

Internal Revenue Service

Number: **200704018**

Release Date: 1/26/2007

Index Numbers 332.02-00, 355.01-00,
368.04-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B03
PLR-129862-06
Date:
October 12, 2006

Distributing =

Controlled =

Sub 1 =

Limited Partnership =

State X =

Business B =

Dear :

This letter responds to your June 12, 2006 letter requesting that we supplement our letter ruling dated October 14, 2005 (PLR-135026-05) (the "Prior Ruling Letter"). Additional information was submitted in letters dated August 21 and September 28, 2006. Capitalized terms not defined in this ruling have the meanings assigned to them in the Prior Ruling Letter. The transaction described in the Prior Ruling Letter is

described as the "Proposed Transaction." The information submitted for consideration is summarized below.

The rulings contained in this letter are based on facts 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.

The Prior Ruling Letter addressed certain federal income tax consequences of the Proposed Transaction under § 355, § 368, and certain other provisions of the Internal Revenue Code (the "Code").

Requested Ruling

Pursuant to § 4.06 of Rev. Proc. 2003-48, 2003-2 C.B. 86, Distributing has requested a supplemental ruling on a significant issue (as defined in § 3.01 (33) of Rev. Proc 2006-3, 2003-1 I.R.B. 121, 124). Specifically, lenders have required that Distributing guarantee some Controlled debt and Controlled guarantee some Distributing debt, respectively, after the proposed spin-off.

Summary of Relevant Facts and Modified Representation

As set forth in the Prior Ruling Letter, Distributing will organize Controlled as a State X corporation and contribute the assets of Business B to Controlled in exchange for all of the shares of Controlled common stock. Among the assets transferred to Controlled are loans due to third parties. Distributing will distribute all of its Controlled stock pro rata to its shareholders.

Third party lenders are requesting that various loan guarantees be executed as described in the following Representation (w):¹

No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution. However, Controlled will be required to guarantee all or part of the remaining indebtedness of Distributing and Sub 1, and Distributing and Sub 1 will, in turn, be required to guarantee all or part of the indebtedness transferred to Controlled as part of Business B. In each instance, an arm's length guarantee fee will be paid to the respective guarantor(s). The guarantees are expected to remain in place for the remaining term of each loan. Most of the loans mature in a year or two but three loans have longer terms. In addition, Distributing and Controlled will guarantee certain Limited Partnership indebtedness and Limited Partnership will guarantee certain Controlled debt.

¹ This Representation (w) is hereby substituted for Representation (w) set forth in the Prior Ruling Letter.

Ruling

Based solely on the information submitted and the representations both set forth herein and submitted with the Prior Ruling Letter, we rule that the fact that Controlled will guarantee all or part of the remaining indebtedness of Distributing and Distributing will guarantee all or part of the indebtedness transferred to Controlled will have no effect on the Prior Ruling Letter, and all rulings set forth therein will remain in full force and effect.

Caveats

No opinion is requested and no opinion is expressed regarding the treatment, for federal income tax purposes, of the guarantee fees paid between Distributing and Controlled or Sub 1 and/or Limited Partnership. Additionally, no opinion is requested and no opinion is expressed regarding the guarantee of Sub 1 or Limited Partnership debt by Distributing and Controlled or Limited Partnership's guarantee of Controlled debt, described in Representation (w), above. Finally, no opinion is expressed about the tax treatment of the Proposed Transaction as modified herein, under other provisions of the Code or 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 ruling and the rulings contained in the Prior Ruling Letter.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether any distribution described herein (including the Prior Ruling Letter) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, whether any of the distributions described herein is used principally as a device for the distribution of earnings and profits of Distributing or Controlled or both (see § 355(a) (1)(B) and § 1.355-2(d)), or whether any distribution described herein 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).

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

It is important that a copy of this ruling letter be attached to the Federal income tax return of each party involved for the taxable year in which the transaction covered by this letter is consummated.

Pursuant to the power of attorney on file in this office, a copy of this letter has been sent to Distributing's authorized representative.

Sincerely yours,

Richard E. Coss
Senior Counsel, Branch 3
Office of Associate Chief Counsel (Corporate)