions have been proposed:

- (i) Distributing1 will contribute to Controlled1 the Business1 assets and liabilities of Distributing1 ("First Contribution"). These assets include assets in domestic and foreign jurisdictions and stock in at least one foreign subsidiary. Certain liabilities may relate to discontinued or disposed-of operations. Certain assets and liabilities will be transferred via interests in disregarded entities.
- (ii) Controlled1 will contribute some of the domestic assets it receives to Controlled2, Controlled3 and Controlled4. Controlled1 will contribute any foreign assets and the stock of any foreign subsidiaries it receives to Controlled3, or to another foreign subsidiary which will be contributed to Controlled3. Controlled3 will further contribute certain foreign assets and shares of stock of foreign subsidiaries it receives to its recently formed foreign subsidiaries.
- (iii) Distributing1 will distribute all the stock of Controlled1 to Distributing2 ("Internal Spin-Off").
- (iv) Distributing2 will contribute to Controlled1 the Business1 assets and liabilities of Distributing2 ("Second Contribution"). These assets include stock in Sub1

and Sub2, assets in domestic and foreign jurisdictions, and possibly stock in at least one foreign subsidiary. Certain liabilities may relate to discontinued or disposed-of operations. Certain assets and liabilities will be transferred via interests in disregarded entities.

- (v) Controlled1 will contribute some of the domestic assets it receives to Controlled2, Controlled3 or Controlled4. Controlled1 will contribute any foreign assets and the stock of any foreign subsidiaries it receives to Controlled3, or to another foreign subsidiary which will be contributed to Controlled3. Controlled3 will further contribute certain foreign assets and shares of stock of foreign subsidiaries it receives to its recently formed foreign subsidiaries.
- (vi) Distributing2 will cause Controlled1 to be recapitalized so that the desirable number of outstanding shares of Controlled1 Common Stock is held by Distributing2.
- (vii) Distributing2 will distribute all the shares of Controlled1 Common Stock to shareholders of Distributing2 Common Stock on a pro rata basis ("External Spin-Off").
- (viii) Controlled1 may adopt a preferred stock purchase rights plan as of or following the date of the External Spin-Off ("Rights Plan"). If the Rights Plan is adopted, each share of Controlled1 Common Stock would evidence one preferred share purchase right to purchase Controlled1 Common Stock on the occurrence of certain events involving a change in control of Controlled1 (the "Controlled1 Purchase Rights").
- (ix) In connection with the Proposed Transaction, Distributing2 and Controlled1 will enter into agreements relating to (i) transitional services ("Transitional Services") for a period not expected to exceed two years following the effective date of the External Spin-Off and based upon cost or cost-plus arrangements; (ii) cross-licensing of intellectual property ("Intellectual Property"); (iii) tax sharing and allocation; and (iv) certain other contractual relationships negotiated at arm's length, including contractual relationships whereby members of the Distributing2 group ("Distributing2 Group") provide services to members of the Controlled1 group ("Controlled1 Group") and whereby members of the Controlled1 Group provide services to members of the Distributing2 Group.
- (x) In connection with the Proposed Transaction, before the External Spin-Off certain transactions will take place pursuant to which the Business1 assets and operations held and conducted by foreign direct or indirect subsidiaries of

Distributing2 will be separated from the other businesses held and conducted by those subsidiaries (the “Foreign Separation Transactions”).

### **Representations**

The following representations have been made with respect to the First Contribution and the Internal Spin-Off:

