

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200843011**
Release Date: 10/24/2008

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:
, ID No.

Index Numbers: 368.04-00, 355.00-00

Telephone Number:

Refer Reply To:
CC:CORP:B06
PLR-111467-08
Date:
July 09, 2008

Legend

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

LLC 1 =

LLC 2 =

LLC 3 =

LP 1 =

LP 2 =

A =

Business X =

Business Y =

\$a =

\$b =

\$c =

\$d =

\$e =

\$f =

x% =

y% =

z% =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

State A =

Dear

This letter responds to your February 15, 2008 letter from your authorized representatives requesting rulings on certain federal income tax consequences of a proposed transaction. Additional information was received in letters dated April 18, May 22, June 20, and July 8, 2008. The information provided in these letters 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 distribution (described below): (i) satisfies the business purpose

requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 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 (see § 355(e) and § 1.355-7).

Distributing is the common parent of an affiliated group of corporations filing a consolidated Federal income tax return. Distributing owns all of the stock of Sub 1. Sub 1 owns all of the stock of Sub 2 and all of the membership interests of LLC 1 and LLC 2. LLC 1 and LLC 2 are disregarded entities that own all of the partnership interests in LP 1, also a disregarded entity. LP 1 owns all of the stock of Sub 3. LP 2 owns x% of the Distributing stock, individual A owns y% and others own the remaining z%.

In Year 1, for what are represented to be valid business reasons, Sub 1 borrowed money from an unrelated party and loaned it to Distributing. This debt is “open account” indebtedness. During the past two years, the amount of the debt has fluctuated between approximately \$e and \$f.

Sub 1 has made the following distributions to Distributing: \$b in Year 2, \$c in Year 3 and \$d in Year 4.

Sub 2, a member of the separate affiliated group of Distributing as defined in § 355(b)(3)(B) (“DSAG”), is engaged in Business X, and Sub 1 (through disregarded entities), also a member of the DSAG, is engaged in Business Y. Financial information has been received indicating that Business X and Business Y each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

For what are represented to be valid corporate business purposes described herein, Distributing desires to separate Business X and Business Y. The separation is intended to be accomplished by the following transactions (collectively, the “Proposed Transaction”):

- (i) Distributing will form Controlled and LLC 3, a disregarded entity.
- (ii) Distributing will cause Sub 1 to merge with and into LLC 3 pursuant to State A law (“Sub 1 Merger”).
- (iii) Distributing will contribute all of the interests in LLC 1 and LLC 2 to Controlled in exchange for additional Controlled stock and the assumption by Controlled of approximately \$a of liabilities relating to the transferred assets (“Contribution”).

Alternatively, instead of Controlled assuming such liabilities, Controlled will borrow \$a from unrelated parties and distribute that amount to Distributing. If Distributing receives \$a from Controlled as part of this step, it will distribute that \$a to either its shareholders or creditors within a one-year period beginning on the date of the Distribution, described below. In no event would Distributing retain any portion of the \$a beyond that one-year period.

(iv) Distributing will distribute all of the Controlled stock pro rata to its shareholders with respect to their Distributing stock ("Distribution").

Any outstanding options to acquire Distributing stock ("Distributing Options") held by Controlled employees and certain Controlled directors will be exchanged for options to acquire Controlled stock ("Controlled Options"). A portion of the Distributing Options held by a director of Distributing (who will serve as a director of both Distributing and Controlled following the transaction) will also be exchanged for Controlled Options. Distributing Options held by employees and certain directors of the Distributing group members will be adjusted after the transaction to reflect the value of Controlled. The ratio of the exercise price for each pre-transaction Distributing Option to the pre-transaction fair market value of the Distributing stock will be maintained for each post-transaction Distributing or Controlled option. The pre-transaction aggregate spread value for each option will be maintained post-transaction.

It is anticipated that after the transaction, Controlled will enter into a contract with Distributing to pay Distributing for providing certain intercompany employee services for a transitional period of time following the consummation of the transaction to administer the 401(k), Non Qualified Plan, Benefit Plans, Auto Leasing, and Property/Casualty/ Workmen's Compensation Insurance established for the benefit of Controlled. These benefits will be concurrently administered for a period of approximately one year. After the one-year anniversary of the transaction, Controlled will enter into new contracts with various vendors as the old contracts expire. The 401(k) plan will continue to be administered by Distributing for a two-year period following the transaction, subject to possible renewals. Additionally, Distributing will provide income tax preparation, tax filing and audit coordination assistance to Controlled for a two-year period following the consummation of the transaction, subject to renewal, pursuant to a tax sharing and indemnification agreement. Controlled will pay Distributing an arm's-length fee for Distributing's performance of all transitional services. The transitional services are hereinafter referred to as the "Continuing Relationships."

The following representations have been made in connection with the Sub 1 Merger:

(a) Distributing, Sub 1 and LLC 3 will adopt a plan of liquidation by merger ("Plan") and the Sub 1 Merger will occur pursuant to such Plan.

(b) Distributing, on the date of the adoption of the Plan, and at all times until the effective time of the Sub 1 Merger, will be the owner of at least 80% of the total combined voting power of all classes of stock of Sub 1 and the owner of at least 80% of the total value of all classes of Sub 1 stock (excluding nonvoting stock, if any, that is limited and preferred as to dividends and otherwise meets the requirements of § 1504(a)(4)).

(c) No shares of Sub 1 stock will have been redeemed during the three years preceding the adoption of the Plan.

(d) All asset transfers from Sub 1 to LLC 3, resulting from the Sub 1 Merger, will be made in a single transfer.

(e) At the effective time of the Sub 1 Merger, all of the stock of Sub 1 will be cancelled and Sub 1 will cease to be a separate legal entity.

(f) Sub 1 will retain no assets following the Sub 1 Merger.

(g) Sub 1 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years prior to the date of the adoption of the Plan.

(h) Except as described above under (iii) of the Proposed Transaction, the Sub 1 Merger will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation ("Recipient") of any of the businesses or assets of Sub 1, if persons holding, directly or indirectly, more than 20% in value of the Sub 1 stock also hold, directly or indirectly, more than 20% in value of the stock in Recipient. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of § 318(a) as modified by § 304(c)(3).

(i) Prior to the adoption of the Plan, no assets of Sub 1 will have been distributed in kind, transferred, or sold to Distributing, except for (i) the distributions described above, (ii) transactions occurring in the normal course of business and (iii) transactions occurring more than three years prior to the adoption of the Plan.

(j) Sub 1 will report all earned income represented by assets that will be distributed to Distributing as owner of LLC 3 such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

(k) The fair market value of the assets of Sub 1 will exceed its liabilities both at the date of the adoption of the Plan and immediately before the effective time of the Sub 1 Merger.

(l) Other than in connection with the Contribution, no assets of Sub 1 have been, or will be, disposed of by either Sub 1, LLC 3, or Distributing except for dispositions as described in representation (i), dispositions in the ordinary course of business and dispositions occurring more than three years prior to the adoption of the Plan.

(m) There is no intercorporate debt existing between Distributing and Sub 1 (other than indebtedness created in the ordinary course of business and certain intercorporate debt owed by Distributing to Sub 1 as described above) and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years prior to the date of the adoption of the Plan.

(n) Sub 1's basis in the debt issued to it by Distributing, as described above, equals the adjusted issue price of that debt.

(o) Neither Distributing nor LLC 3 are organizations that are exempt from Federal income tax under § 501 or any other provision of the Code.

(p) Pursuant to the Sub 1 Merger, as a result of the operation of law, the following will occur simultaneously: (i) all of the assets and liabilities of Sub 1 will become assets and liabilities of LLC 3, and (ii) Sub 1 will cease its separate legal existence.

(q) Neither Distributing nor LLC 3 has any plan or intention to sell or otherwise dispose of any of the assets of Sub 1 acquired in the Sub 1 Merger, except for dispositions made in the ordinary course of business or pursuant to the Proposed Transaction.

(r) The liabilities of Sub 1 assumed by Distributing, as owner of LLC 3, and the liabilities to which the transferred assets of Sub 1 are subject, were incurred by Sub 1 in the ordinary course of its business.

(s) Following the Sub 1 Merger, Distributing, as owner of LLC 3, will continue the historic business of Sub 1 or use a significant portion of Sub 1's historic business assets in a business.

(t) Distributing, LLC 3 and Sub 1 will pay their respective expenses, if any, incurred in connection with the Sub 1 Merger.

(u) No parties to the Sub 1 Merger are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(v) Sub 1 is not under the jurisdiction of a court in a title 11, or similar, case within the meaning of § 368(a)(3)(A).

(w) The fair market value of the assets of Sub 1 will exceed its liabilities both at the date of the adoption of the Plan and immediately prior to the effective time of the Sub 1 Merger.

(x) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with or in any way related to, the Sub 1 Merger have been fully disclosed.

The following representations have been made in connection with the Contribution and Distribution:

(aa) The indebtedness, if any, owed by Controlled to Distributing after the Distribution will not constitute stock or securities.

(bb) No part of the consideration to be distributed by Distributing to its shareholders will be received by any shareholder of Distributing as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

(cc) The five years of financial information submitted on behalf of Business X conducted by Sub 2, a member of the DSAG, is representative of its present operation and, with regard to that business, there have been no substantial operational changes since the date of the last financial statements submitted. Sub 2 is, and immediately after the Distribution will be, affiliated with Distributing in a manner that satisfies § 1504(a), without regard to § 1504(b).

(dd) The five years of financial information submitted on behalf of Business Y conducted by Sub 1 (through disregarded entities), a member of the DSAG, is representative of its present operation and, with regard to that business, there have been no substantial operational changes since the date of the last financial statements submitted.

(ee) Following the Distribution, Sub 2, a member of the DSAG, and Controlled (through disregarded entities) will each continue the active conduct of their respective businesses, independently and with their separate employees.

(ff) The Distribution is carried out for the following corporate business purposes: (a) to use equity incentives and equity separation for the employees in order to enable Business X and Business Y to attract, retain and properly provide incentives to management, including future management and management/owners of acquired companies, as well as focus the employees' efforts on strategic priorities, since their equity incentives will be tied solely to the business that they are involved with, and (b) to eliminate the possibility that Distributing or Controlled will be subject to customer based business exposure with respect to overlapping customers. The Distribution is motivated, in whole or substantial part, by these corporate business purposes.

(gg) The transaction is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(hh) For purposes of § 355(d), immediately after the distribution, no person (determined after applying the aggregation rules of § 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 shares of all classes of Distributing 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 distribution.

(ii) For purposes of § 355(d), immediately after the distribution, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 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 distribution or (ii) attributable to distributions on Distributing 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 distribution.

(jj) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.

(kk) No intercorporate debt will exist between Distributing (or any of its subsidiaries) and Controlled (or any of its subsidiaries) at the time of the Distribution, and no intercorporate debt will exist between Distributing (or any of its subsidiaries) or Controlled (or any of its subsidiaries) subsequent to the Distribution (except as may arise in the ordinary course of business or with respect to payments pursuant to any Continuing Relationships between Distributing and Controlled or that may arise under the tax sharing and indemnification agreement).

(ll) 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 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 of a member in the stock of another member that is required to be taken into account by § 1.1502-19 will be included in income immediately before the transaction.

(mm) Payments made in connection with all continuing transactions, if any, between Distributing (or any of its subsidiaries) and Controlled (or any of its subsidiaries) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(nn) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(oo) No acquisition of stock of Distributing or Controlled (including any predecessor or successor of any such corporation) is part of a plan or series of related transactions (within the meaning of § 1.355-7) that includes the Distribution of Controlled stock.

(pp) Immediately after the transaction (as defined in § 355(g)(4)), neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

(qq) Distributing and Controlled will each pay their own respective expenses, if any, incurred in connection with the transaction.

(rr) The total fair market value of the assets that Distributing will transfer to Controlled in the Contribution will exceed the sum of (i) the amount of liabilities, if any, assumed (within the meaning of § 357(d)) by Controlled in connection with the exchange, (ii) the amount of liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the exchange, and (iii) the amount of the cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without recognition of gain) received by Distributing from Controlled in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.

(ss) The total fair market value of the assets transferred to Controlled by Distributing in the Contribution will equal or exceed the aggregate adjusted basis of the transferred assets.

(tt) The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing in the Contribution will equal or exceed the sum of: (i) the total liabilities (if any) assumed (within the meaning of § 357(d)) by Controlled, 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 from Controlled and transferred to Distributing's creditors in connection with the transaction, if any. The liabilities to be assumed (within the meaning of § 357(d)) by Controlled in the Contribution were incurred in the ordinary course of business and are associated with the assets to be transferred.

(uu) The payment of cash in lieu of fractional shares, if any, of Controlled stock will be solely for the purpose of avoiding the expense and inconvenience to Distributing of issuing fractional shares and will not represent separately bargained for consideration. It is expected that the total cash consideration that will be paid to the shareholders of Controlled instead of issuing fractional shares will not exceed one percent of the total

consideration that will be issued in the transaction to the Controlled shareholders. Any fractional share interests of each Controlled shareholder will be aggregated, and it is intended that no Controlled shareholder will receive cash in an amount equal to or greater than the value of one full share of Controlled stock.

(vv) Neither Business X conducted by Sub 2, a member of the DSAG, nor control of an entity conducting this business, will have been acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Distribution, Sub 2 will have been the principal owner of the goodwill and significant assets of Business X and will continue to be the principal owner following the Distribution.

(ww) Neither Business Y conducted either by Sub 1 (through disregarded entities) or Controlled (through disregarded entities) nor control of an entity conducting this business, will have been acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Distribution, either Sub 1 (through disregarded entities) or Controlled (through disregarded entities) will have been the principal owner of the goodwill and significant assets of Business Y and will continue to be the principal owner following the Distribution.

Based solely on the information submitted and the representations provided, we rule as follows in connection with the Sub 1 Merger:

1. No gain or loss will be recognized by Distributing in the Sub 1 Merger.
2. No gain or loss will be recognized by Sub 1 in the Sub 1 Merger.
3. The basis of each asset received by Distributing, through LLC 3, in the Sub 1 Merger will equal the basis of that asset in the hands of Sub 1 immediately before the Sub 1 Merger.
4. The holding period of each asset received by Distributing, through LLC 3, in the Sub 1 Merger will include the holding period during which that asset was held by Sub 1.
5. Distributing, through LLC 3, will succeed to and take into account those attributes of Sub 1 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383 and 384 and the regulations thereunder (§ 381(a) and Treas. Reg. § 1.381(a)-1).

Based solely on the information submitted and the representations provided, we rule as follows in connection with the Contribution and Distribution:

6. The Contribution and Distribution will constitute a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled will each be "a party to a reorganization" within the meaning of § 368(b).
7. Distributing will not recognize any gain or loss on the receipt of the Controlled stock and the assumption by Controlled of liabilities associated with the transferred assets pursuant to the Contribution (§§ 357(a) and 361(a), (b)). Further, If Distributing receives cash from Controlled (in the amount of \$a) instead of Controlled assuming certain liabilities of Distributing equal to that amount, Distributing will not recognize income or gain upon the receipt of such cash, provided that it distributes the entire amount of that cash to its shareholders or creditors (§ 361(b)(1)(A) and (b)(3)).
8. Controlled will not recognize any gain or loss on the Contribution (§ 1032(a)).
9. Controlled's basis in each asset received from Distributing in the Contribution will equal the basis of that asset in the hands of Distributing immediately before the Contribution (§ 362(b)).
10. Controlled's holding period in each asset received from Distributing in the Contribution will include the period during which Distributing held that asset (§ 1223(2)).
11. Earnings and profits will be allocated between Distributing and Controlled in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33.
12. Distributing will not recognize any gain or loss on the Distribution (§ 361(c)).
13. The shareholders of Distributing will not recognize any gain or loss (and will not otherwise include any amount in income) on the Distribution (§ 355(a)).
14. Each Distributing shareholder's basis in a share of Distributing stock (as adjusted under § 1.358-1) shall be allocated between the share of Distributing stock with respect to which the distribution is made and the share or shares of Controlled stock (or allocable portions thereof) received with respect to the share of Distributing stock in proportion to their fair market values. If one share of Controlled stock is received in respect of more than one share of Distributing stock, the basis of each share of Distributing stock must be allocated to the shares of Controlled stock received in a manner that reflects that, to the extent possible, a share of Controlled stock is received in respect of shares of Distributing stock acquired on the same date and at the same price. If a Distributing shareholder that purchased or acquired shares of Distributing stock on different dates or at different prices is not able to identify which particular share of Controlled stock (or portion thereof) is received with respect to a particular share of Distributing stock, the shareholder may designate which particular share of Controlled

stock (or portion thereof) is received with respect to a particular share of Distributing stock, provided that the designation is consistent with the terms of the Distribution.

15. A Distributing shareholder's holding period in the Controlled stock received will include that shareholder's holding period for the Distributing stock with respect to which the Distribution is made, provided that the Distributing stock is held as a capital asset on the date of the Distribution (§ 1223(1)).

16. If cash in lieu of a fractional share of Controlled stock is received by a shareholder, the shareholder will have gain or loss measured by the difference between the basis of the fractional share, as allocated thereto as determined in ruling 14 above, and the amount of cash received (§ 1001(a)). Any gain or loss will be treated as capital gain or loss, provided such fractional share will be held as a capital asset on the date of the Distribution (§§ 1221 and 1222).

No opinion is expressed about the tax treatment of the Proposed Transaction 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 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 Proposed Transaction is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) and § 1.355-2(d)); (iii) whether the Proposed Transaction is part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii), and (iv) the Federal income tax consequences of the cancellation of the intercorporate debt owed by Distributing to Sub 1.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

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.

Sincerely,

Mary E. Goode
Senior Counsel, Branch 6
(Corporate)

cc: