

Internal Revenue Service

Department of the Treasury

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Date:

November 17, 1999

Distributing =

Controlled =

Liquidating =

Business 1 =

Business 2 =

Services =

A =

B =

C =

Investment Bank D =

Investment Bank E =

Consultant =

Month F =

Month G =

a =

b =
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This letter responds to your May 14, 1999, request for rulings on the federal income tax consequences of a proposed transaction.

Summary of Facts

Publicly traded Distributing is the common parent of a consolidated group.

Distributing wholly owns Liquidating,

Distributing engages, directly and through subsidiaries and affiliates, in Business

1. Controlled engages, directly and through subsidiaries and affiliates, in Business 2. We have received financial information indicating that Business 1 and Business 2 each had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing and Controlled each needs additional capital to expand its business. Consultant has advised that the most efficient way to raise this capital is through public offerings of stock made in connection with the separation of Distributing and Controlled from one another.

Proposed Transaction

To accomplish this separation, Distributing has proposed the following transaction:

(i) Liquidating will merge under state law into its sole shareholder, Distributing (the "Liquidation").

(ii) In connection with step (iv) below, Distributing will make an offering (the "Distributing Offering").

(iii) Controlled will recapitalize its common stock into two classes of Controlled common stock with identical rights except for voting power (the "Recapitalization").

(iv) Distributing will distribute its Controlled Class A and Class B stock pro rata to all of its shareholders (the "Distribution").

(v) Controlled will make an offering of its Class A common stock to the public (the "Controlled Offering").

Liquidation Representations

The taxpayer has submitted the following representations concerning the Liquidation:

(a) Distributing, on the date of adoption of the plan of liquidation, and at all times until the final liquidating distribution is completed, will be the owner of at least 80 percent of the single outstanding class of Liquidating stock.

(b) No shares of Liquidating stock will have been redeemed during the three years preceding the adoption of the plan of complete liquidation of Liquidating.

(c) All distributions from Liquidating to Distributing pursuant to the plan of complete liquidation will be made within a single taxable year of Liquidating.

(d) As soon as the first liquidating distribution has been made, Liquidating will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and distributing its remaining assets to its shareholders.

(e) Liquidating will retain no assets following the final liquidating distribution.

(f) Liquidating will not have acquired assets in any nontaxable transaction at any time, except for annual contributions of working capital and acquisitions occurring more than three years before the date of adoption of the plan of liquidation.

(g) No assets of Liquidating have been, or will be, disposed of by either Liquidating or Distributing except for dispositions in the ordinary course of business and dispositions occurring more than 3 years before adoption of the plan of liquidation.

(h) The Liquidation will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation (the "Recipient") of any of the businesses or assets of Liquidating, if persons holding, directly or indirectly, more than 20 percent in the value of the Liquidating stock also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient. For purposes of this representation, ownership will be determined by applying the constructive ownership rules of § 318(a) of the Internal Revenue Code as modified by § 304(c)(3).

(i) Before the adoption of the liquidation plan, no assets of Liquidating will have been distributed in kind, transferred, or sold to Distributing, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years before adoption of the liquidation plan.

(j) Liquidating will report all earned income represented by assets that will be distributed to its shareholders such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

(k) The fair market value of the assets of Liquidating will exceed its liabilities both on the date of the adoption of the plan of complete liquidation and immediately before the time the first liquidating distribution is made.

(l) There is no intercorporate debt existing between Distributing and Liquidating, and none has been canceled, forgiven, or discounted, except for transactions that occurred more than three years before the date of adoption of the plan of liquidation.

(m) Distributing is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.

(n) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the proposed Liquidation have been fully disclosed.

Recapitalization Representations

The taxpayer has submitted the following representations concerning the Recapitalization:

(o) The fair market value of the Controlled stock immediately following the Recapitalization will approximately equal the fair market value of the Controlled stock held by the shareholder immediately before the Recapitalization.

(p) The Recapitalization is a single, isolated transaction and is not part of a plan to periodically increase the proportionate interest of any shareholder in the assets or earnings and profits of Controlled.

(q) Controlled and its shareholders will each pay its, his, or her own expenses, if any, incurred in connection with the Recapitalization.

(r) Controlled is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

(s) None of the Controlled Class A or Class B common stock received by Distributing will be for services rendered or to be rendered.

(u) The Recapitalization will occur under a plan of reorganization agreed upon before the Recapitalization.

(v) At the time of the Recapitalization, Controlled will not have outstanding any stock options, warrants, convertible securities, or other rights that are convertible into any class of stock or securities of Controlled,

(w) Controlled will be treated under applicable state law as the same corporation following the Recapitalization, and its corporate existence will continue uninterrupted.

(x) The management of Controlled has no plan or intention to propose a change to the voting rights or powers of the Controlled Class A common stock or Controlled Class B common stock.

Distribution Representations

The taxpayer has submitted the following representations concerning the Distribution:

(y) No part of the consideration 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.

(z) The five years of financial information submitted for Business 1 of Distributing and Business 2 of Controlled represents, in each case, its present operations, and with regard to each business, there has been no substantial operational change since the date of the last financial statements submitted.

(aa) Following the transaction, Distributing and Controlled will each continue the active conduct of its business independently and with its separate employees, except for the sharing of certain employees during a transitional period.

(bb) The Distribution will be carried out to allow Distributing and Controlled each to acquire through a public offering the additional capital it needs to expand its business. The Distribution is motivated, in whole or substantial part, by this corporate business purpose.

(cc) There is no plan or intention by any shareholder who owns five percent or more of the stock of Distributing, and the 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 stock in, or securities of, either Distributing or Controlled after the transaction

(dd) 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 section 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696, 705.

(ee) 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 Distribution, except in the ordinary course of business.

(ff) No intercorporate debt will exist between Distributing and Controlled at the time of, or after, the Distribution.

(gg) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and § 1.1502-14 of the Income Tax Regulations as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, any excess loss account Distributing may have in the Controlled stock will be included in income immediately before the Distribution to the extent required by applicable regulations (see § 1.1502-19).

(hh) Payments made in connection with any continuing transactions between Distributing and Controlled, including any transitional arrangement for the sharing of employees, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(ii) The Distribution 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 D or C entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either D or C. If stock acquisitions under (i) the Buyback Programs, (ii) the Recapitalization, (iii) the Distributing Offering, and (iv) the Controlled Offering were aggregated and treated as part of a "plan" including the Distribution, they would not, by themselves, result in a 50 percent or greater acquisition of the stock of Distributing or Controlled by vote or value.

(jj) Any option that has been or will be issued and exercised under an option plan of either Distributing or Controlled (i) contains customary terms and conditions, (ii) is provided to an employee, director, or independent contractor in connection with the performance of services for the corporation or a person related to it under § 355(d)(7)(A), (iii) is not excessive by reference to the services performed, (iv) is nontransferable within the meaning of §1.83-3(d) immediately after the Distribution and within six months thereafter, and (v) does not have a readily ascertainable fair market value as defined in §1.83-7(b) immediately after the Distribution and within six months thereafter.

Liquidation Rulings

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

(1) For federal income tax purposes, the merger of Liquidating into Distributing will be treated as a distribution by Liquidating of all its assets to Distributing in complete liquidation under § 332 (§ 1.332-2(d)).

(2) No gain or loss will be recognized by Distributing on the receipt of Liquidating's assets in the Liquidation (§ 332(a)).

(3) No gain or loss will be recognized by Liquidating on the distribution of its properties to Distributing in the Liquidation (§§ 336(d)(3) and 337(a)).

(4) The basis of each Liquidating asset in the hands of Distributing will equal the basis of that asset in the hands of Liquidating immediately before the Liquidation (§ 334(b)(1)).

(5) The holding period of each Liquidating asset received by Distributing will include the period during which Liquidating held the asset (§ 1223(2)).

(6) Distributing will succeed to and take into account the items of Liquidating described in § 381(c), subject to the provisions and limitations of § 381(b) and (c) and the regulations thereunder (§ 381(a) and § 1.381(a)-1).

(7) Distributing will succeed to and take into account the earnings and profits of Liquidating as of the date of the merger of Liquidating into Distributing (§ 381(c)(2)(A) and § 1.381(c)(2)-1). Any deficit in earnings and profits of Distributing or Liquidating will be used only to offset earnings and profits accumulated after the date of the merger of Liquidating into Distributing (§ 381(c)(2)(B)).

Recapitalization Rulings

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

(8) The Recapitalization will be treated as an exchange by Distributing of its old Controlled common stock for new Controlled Class A and Class B common stock
will qualify as a reorganization
under § 368(a)(1)(E). Controlled will be a "party to the reorganization" under § 368(b).

(9) No gain or loss will be recognized by Distributing
as a result of the Recapitalization (§ 354(a)(1)).

(10) The basis in Controlled Class A and Class B common stock received by Distributing,
in the Recapitalization will equal the basis of the Controlled common

stock surrendered in exchange therefor (§ 358(a)(1)).

(11) The holding period of Controlled Class A and Class B common stock received by Distributing in the Recapitalization will include the period during which the Controlled common stock surrendered in exchange therefor was held, provided the Controlled common stock is held as a capital asset on the date of the exchange (§ 1223(1)).

(12) No gain or loss will be recognized by Controlled on its issuance of Class A and Class B common stock in exchange for Controlled common stock (§ 1032(a)).

Distribution Rulings

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

(13) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the Distributing shareholders on the Distribution (§ 355(a)(1)).

(14) No gain or loss will be recognized by Distributing on the Distribution (§ 355(c)).

(15) The aggregate basis of the Distributing shares and the Controlled Class A and Class B shares in the hands of each Distributing shareholder after the Distribution will equal the aggregate basis of the Distributing shares in the hands of the Distributing shareholder immediately before the Distribution (§§ 358(a) and 1.358-1(a)). This basis will be allocated between the Distributing shares and the Controlled Class A and Class B shares in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§§ 358(b)(2) and 358(c)).

(16) The holding period of the Controlled Class A and Class B shares received by each Distributing shareholder in the Distribution will include the holding period of the Distributing shares on which the Distribution is made, provided that the Distributing shares are held as capital assets on the date of the Distribution (§ 1223(1)).

(17) As provided in § 312(h), proper allocation of earnings and profits between Distributing and Controlled will be made under § 1.312-10(b).

(18) The issuance or exercise of any stock option described above in representation (jj) will not be treated as an acquisition for purposes of § 355(e).

Caveats

We express no opinion on the tax effects of the transaction under any other provisions of the Code or regulations, or the tax effects of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above rulings.

Procedural Statements

This ruling letter is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Each taxpayer affected by this ruling letter should attach a copy of the letter to the taxpayer's federal income tax return for the taxable year in which the transaction covered by the letter is completed.

Under a power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Assistant Chief Counsel (Corporate)

By: *Wayne J. Murray*

Senior Technician/Reviewer, Branch 4