- (a) The indebtedness, if any, owed by Controlled1 to Distributing1 after the Internal Spin-Off will not constitute stock or securities.
- (b) No part of the consideration to be distributed by Distributing1 will be received by a shareholder as a creditor, employee or in any capacity other than that of a shareholder of Distributing1.
- (c) Distributing2, Distributing1, and Controlled1 will each treat the members of its separate affiliated group as defined in § 355(b)(3)(B) as one corporation in determining whether it meets the requirement of §355(b)(2)(A) regarding the active conduct of a trade or business.
- (d) The five years of financial information submitted on behalf of Distributing1 is representative of Distributing1’s present operation, and with regard to such corporation 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 Controlled1 is representative of the present operation of Business1 conducted by Distributing1 and its subsidiaries, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (f) The First Contribution and Internal Spin-Off will be carried out with a substantial business purpose.
- (g) Following the Internal Spin-Off, Distributing1 and Controlled1 will each continue the active conduct of its business, independently and with its separate employees.
- (h) The total fair market value of the assets that Distributing1 will transfer to Controlled1 will exceed the sum of: (a) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled1 in connection with the exchange, (b) the amount of any liabilities owed to Controlled1 by Distributing1 (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 Distributing1 from Controlled1 (if any) in connection with the exchange. The fair market value of the assets of Controlled1 will exceed the amount of its liabilities immediately after the exchange.
- (i) The total adjusted bases and the fair market value of the assets transferred to Controlled1 by Distributing1 each equals or exceeds the sum of the liabilities assumed by Controlled1 plus any liabilities to which the transferred assets are subject; and the liabilities assumed in the transaction and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred, except for certain liabilities which may relate to discontinued or disposed-of operations.
  - (j) Distributing1 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.
  - (k) Except in connection with the continuing transactions under the intercompany agreements, no intercorporate debt will exist between Distributing1 and Controlled1 at the time of, or subsequent to, the Internal Spin-Off.
  - (l) Immediately before the External Spin-Off, items of income, gain, loss, deduction and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. §§ 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; Treas. Reg. § 1.1502-13 as published by T.D. 8597). Further, Distributing1's excess loss account, if any, with respect to the Controlled1 Stock will be included in income immediately before the External Spin-Off (see Treas. Reg. § 1.1502-19).
  - (m) Payments made in connection with all continuing transactions between Distributing1 and Controlled1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length, except for certain transactions and arrangements under the Transitional Services or subleases, which may be based on cost or cost-plus arrangements.
  - (n) No two parties to the transaction are investment companies as defined in §§368(a)(2)(F)(iii) and (iv).
  - (o) For purposes of § 355(d), immediately after the Internal Spin-Off, 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 Distributing1 entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing1 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 Internal Spin-Off.
- (p) For purposes of § 355(d), immediately after the Internal Spin-Off, 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 Controlled1 entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled1 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 Internal Spin-Off, or (ii) attributable to distributions on Distributing1 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 Internal Spin-Off.
  - (q) The Internal Spin-Off is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 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 § 355(d)(4)) in Distributing1 or Controlled1 (including any predecessor or successor of any such corporation).

The following representations are made in connection with the Second Contribution and the External Spin-Off:

- (r) The indebtedness, if any, owed by Controlled1 to Distributing2 after the External Spin-Off will not constitute stock or securities.
- (s) No part of the consideration to be distributed by Distributing2 will be received by a shareholder as a creditor, employee or in any capacity other than that of a shareholder of Distributing2, except for shares of Controlled1 Common Stock that may be received by holders of Restricted Stock.
- (t) The five years of financial information submitted on behalf of Distributing2 is representative of Distributing2's present operation; and with regard to such corporation there have been no substantial operational changes since the date of the last financial statements submitted.
- (u) The five years of financial information submitted on behalf of Controlled1 is representative of the present operation of Business1 conducted by Distributing2 and its subsidiaries, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

