

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200825036**  
Release Date: 6/20/2008

Third Party Communication: None  
Date of Communication: Not Applicable  
Person To Contact:

Index Number: 355.00-00, 355.01-02, 368.00-00

, ID No.  
Telephone Number:

Refer Reply To:  
CC:CORP:B06  
PLR-152913-07  
Date:  
March 19, 2008

LEGEND

Distributing =

Controlled 1 =

Controlled 2 =

Shareholder A =

Shareholder B =

Shareholder C =

a% =

b% =

c% =

d% =

Business A =

State X =

Date 1 =

Dear

This letter responds to your August 28, 2007 letter from your authorized representatives requesting rulings on certain federal income tax consequences of a proposed transaction. The information provided in that letter and in later correspondence 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. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the distributions (described below): (i) satisfy the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) are used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporations or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); or (iii) are 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 1 or Controlled 2 (see § 355(e) and § 1.355-7).

### **Summary of Facts**

Distributing was incorporated on Date 1 in State X. Distributing is a cash basis taxpayer. Distributing is engaged in Business A. Distributing has supplied financial information indicating that Business A has had gross receipts and operating expenses representing the active conduct of a trade or business for the past 5 years.

Distributing has one class of stock which is owned a% by Shareholder A, b% by Shareholder B and c% by Shareholder C. Shareholder C has a small minority stock interest in Distributing. Shareholder A and Shareholder B have had continuing disputes and disagreements with respect to the management and operation of Business A as conducted by Distributing. These disputes adversely affect the normal operations of Business A. Shareholder A and Shareholder B have decided to engage in a split-up so that each may go their separate way.

### **Proposed Transaction**

To effect the separation, Distributing proposes the following transaction:

- (i) Distributing will form Controlled 1 and Controlled 2 as State X corporations.
- (ii) Distributing will transfer operating assets of Business A (subject to liabilities) equal to approximately one half of the value of Business A to Controlled 1 in exchange for all of its stock.
- (iii) Distributing will transfer operating assets of Business A (subject to liabilities) equal to approximately one half of the value of Business A to Controlled 2 in exchange for all of its stock.
- (iv) Cash and other assets will be used to equalize differences, if any, in the net value of assets transferred to Controlled 1 or Controlled 2.
- (v) Distributing will distribute all of the stock of Controlled 1 to Shareholder A and Shareholder C in exchange for all of Shareholder's A Distributing stock and a portion of Shareholder C's Distributing stock. (Distribution 1).
- (vi) Distributing will distribute all of the Controlled 2 stock to Shareholder B and Shareholder C in exchange for all of Shareholder B's Distributing stock and the remainder of Shareholder C's Distributing stock. (Distribution 2). Immediately before Distribution 1 and Distribution 2 ("the distribution"), Distributing's only assets will consist of the stock of Controlled 1 and the stock of Controlled 2.
- (vii) Distributing will then liquidate.
- (viii) Immediately after the liquidation of Distributing, Shareholder A will own d% of Controlled 1 and Shareholder C will own c% of Controlled 1. Immediately after the liquidation of Distributing, Shareholder B will own d% of Controlled 2 and Shareholder C will own c% of Controlled 2.
- (ix) After the liquidation of Distributing, the management and day-to-day affairs of Controlled 1 and Controlled 2 will be overseen by Shareholder C with Shareholder A assisting in the management of Controlled 1 and Shareholder B assisting in the management of Controlled 2. In particular, Shareholder A will be involved in making key business decisions involving Controlled 1, and Shareholder B will be involved in making key business decisions involving Controlled 2.

In connection with the Proposed transaction, Distributing makes the following representations:

