Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:CORP:1-PLR-118388-99
Date:
April 28, 2000

Re:

Parent =

Distributing =

Controlled =

Target =

Business A =
Business D =
Business F =

Individual E =
Individual G =

Regulatory Agency =

Regulatory Changes =

Business Assets =

aa =
bb =
cc =
dd =
ee =
ff =
rr =
ss =

tt =

uu =

Date 8 =
Date 9 =
Date 10 =
Date 11 =
Date 12 =
Date 13 =

Corporation D =
Corporation H =

Dear :

This letter responds to your request dated November 17, 1999 (the "Supplemental Ruling Request"), for a letter ruling supplementing our letter ruling dated August 3, 1999 (PLR-121117-98, the "Prior Letter Ruling"). The Prior Letter Ruling concerned a proposed split-off transaction (referred to as the “Split-off Transaction” in the Prior Letter Ruling; hereinafter, the “Proposed Split-off”). The Proposed Split-off has not, as yet, been consummated. This supplemental ruling addresses the effect of a proposed merger of Target with and into Parent (the “Proposed Merger”) on the Prior Letter Ruling. Additional information and revisions were submitted in letters dated January 3, 2000, February 15, 2000, March 27, 2000, April 13, 2000, April 21, 2000, and April 24, 2000. The facts submitted are summarized below. Capitalized terms retain the meaning assigned to them in the Prior Letter Ruling.

Parent has represented that on Date 8 (after the Prior Letter Ruling was issued), Regulatory Agency announced certain significant Regulatory Changes affecting Business A. In response to such regulatory changes, Individual G, the senior member of management of Target, which is also engaged in Business A, contacted Individual E, the senior member of Parent's management requesting a meeting. On Date 9, Individuals E and G met and discussed various possible business combinations. Such meeting and subsequent discussions progressed to agreement on the Proposed Merger on Date 10; such agreement was subsequently amended and restated (the "Merger Agreement"). The taxpayer has represented that Parent and Target, which is also a publicly traded company, agreed to the Proposed Merger for business reasons unrelated to the Proposed Split-off. The Proposed Merger was approved by shareholders of both companies on Date 11. Parent and Target are waiting for approval of the Proposed Merger by Regulatory Agency, which may require the combined entity to dispose of certain Business Assets. Prior to Date 12, the senior management of Parent did not plan for, or otherwise pursue, a merger with, or other acquisition of, Target.

Under the Merger Agreement, Parent has the right, but not the obligation, to complete the Proposed Split-off prior to or after the Proposed Merger subject to certain

conditions. Parent has represented that the Merger Agreement only allows Target to object to the Proposed Split-off if the following conditions are not satisfied: (a) Parent furnishes to Target, with a reasonable opportunity to review, a written statement of facts (the "Statement of Facts") in support of the tax-free treatment of the Proposed Split-off; (b) Target does not reasonably object in writing, within five business days after the receipt of the Statement of Facts, on the basis that the Statement of Facts is not accurate or is not complete in all material respects; (c) Parent's outside tax counsel delivers to Target and Parent its written opinion in a form reasonably acceptable to Target, based upon the Statement of Facts, that the Proposed Split-off should be tax-free; and (d) the pricing with respect to the Proposed Split-off is at a premium to Controlled stockholders at the time the offer commences of no more than uu percent.

Parent has provided facts showing that the Proposed Split-off is independent of the Proposed Merger. Parent intends to complete the Proposed Split-off without regard to whether the Proposed Merger is ever consummated. Furthermore, Parent intends to complete the Proposed Merger prior to completing the Proposed Split-off. Subject to market conditions, Parent intends to complete the Proposed Split-off as soon as practicable after receipt of the rulings contained herein and after completing the Proposed Merger.

Parent has represented that the business purposes for the Proposed Split-off set forth in the ruling request, supplements and submissions for the Prior Letter Ruling remain unchanged by the Proposed Merger. Parent has further represented that Target's business operations and assets do not impact Parent's business purposes for splitting off Controlled. Prior to the Proposed Split-off, Parent will contribute some or all of Target's assets to Distributing.

Pursuant to the Merger Agreement, Parent will be the surviving corporation, and each holder of Target voting common stock will receive rr shares of Parent Class B common stock (non-voting) in exchange for each share of Target common stock. Each issued and outstanding share of Target preferred stock will be automatically converted into the right to receive rr shares of newly created voting Parent Series C preferred stock, each share of which will be convertible at the holder's option into ss shares of Parent Class B common stock.

It is expected that holders of Target common stock and Target preferred stock immediately prior to the closing of the Proposed Merger will own (assuming such holders of Target preferred stock had elected to convert their Parent Series C preferred stock into Parent Class B common stock) approximately tt percent of the aggregate outstanding Parent Class A and Class B common stock after the Proposed Merger without regard to the Proposed Split-off. There will, however, be no material change in the voting power held by Parent shareholders immediately prior to the Proposed Merger because the holders of Target common stock will only receive non-voting Parent stock. The taxpayer expects that the Proposed Merger will be a reverse acquisition under § 1.1502-75(d)(3).

On Date 11, Corporation D transferred all of its Parent stock to Corporation H, a wholly-owned subsidiary of Corporation D. As of Date 13, there were approximately aa shares of Parent Class A stock outstanding and approximately bb shares of Parent Class B stock outstanding. As of Date 13, approximately cc shares of Parent Class A stock, representing dd percent of the outstanding Parent Class A stock, and ee shares of Parent Class B stock, representing ff percent of the outstanding Parent Class B stock, were owned by Corporation H.

The following additional representations, which amend representations made in connection with the Prior Letter Ruling, have been made in connection with the Proposed Merger and the Proposed Split-off:

(a) Except with respect to the operations of Target acquired in the Proposed Merger, the five years of financial information submitted on behalf of Distributing and Controlled is representative of each respective corporations' present operation, and with regard to each such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(b) Business D, a division of Distributing, will be relied upon to meet the requirements of § 355(b) for Distributing. The gross assets of Business D will have a fair market value that is at least 5 percent of the total fair market value of the gross assets of Distributing other than Controlled and including the assets of Target that will be transferred to Distributing prior to the Proposed Split-off.

(c) Controlled will rely upon its Business F to meet the requirements of § 355(b). The gross assets of Business F held directly by Controlled have a fair market value that is at least 5 percent of the total fair market value of the gross assets of Controlled.

(d) There is no plan or intention to liquidate Parent, Distributing or Controlled, to merge them with any other corporation, or to sell or otherwise dispose of their assets after the Proposed Split-off, except (a) in the ordinary course of business, (b) the Proposed Merger, (c) any dispositions of Business Assets by Parent or Target necessary in order to comply with Regulatory Agency rules or orders, and (d) certain dispositions of assets by Parent and Controlled pursuant to proposed business ventures.

(e) Any person acquiring an interest in Parent pursuant to the Proposed Merger (an "Acquiring Person") will not acquire, pursuant to the Proposed Merger, 5 percent or more of any class of stock of Parent or Controlled and actively participate in the management or operation of Parent or Controlled (a

> "Controlling Shareholder"). Parent neither anticipates that, nor has any knowledge about a plan or intention by which, an Acquiring Person who actively participates in the management or operation of Parent or Controlled will acquire at any point after the Proposed Merger and before the end of the two-year period beginning on the date of the Proposed Split-off (or later pursuant to an agreement, understanding or arrangement existing at the time of the Proposed Split-off or within six months thereafter) (the "Two Year Period"), sufficient stock to become a Controlling Shareholder. At present, Individual E and family members are on the Board of Directors of Parent and indirectly hold a Controlling Shareholder Interest.

In connection with the Prior Letter Ruling, the taxpayer made the following representation: "Immediately after the Proposed Split-off, Distributing and Controlled will each continue, independently and with its separate employees, the active conduct of their respective businesses, except for the Shared Employees discussed above." The taxpayer now represents that there will be no Shared Employees.

Also in connection with the Prior Letter Ruling, the taxpayer represented that "[t]he First and Second Distributions are not (within the meaning of § 355(e)) part of a plan or series of related transactions 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 Parent or Controlled, or stock possessing 50 percent or more of the total value of all classes of stock of either Parent or Controlled." In light of the Proposed Merger, the taxpayer has substituted for the foregoing representation, the information set forth above, which, provided that the Proposed Split-off occurs after the Proposed Merger, rebuts the presumption that the Proposed Split-off and the Proposed Merger are part of a plan or series of related transactions under § 355(e)(2)(A)(ii).

Based upon the foregoing and provided that the Proposed Split-off occurs after the Proposed Merger, we reaffirm the rulings set forth in the Prior Letter Ruling and rule that the Proposed Split-off and the Proposed Merger will not be treated as pursuant to a "plan (or series of related transactions)" under § 355(e)(2)(A)(ii).

We express no opinion about the tax treatment of the proposed transactions under any other provisions of the Code and regulations promulgated thereunder or the tax treatment of any conditions existing at the time of, or effects from, the proposed transactions that are not specifically covered by the above rulings. Furthermore, we express no opinion about the tax treatment of the Proposed Merger nor the contribution of Target assets to Distributing.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling letter (including regulations under § 358(g)) have not yet been adopted.

Therefore, this ruling will be modified or revoked if adopted temporary or final regulations are inconsistent with any conclusions in the ruling. See, section 12.04 of Rev. Proc. 2000-1, 2000-1 I.R.B. 4, 46 (January 3, 2000). However, when the criteria in section 12.05 of Rev. Proc. 2000-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

This ruling letter has no effect on any earlier documents, except as described above, and is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter should be attached to the federal income tax returns of the taxpayers involved for the taxable year in which the transaction covered by this supplemental letter ruling is consummated.

We have sent a copy of this letter to the representative designated in the power of attorney on file in this office.

Sincerely yours,
Assistant Chief Counsel (Corporate)
By: Mark S. Jennings
Acting Chief, Branch 1