- (v) The Second Contribution and External Spin-Off will be carried out with a substantial business purpose.
- (w) Following the External Spin-Off, Distributing2 and Controlled1 will each continue the active conduct of its business, independently and with its separate employees.
- (x) The total fair market value of the assets that Distributing2 will transfer to Controlled1 will exceed the sum of: (a) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled1 in connection with the exchange, (b) the amount of any liabilities owed to Controlled1 by Distributing2 (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 Distributing2 from Controlled1 (if any) in connection with the exchange. The fair market value of the assets of Controlled1 will exceed the amount of its liabilities immediately after the exchange.
- (y) The total adjusted bases and the fair market values of the assets transferred to Controlled1 by Distributing2 each equals or exceeds the sum of the liabilities assumed by Controlled1 plus any liabilities to which the transferred assets are subject; and the liabilities assumed in the transaction and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred, except for certain liabilities which may relate to discontinued or disposed-of operations.
- (z) Distributing2 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.
- (aa) Except in connection with the continuing transactions under the intercompany agreements, no intercorporate debt will exist between Distributing2 and Controlled1 at the time of, or subsequent to, the External Spin-Off.
- (bb) Immediately before the External Spin-Off, items of income, gain, loss, deduction and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. §§ 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; Treas. Reg. § 1.1502-13 as published by T.D. 8597). Further, Distributing2's excess loss account, if any, with respect to the Controlled1 Stock will be included in income immediately before the External Spin-Off (see Treas. Reg. § 1.1502-19).



- (cc) Payments made in connection with all continuing transactions between Distributing<sup>2</sup> and Controlled<sup>1</sup> will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length, except for certain transactions and arrangements under the Transitional Services or subleases, which may be based on cost or cost-plus arrangements.
- (dd) No two parties to the transaction are investment companies as defined in §§368(a)(2)(F)(iii) and (iv).
- (ee) For purposes of § 355(d), immediately after the External Spin-Off, 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<sup>2</sup> entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing<sup>2</sup> 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 External Spin-Off.
- (ff) For purposes of § 355(d), immediately after the External Spin-Off, 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<sup>1</sup> stock entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled<sup>1</sup> 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 External Spin-Off, or (ii) attributable to distributions on Distributing<sup>2</sup> 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 External Spin-Off.
- (gg) The External Spin-Off is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 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 § 355(d)(4)) in Distributing<sup>2</sup> or Controlled<sup>1</sup> (including any predecessor or successor of any such corporation).
- (hh) Distributing<sup>2</sup> has not been and will not be a United States real property holding corporation, as defined in § 897(c)(2), at any time during the five-year period ending on the date of the External Spin-Off, and Distributing<sup>2</sup> will not be a United States real property holding corporation immediately after the External Spin-Off.
- (ii) If adopted, the Controlled<sup>1</sup> Purchase Rights would be of the type described in Rev. Rul. 90-11, 1990-6 I.R.B. 6.

- (jj) Any shares of Controlled1 Common Stock distributed in the External Spin-Off as or with respect to Restricted Stock will not represent more than 20 percent of the Controlled1 Common Stock outstanding.

### **Rulings**

Based solely on the information submitted and the representations set forth above, we rule as follows regarding the First Contribution and Internal Spin-Off:

- (1) The First Contribution followed by the Internal Spin-Off will qualify as a reorganization under §368(a)(1)(D). Distributing1 and Controlled1 each will be a party to the reorganization under §368(b).
- (2) No gain or loss will be recognized by Distributing1 on the First Contribution. Sections 357(a) and 361(a).
- (3) No gain or loss will be recognized by Controlled1 on the First Contribution. Section 1032(a).
- (4) The basis of each asset received by Controlled1 in the First Contribution will equal the basis of that asset in the hands of Distributing1 immediately before its transfer. Section 362(b).
- (5) The holding period of each asset received by Controlled1 in the First Contribution will include the period during which that asset was held by Distributing1. Section 1223(2).
- (6) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing2 on the Internal Spin-Off. Section 355(a)(1).
- (7) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing1 on the Internal Spin-Off. Sections 361(c)(1) and 355.
- (8) The aggregate basis of the stock of Distributing1 and of the stock of Controlled1 in the hands of Distributing2 will equal the aggregate basis of the stock of Distributing1 held immediately before the Internal Spin-Off, allocated between the stock of Distributing1 and the stock of Controlled1 in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2). Sections 358(a)(1), 358(b)(2) and 358(c).
- (9) The holding period of the stock of Controlled1 received by Distributing2 in the Internal Spin-Off will include the holding period of Distributing1 stock with respect to which the distribution is made, provided such Distributing1 stock is

held as a capital asset by Distributing2 on the date of the Internal Spin-Off. Section 1223(1).

- (10) Earnings and profits will be allocated between Distributing1 and Controlled1 in accordance with § 312(h), Treas. Reg. §§ 1.312-10(a) and 1.1502-33(f)(2).

Based solely on the information submitted and the representations set forth above, we rule as follows regarding the Second Contribution and External Spin-Off:

- (11) The Second Contribution followed by the External Spin-Off will qualify as a reorganization under § 368(a)(1)(D). Distributing2 and Controlled1 each will be a party to the reorganization under § 368(b).
- (12) No gain or loss will be recognized by Distributing2 on the Second Contribution. Sections 357(a) and 361(a).
- (13) No gain or loss will be recognized by Controlled1 on the Second Contribution. Section 1032(a).
- (14) The basis of each asset received by Controlled1 in the Second Contribution will equal the basis of that asset in the hands of Distributing2 immediately before its transfer. Section 362(b).
- (15) The holding period of each asset received by Controlled1 in the Second Contribution will include the period during which that asset was held by Distributing2. Section 1223(2).
- (16) No gain or loss will be recognized by (and no amount will be included in the income of) the shareholders of Distributing2 on the External Spin-Off. Section 355(a)(1).
- (17) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing2 on the External Spin-Off. Sections 361(c)(1) and 355.
- (18) The aggregate basis of the stock of Distributing2 and of the stock of Controlled1 in the hands of the shareholders of Distributing2 will equal the aggregate basis of the stock of Distributing2 held immediately before the External Spin-Off, allocated between the stock of Distributing2 and the stock of Controlled1 in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2). Sections 358(a)(1), 358(b)(2) and 358(c).
- (19) The holding period of the stock of Controlled1 received by the shareholders of Distributing2 in the External Spin-Off will include the holding period of

Distributing2 stock with respect to which the distribution is made, provided such Distributing2 stock is held as a capital asset by the shareholders of Distributing2 on the date of the External Spin-Off. Section 1223(1).

- (20) Earnings and profits will be allocated between Distributing2 and Controlled1 in accordance with § 312(h), Treas. Reg. §§ 1.312-10(a) and 1.1502-33(e)(3).

### **Caveats**

Except as expressly provided herein, 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 Transactions that are not specifically covered by the above rulings. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding:

- (i) Whether either Spin-Off satisfies the business purpose requirement of Treas. Reg. §1.355-2(b);
- (ii) Whether either Spin-Off is being used principally as a device for the distribution of the earnings and profits of Distributing2, Distributing1 or Controlled1 (see § 355(a)(1)(B) and Treas. Reg. § 1.355-2(d));
- (iii) Whether either Spin-Off 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 Distributing2, Distributing1, or Controlled1 (see § 355(e) and Treas. Reg. § 1.355-7));
- (iv) The application of §§ 367 and 1248 to the Foreign Separation Transactions or any other transaction addressed in this letter ruling;
- (v) With respect to the Foreign Separation Transactions or any other restructuring steps prior to the External Spin-off, the application of Treas. Reg. § 1.367(a)-8 or -8T to any entities that may have entered into or are subject to gain recognition agreements under § 367(a);
- (vi) The federal tax treatment of any agreements regarding Intellectual Property;
- (vii) The federal tax treatment of the Transitional Services or any other cost or cost-plus arrangements;
- (viii) The federal tax treatment of the Foreign Separation Transactions;

- (ix) The federal tax treatment of Restricted Stock or distributions made with respect to Restricted Stock; or
- (x) The federal tax treatment of assets for which a § 59(e) election may be in effect and the unamortized remaining balance of expenses for which a § 59(e) election may be in effect.

### **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 of the 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,

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Douglas C. Bates  
Assistant to the Branch Chief, Branch 5  
Office of Associate Chief Counsel (Corporate)