

**Internal Revenue Service**

Number: **201017031**

Release Date: 4/30/2010

Index Number: 332.00-00, 355.01-01

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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CC:CORP:B03

PLR-142436-09

Date:

December 10, 2009

Distributing =

Controlled =

LLC 1 =

LLC 2 =

Sub 1 =

Sub 2 =

Target =

State X =

State Y =

Property 1 =

Property 2 =

Property 3 =

Business M =

Division N =

Individual A =

A Group =

Trust B =

Individual C =

Individual D =

Pension Plan E =

Individual F =

Trust G =

Trust H =

Individual I =

Individual J =

K Group =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

o =

p =

q =

r =

s =

Year 1 =

Date 1 =

Dear :

We respond to your authorized representative's request dated September 18, 2009, for rulings on the federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated October 19, November 4, November 11, and November 25, 2009. 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 penalty of perjury statements 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 Split-Off (defined 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 any distributing corporation or controlled corporation (see § 355(e)(2)(A)(ii) and § 1.355-7).

Distributing, a State X corporation, is the common parent of an affiliated group that files a consolidated income tax return. Distributing owns all of LLC 1, an entity that is disregarded as an entity separate from Distributing. LLC 1 owns all of the stock of two corporations, Sub 1, a State X corporation, and Sub 2, a State Y corporation. LLC 1 also owns Property 1 and Property 2. Sub 1 owns all of the membership interests in LLC 2, another disregarded entity that owns Property 3, its sole asset. Distributing, directly and through its wholly owned entities, is engaged in Business M, which includes Division N.

Distributing has two classes of stock outstanding, Class A Voting Common Stock ("Class A shares") and Class B Nonvoting Common Stock ("Class B shares").

The Class A shares are owned as follows:

<u>Shareholder</u>	<u>Percentage</u>
Individual A ("A")	<u>a</u>
A Group	<u>b</u>
Trust B	<u>c</u>
Individual C ("C")	<u>d</u>
Individual D ("D")	<u>e</u>
Pension Plan E ("E")	<u>f</u>

Individual F (“F”)	<u>g</u>
Trust G (“G”)	<u>h</u>
Trust H (“H”)	<u>i</u>
Individual I (“I”)	<u>j</u>
Individual J (“J”)	<u>k</u>
K Group (“K”)	<u>l</u>

The Class B shares are owned by employees or directors of Distributing.

K is comprised of employees of Distributing.

A is the father of C and D. A is also related to some or all of the A Group.

F, G, H, and I previously owned all the stock of Target, a State X corporation, which was engaged in Division N of Business M. In Year 1, Target merged into LLC 1 under State X law, with LLC 1 surviving (the “Merger”), and Distributing via LLC 1 expanded its Division N. For federal income tax purposes, the Merger was treated as a reorganization pursuant to § 368(a)(1)(A) as if Target merged with and into Distributing. In the Merger, F, G, H, and I received their Class A shares and cash, and F also received an interest bearing promissory note (the “Note”) in the principal amount of \$ m payable over n years. In addition, J received Class A shares at the closing of the Merger pursuant to a contractual right with Target.

Over the years, Distributing has been redeeming some of A’s and C’s Class A shares as well as those of other shareholders and intends to continue to do so. It has an obligation to redeem \$ o of C’s Class A shares each year. If financial conditions permit, Distributing would like to accelerate the redemption of C, continue to redeem A and other shareholders, and completely redeem E. In order to accomplish the repurchase of these Class A shares, Distributing intends to explore the possibility of raising outside capital in the form of debt and/or equity.

We have received financial information that indicates that Business M has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

For what are represented to be valid business purposes, Distributing proposes the following transaction:

- (i) Sub 1 will be converted to Sub 1 LLC, a limited liability company, pursuant to applicable State X law (“Conversion 1”). Sub 2 will be merged into Sub 2 LLC, a newly formed State Y limited liability company, pursuant to State Y law (“Conversion 2”). Sub 1 LLC and Sub 2 LLC will not elect or claim to be treated as corporations for federal income tax purposes. As such, post conversion, all of

Distributing's entities will be disregarded as entities separate from Distributing for federal tax purposes.

- (ii) LLC 1 will contribute Property 2 and any liabilities associated with Property 2 to LLC 2. LLC 1 will then sell LLC 2 to F. Further, G plans to form a single member limited liability company disregarded as an entity separate from G to purchase Property 1 from LLC 1. Distributing has represented that these transactions will be treated as sales of assets by Distributing. These transactions are being done for liability purposes and other business reasons. The net proceeds from these sales will remain with Distributing after the Split-Off, described in Step (viii), below.
- (iii) F will make a \$ p payment to LLC 1 with respect to a promissory note dated Date 1, Year 1 (the "Promissory Note"). The payment will remain with Distributing after the Split-Off as described in Step (viii), below.
- (iv) Distributing will form Controlled.
- (v) G will purchase all of the Class A shares held by I and J, which represents a very small percentage of the outstanding Class A shares.
- (vi) Distributing will contribute 100 percent of the membership interests of LLC1 (which will include the balance of the Promissory Note owed by F to LLC 1 and 100 percent of the membership interests of Sub 1 LLC and Sub 2 LLC) to Controlled. Any Division N-related assets owned by Distributing directly will also be contributed to Controlled.
- (vii) Certain liabilities related to Division N will be assumed by Controlled to the extent they are not already liabilities of LLC 1, Sub 1 LLC, or Sub 2 LLC. These liabilities include: bank debt of approximately \$ q and the Note, which will have an outstanding principle balance of approximately \$ r upon closing. After these assumptions, the value of Controlled's assets will continue to exceed Controlled's liabilities. Steps (vi) and (vii) are collectively referred to as the "Contribution."
- (viii) Distributing will distribute 100 percent of the shares of Controlled (1) to F, G, and H in exchange for all of their Class A shares; and (2) to A, C and D in exchange for some of their Class A shares. Distributing will also pay certain expenses of F, some of which may be attributable to G and H (the "Other Consideration"). This step is referred to as the "Split-Off."

The following representations have been made in connection with Conversion 1:

- (a) Distributing, on the date of adoption of the plan of Conversion 1 (the “Conversion 1 Plan Date”), and at all times thereafter until Conversion 1 is completed, will own 100 percent of the single outstanding class of Sub 1 stock.
- (b) No shares of Sub 1 have been redeemed during the three years preceding the Conversion 1 Plan Date.
- (c) Conversion 1 will take place within a single taxable year.
- (d) Effective as of the effective date of Conversion 1, the corporate existence of Sub 1 will cease under applicable local law.
- (e) Sub 1 (as a corporation) will not retain any assets following Conversion 1.
- (f) 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 Conversion 1 Plan Date.
- (g) No assets of Sub 1 have been, or will be, disposed of by either Sub 1 or Distributing except for dispositions in the ordinary course of business, dispositions occurring more than three years prior to the Conversion 1 Plan Date, and the disposition of Property 3 (through the sale of LLC 2), which is estimated to be    percent (a very small percentage) of the net asset value of Sub 1.
- (h) Except as described above, Conversion 1 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 percent in value of the Sub 1 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 application of the constructive ownership rules of § 318(a) as modified by § 304(c)(3).
- (i) Prior to the Conversion 1 Plan Date, no assets of Sub 1 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 prior to the Conversion 1 Plan Date.
- (j) Sub 1 will report all earned income represented by assets that will be deemed distributed to Distributing, 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 Conversion 1 Plan Date and immediately prior to the time Conversion 1 occurs.

- (l) There is no intercorporate debt existing between Distributing and Sub 1, and none has been canceled, forgiven, or discounted, except for transactions that occurred more than three years prior to the Conversion 1 Plan Date.
- (m) Neither Distributing nor Sub 1 is an organization that is exempt from federal income tax under § 501 or another provision of the Code.
- (n) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to Conversion 1 have been fully disclosed.

The following representations have been made in connection with Conversion 2:

- (o) Distributing, on the date of adoption of the plan of Conversion 2 (the “Conversion 2 Plan Date”), and at all times thereafter until Conversion 2 is completed, will own 100 percent of the single outstanding class of Sub 2 stock.
- (p) No shares of Sub 2 have been redeemed during the three years preceding the Conversion 2 Plan Date.
- (q) Conversion 2 will take place within a single taxable year.
- (r) Effective as of the effective date of Conversion 2, the corporate existence of Sub 2 will cease under applicable local law.
- (s) Sub 2 (as a corporation) will not retain any assets following Conversion 2.
- (t) Sub 2 will not have acquired assets in any nontaxable transaction at any time except for acquisitions occurring more than three years prior to the Conversion 2 Plan Date.
- (u) No assets of Sub 2, have been, or will be, disposed of by either Sub 2 or Distributing except for dispositions in the ordinary course of business and dispositions occurring more than three years prior to the Conversion 2 Plan Date.
- (v) Except as described above, Conversion 2 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 2, if persons holding, directly or indirectly, more than 20 percent in value of the Sub 2 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 application of the constructive ownership rules of § 318(a) as modified by § 304(c)(3).
- (w) Prior to the Conversion 2 Plan Date, no assets of Sub 2 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 prior to the Conversion 2 Plan Date.

- (x) Sub 2 will report all earned income represented by assets that will be deemed distributed to Distributing, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
- (y) The fair market value of the assets of Sub 2 will exceed its liabilities, both at the Conversion 2 Plan Date and immediately prior to the time Conversion 2 occurs.
- (z) There is no intercorporate debt existing between Distributing and Sub 2, and none has been canceled, forgiven, or discounted, except for transactions that occurred more than three years prior to the Conversion 2 Plan Date.
- (aa) Neither Distributing nor Sub 2 is an organization that is exempt from federal income tax under § 501 or another provision of the Code.
- (bb) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, Conversion 2 have been fully disclosed.

The following representations have been made in connection with the Split-Off:

- (cc) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the distribution of Controlled's stock except that certain short term trade payables will arise between Controlled and Distributing to the extent either corporation refers business to the other and is therefore entitled to a commission. Such indebtedness will not constitute stock or securities.
- (dd) 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 Distributing.
- (ee) The five years of financial information submitted on behalf of Distributing is representative of its present operations, and with regard to Distributing, there have been no substantial operational changes since the date of the last financial statements submitted.
- (ff) Following the transaction, Distributing and Controlled each will continue, independently and with its separate employees, the active conduct of its share of all the integrated activities of the business conducted by Distributing prior to the consummation of the transaction.

- (gg) The Split-Off is being carried out for the following corporate business purposes: (1) to focus Distributing's resources on more profitable divisions of Distributing's business; (2) to separate F from Distributing's business so that he may manage the business of Controlled as he sees fit and allow Distributing's management to focus on the remainder of Distributing's business without interference; and (3) for other corporate business purposes. The distribution of the stock or stock and securities, of Controlled is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (hh) The transaction is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (ii) There is no acquisition of stock of Distributing or Controlled (including any predecessor of any such corporation) that is part of a plan or series of related transactions (within the meaning of § 1.355-7) that includes the distribution of Controlled stock.
- (jj) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (kk) The fair market value of the Controlled stock and other consideration to be received by each shareholder of Distributing will be approximately equal to the fair market value of the Distributing stock surrendered by the shareholder in the exchange.
- (ll) For purposes of § 355(d), immediately after the Split-Off, no person (determined after applying § 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 Split-Off.
- (mm) For purposes of § 355(d), immediately after the Split-Off, no person (determined after applying § 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 Split-Off or (ii) attributable to transactions 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 Split-Off.

- (nn) 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)).
- (oo) The total adjusted basis and fair market value of the assets transferred to Controlled by Distributing will equal or exceed the sum of the liabilities assumed (within the meaning of § 357(d)) by Controlled.
- (pp) Except for the indebtedness related to the Merger which includes certain bank debt and the Note, the liabilities to be assumed (as defined under § 357(d)) by Controlled were incurred in the ordinary course of business and are associated with the assets being transferred.
- (qq) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (rr) 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. Further, Distributing's excess loss account with respect to the Controlled stock will be included in income immediately before the distribution. There were no excess loss accounts with respect to Sub 1 or Sub 2 immediately before Conversion 1 and Conversion 2, respectively.
- (ss) Any increase in ownership of Distributing stock, by vote or value, by a Distributing shareholder which occurs solely as a result of the Split-Off will not be treated as an acquisition that is taken into account for purposes of § 355(e)(2)(A)(ii) (except to the extent that the Distributing stock held before the Split-Off by such shareholder was acquired pursuant to a plan (or series of related transactions) described in § 355(e)(2)(A)(ii) with the Split-Off).
- (tt) Any increase in ownership of Distributing stock, by vote or value, by a Distributing shareholder which occurs solely as a result of a redemption of a family member who is related under § 267(c)(4) will not be treated as an acquisition that is taken into account for purposes of § 355(e)(2)(A)(ii).

Based solely on the information submitted and the representations set forth above, we rule as follows on Conversion 1:

- (1) Conversion 1 will be treated as a distribution by Sub 1 to Distributing in complete liquidation under § 332(a).
- (2) No gain or loss will be recognized by Distributing on the deemed receipt of the assets and liabilities of Sub 1 pursuant to Conversion 1 (§ 332(a)).

- (3) No gain or loss will be recognized by Sub 1 on the deemed distribution of its assets and liabilities to Distributing in Conversion 1 (§ 337(a)).
- (4) The basis of each asset of Sub 1 deemed received by Distributing pursuant to Conversion 1 will equal the basis of that asset in the hands of Sub 1 immediately before Conversion 1 (§ 334(b)(1)).
- (5) The holding period of each asset of Sub 1 deemed received by Distributing in Conversion 1 will include the period during which Sub 1 held such asset (§ 1223(2)).
- (6) Distributing will succeed to and take into account the items of Sub 1 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383 384, and 1502 and the regulations thereunder (§ 381(a)(1) and § 1.381(a)-1).
- (7) Except to the extent Sub 1's earnings and profits are reflected in Distributing's earnings and profits, Distributing will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Sub 1 as of the date of Conversion 1 (§ 381(c)(2)(A) and §§ 1.381(c)(2)-1 and 1.1502-33(a)(2)). Any deficit in the earnings and profits of Sub 1 will be used only to offset earnings and profits accumulated after the date of Conversion 1 (§ 381(c)(2)(B)).

Based solely on the information submitted and the representations set forth above, we rule as follows on Conversion 2:

- (8) Conversion 2 will be treated as a distribution by Sub 2 to Distributing in complete liquidation under § 332(a).
- (9) No gain or loss will be recognized by Distributing on the deemed receipt of the assets and liabilities of Sub 2 pursuant to Conversion 2 (§ 332(a)).
- (10) No gain or loss will be recognized by Sub 2 on the deemed distribution of its assets and liabilities to Distributing in Conversion 2 (§ 337(a)).
- (11) The basis of each asset of Sub 2 deemed received by Distributing pursuant to Conversion 2 will equal the basis of that asset in the hands of Sub 1 immediately before Conversion 1 (§ 334(b)(1)).
- (12) The holding period of each asset of Sub 2 deemed received by Distributing in Conversion 2 will include the period during which Sub 2 held such asset (§ 1223(2)).

- (13) Distributing will succeed to and take into account the items of Sub 2 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383 384, and 1502 and the regulations thereunder (§ 381(a)(1) and § 1.381(a)-1).
- (14) Except to the extent Sub 2's earnings and profits are reflected in Distributing's earnings and profits, Distributing will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Sub 2 as of the date of Conversion 2 (§ 381(c)(2)(A) and §§ 1.381(c)(2)-1 and 1.1502-33(a)(2)). Any deficit in the earnings and profits of Sub 2 will be used only to offset earnings and profits accumulated after the date of Conversion 2 (§ 381(c)(2)(B)).

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

- (15) The Contribution followed by the Split-Off will constitute a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled each will be a "party to a reorganization" within the meaning of § 368(b).
- (16) No gain or loss will be recognized by Distributing upon the Contribution (§§ 361 and 357(a)).
- (17) No gain or loss will be recognized by Controlled upon the Contribution (§ 1032).
- (18) Controlled's basis in each of the assets received will equal the basis of such asset in the hands of Distributing immediately prior to the Contribution (§ 362(b)).
- (19) Controlled's holding period in each of the assets received will include the period during which such asset was held by Distributing (§ 1223(2)).
- (20) No gain or loss will be recognized by Distributing upon the Split-Off (§ 361(c)).
- (21) No gain or loss will be recognized by (and no amount will be includible in the income of) A, C, and D (and/or to G and/or H to the extent that no portion of the Other Consideration is applicable to them) upon the receipt of Controlled stock in exchange for Distributing Class A shares (§ 355(a)(1)).
- (22) F (and/or G and/or H to the extent that a portion of the Other Consideration is applicable to them) will recognize gain, if any, on their receipt of the Controlled stock and Other Consideration (applicable to that shareholder) in the Split-Off, but not in excess of the fair market value of the Other Consideration (applicable to that shareholder) that is received (or deemed received) (§ 356(a)(1)). For purposes of § 356, F (and/or G and/or H to the extent that a portion of the Other Consideration is applicable to them) will be treated as if they had retained the Class A shares actually exchanged for the Controlled stock and received their

allocable share of the Other Consideration in exchange for the Class A shares equal in value to their allocable share of the Other Consideration (Rev. Rul. 93-62, 1993-2 C.B. 118). If the exchange has the effect of a distribution of a dividend (determined with the application of § 318(a)), then the amount of the gain recognized that is not in excess of F's (and/or G's and/or H's to the extent that a portion of the Other Consideration is applicable to them) ratable share of the undistributed earnings and profits will be treated as a dividend (§ 356(a)(2)). F (and/or G and/or H to the extent that a portion of the Other Consideration is applicable to them) will recognize no loss from the exchange (§ 356(c)).

- (23) The basis of the Controlled stock received by F (and/or G and/or H to the extent that a portion of the Other Consideration is applicable to them) pursuant to the Split-Off will be equal to such holder's adjusted basis in the Class A shares surrendered, decreased by the amount of any of the Other Consideration applicable to such shareholder, and increased by (i) the amount treated as a dividend, and (ii) any gain recognized on the exchange (excluding the portion of the gain that was treated as a dividend) (§ 358(a)(1) and (b)(2)).
- (24) The basis of the Controlled stock in the hands of A, C, and D (and/or to G and/or H to the extent that no portion of the Other Consideration is applicable to them) after the Split-Off will equal the basis of the Class A shares surrendered in exchange therefor (§ 358(a)(1)).
- (25) The holding period of the Controlled stock received by each holder of the Class A shares pursuant to the Split-Off will include the holding period of the Class A shares surrendered by the shareholder, provided such stock is held as a capital asset on the date of the Split-Off (§ 1223(1)).
- (26) Earnings and profits will be allocated between Distributing and Controlled in accordance with §§ 312(h), 1.312-10(a) and 1.1502-33(e)(3).

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 Split-Off satisfies the business purpose requirement of § 1.355-2(b); (ii) whether the Split-Off 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) and § 1.355-2(d)); (iii) whether the Split-Off and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii); or (iv) how much, if any, of the Other Consideration is attributable to F and/or G and/or H.

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.

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.

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

Sincerely,

Filiz A. Serbes  
Chief, Branch 3  
Office of Associate Chief Counsel  
(Corporate)