### **Representations**

- (a) The distribution of the stock, or stock and securities, of Controlled 1 and Controlled 2 (“the Controlled corporations”) is carried out for the following corporate business purposes: to eliminate shareholder disputes between Shareholder A and Shareholder B that, if permitted to continue, would jeopardize the operation and continued success of the corporate business. By effecting a separation of ownership and management of Business A through a split-up, Shareholder A and Shareholder C will exclusively own and operate Controlled 1, and Shareholder B and Shareholder C will exclusively own and operate Controlled 2. The distribution of the stock, or stock and securities, of Controlled 1 and Controlled 2 is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (b) The transactions are not used principally as a device for the distribution of the earnings and profits of the distributing corporation or the Controlled corporations or both. See § 355(a)(1)(B).
- (c) The distribution is not part of a plan or series of related transactions (within the meaning of § 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 or Controlled 1 or Controlled 2 (including any predecessor or successor of any such corporation).
- (d) The total fair market value of the assets transferred by Distributing to Controlled 1 as part of the Proposed transaction will equal or exceed the aggregate adjusted basis of the transferred assets.
- (e) The total fair market value of the assets transferred by Distributing to Controlled 2 as part of the Proposed transaction will equal or exceed the aggregate adjusted basis of the transferred assets.
- (f) The total fair market value of the assets that Distributing will transfer to Controlled 1 in the Proposed transaction will exceed the sum of: (a) the amount of liabilities (if any) assumed (within the meaning of § 357(d)) by Controlled 1 in connection with the exchange, (b) the amount of liabilities (if any) owed to Controlled 1 by Distributing that are discharged or extinguished in connection with the exchange, and (c) the amount of cash (if any) and the fair market of other property (if any) (other than stock or securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing from Controlled 1 in connection with the exchange. The fair market value of the assets of Controlled 1 will exceed the amount of its liabilities immediately after the exchange.

- (g) The total fair market value of the assets that Distributing will transfer to Controlled 2 in the Proposed transaction will exceed the sum of: (a) the amount of liabilities (if any) assumed (within the meaning of § 357(d)) by Controlled 2 in connection with the exchange, (b) the amount of liabilities (if any) owed to Controlled 2 by Distributing that are discharged or extinguished in connection with the exchange, and (c) the amount of cash (if any) and the fair market of other property (if any) (other than stock or securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing from Controlled 2 in connection with the exchange. The fair market value of the assets of Controlled 2 will exceed the amount of its liabilities immediately after the exchange.
- (h) The total adjusted basis and the fair market value of the assets transferred to Controlled 1 by Distributing will equal or exceed the sum of (i) the total liabilities assumed (within the meaning of § 357(d)) by Controlled 1, and (ii) the total amount of any money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing and transferred to its creditors in connection with the reorganization.
- (i) The liabilities assumed (if any) (within the meaning of § 357(d)) by Controlled 1 in the Proposed Transaction were incurred in the ordinary course of business and are associated with the assets being transferred.
- (j) The total adjusted basis and the fair market value of the assets transferred to Controlled 2 by Distributing will equal or exceed the sum of (i) the total liabilities assumed (within the meaning of § 357(d)) by Controlled 2, and (ii) the total amount of any money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing and transferred to its creditors in connection with the reorganization.
- (k) The liabilities assumed (if any) (within the meaning of § 357(d)) by Controlled 2 in the Proposed Transaction were incurred in the ordinary course of business and are associated with the assets being transferred.
- (l) Immediately after the transaction (as defined in § 355(g)(4)), either (1) no person will hold a 50-percent or greater interest (within the meaning of § 355(g)(3)) in Distributing or Controlled 1 or Controlled 2, (2) if any person holds a 50-percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (3) Distributing and Controlled 1 and Controlled 2 will not be a disqualified investment corporation (within the meaning of § 355(g)(2)).

- (m) For purposes of section 355(d), immediately after the distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of the shares of all classes of Distributing stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of distribution.
- (n) For purposes of section 355(d), immediately after the distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of either Controlled 1 stock or Controlled 2 stock entitled to vote, or 50 percent or more of the total value of the shares of all classes of either Controlled 1 stock or Controlled 2 stock that was either: (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the distribution or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the distribution.
- (o) The fair market value of the stock of Controlled 1 to be received by Shareholder A and Shareholder C and the fair market value of the stock of Controlled 2 to be received by Shareholder B and Shareholder C will be approximately equal to the fair market value of the Distributing stock surrendered by the shareholders in the exchange.
- (p) 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 the corporation.
- (q) The five years of financial information submitted on behalf of Distributing is representative of the corporation's present operations, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- (r) Following the transaction, (except for Shareholder C, who will perform managerial and operational duties for both Controlled 1 and Controlled 2) Controlled 1 and Controlled 2 will each continue, independently and with its separate employees, (or through the actions of shareholders acting on their behalf) the active conduct of its share of all the integrated activities of the business conducted by Distributing prior to the consummation of the transaction.

- (s) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.
- (t) No intercorporate debt will exist between Distributing and either Controlled corporation or between Controlled 1 and Controlled 2 at the time of, or subsequent to, the distribution of the Controlled 1 and Controlled 2 stock.
- (u) Payments made in connection with all continuing transactions, if any, between Controlled 1 and Controlled 2, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (v) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

Based solely on the information and representations submitted, we rule as follows on the Proposed transaction:

### **Rulings**

- (1) Each of the transfers by Distributing to Controlled 1 and to Controlled 2 of a portion of the assets of Business A, in exchange for all of the stock of each of the Controlled corporations and the assumption of liabilities by each of the Controlled corporations, followed by the distribution of the stock of Controlled 1 and the stock of Controlled 2 to Shareholders A and C and to Shareholders B and C, respectively, will each be a reorganization within the meaning of 368(a)(1)(D). Distributing and Controlled 1 and Distributing and Controlled 2 will be a "party to a reorganization" for each respective 368(a)(1)(D) reorganization within the meaning of § 368(b).
- (2) No gain or loss will be recognized by Distributing upon the transfer of assets, subject to liabilities, to Controlled 1 solely in exchange for stock in Controlled 1. (§ 361(a) and 357(a)).
- (3) No gain or loss will be recognized by Controlled 1 upon the receipt of the assets from Distributing in exchange for all the shares of stock of Controlled 1. (§ 1032(a)).
- (4) The basis of the assets received by Controlled 1 will be the same as the basis of such assets in the hands of Distributing immediately prior to their transfer to Controlled 1. (§ 362(b)).

- (5) The holding period of the Distributing assets received by Controlled 1 will include the period during which such assets were held by Distributing. (§ 1223(2)).
- (6) No gain or loss will be recognized by (and no amount will be included in the income of) Shareholders A and C upon their receipt of shares of Controlled 1 in exchange for their Distributing shares. (§ 355(a)(1)).
- (7) No gain or loss will be recognized by Distributing upon the distribution of the stock of Controlled 1 to Shareholders A and C. (§ 361(c)).
- (8) The basis of the stock of Controlled 1 in the hands of Shareholders A and C will be the same as the basis of the Distributing stock surrendered by such shareholders in exchange therefor, allocated in the manner described in § 1.358-2. (§ 358(a)(1), (b) and (c)).
- (9) The holding period of the stock of Controlled 1 received by Shareholders A and C will include the holding period of the Distributing stock surrendered in exchange therefore, provided that the Distributing stock is held as a capital asset on the date of the distribution (§ 1223(1)).
- (10) As provided in § 312(h), proper allocation of earnings and profits between Distributing and Controlled 1 will be made under § 1-312-10(a) of the Income Tax Regulations.
- (11) No gain or loss will be recognized by Distributing upon the transfer of assets, subject to liabilities, to Controlled 2 solely in exchange for stock in Controlled 2. (§ 361(a) and 357(a)).
- (12) No gain or loss will be recognized by Controlled 2 upon the receipt of the assets from Distributing in exchange for all the shares of stock of Controlled 2. (§ 1032(a)).
- (13) The basis of the assets received by Controlled 2 will be the same as the basis of such assets in the hands of Distributing immediately prior to their transfer to Controlled 2. (§ 362(b)).
- (14) The holding period of the Distributing assets received by Controlled 2 will include the period during which such assets were held by Distributing. (§ 1223(2)).
- (15) No gain or loss will be recognized by (and no amount will be included in the income of) Shareholders B and C upon their receipt of shares of Controlled 2 in exchange for their Distributing shares. (§ 355(a)(1)).



- (16) No gain or loss will be recognized by Distributing upon the distribution of the stock of Controlled 2 to Shareholders B and C. (§ 361(c)).
- (17) The basis of the stock of Controlled 2 in the hands of Shareholders B and C will be the same as the basis of the Distributing stock surrendered by such shareholders in exchange therefor, allocated in the manner described in § 1.358-2. (§ 358(a)(1), (b) and (c)).
- (18) The holding period of the stock of Controlled 2 received by Shareholders B and C will include the holding period of the Distributing stock surrendered in exchange therefore, provided that the Distributing stock is held as a capital asset on the date of the distribution (§ 1223(1)).
- (19) As provided in § 312(h), proper allocation of earnings and profits between Distributing and Controlled 2 will be made under § 1-312-10(a) of the Income Tax Regulations

### **CAVEATS**

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 condition existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

- (i) Whether the distribution satisfies the business purpose requirement of § 1.355-2(b);
- (ii) Whether the distribution is used principally as a device for distribution of the earnings and profits of Distributing or the Controlled corporations (see §§ 355(a)(1)(B) and 1.355-2(d));
- (iii) Whether the distribution 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 1 or Controlled 2 (see § 355(e) and § 1.355-7).

### **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.

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 this 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,

Steven J. Hankin

---

Steven J. Hankin  
Senior Technician Reviewer, Branch 6  
(Office of Associate Chief Counsel (Corporate))

cc: