

Internal Revenue Service

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Refer Reply To:
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October 21, 1999

FP =

Distributing 2 =

Distributing 1 =

Distributing =

Sub 1 =

Sub 2 =

Sub 3 =

W Business =

X Business =

Y Business =

Z Business =

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Country =

Consultant =

This is in reply to a letter dated March 19, 1999 requested rulings regarding a proposed transaction. Additional information was provided in subsequent submissions.

The facts provided indicate that Distributing 2 is the U.S. parent of a consolidated group (the "Group"). FP, a foreign corporation, owns all of the stock of Distributing 2. Distributing 2 owns all of the stock of Distributing 1 and six other companies, including Sub 1. Sub 1 is a holding company which owns all of the stock of Sub 2, another holding company which owns all of the stock of Sub 3, a corporation engaged in an active business. Distributing 1 owns all of the stock of Distributing 2, Distributing 1, Distributing, Sub 1, Sub 2 and Sub 3 are U.S. corporations.

Distributing is engaged in the X Business and the Y Business. Distributing 1 is engaged in the Z Business. Distributing 2 is primarily a holding company. Sub 1 is engaged in a five year active trade or business through its 100% ownership of all of the stock of Sub 2 and Sub 2 is engaged in a five year active trade or business through its 100% ownership of all of the stock of Sub 3. Sub 3 is directly engaged in the W Business.

The management of the X Business has determined that in order to comply with its customers needs, the X business must report to a management group that is focused on the needs of its unique business. Because of the relative size of the X Business as compared to the other Group businesses, the Group has not been responsive to the needs of the X Business. A report prepared by Consultant confirms the need for restructuring. By separating the X Business from the other businesses of the Group, management will be able to separately focus exclusively on strategies and objectives geared to the very different operations of their respective businesses.

Therefore, to accomplish the above stated business purpose, the following steps are proposed:

- I. Distributing will contribute all assets and liabilities related to the X Business (the "Transferred Property") to newly created domestic corporation, Controlled, in exchange for all of Controlled's common stock.

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- II. Distributing will distribute all of the stock of Controlled to Distributing's sole shareholder, Distributing 1.
- III. Distributing 1 will distribute all of the stock of Controlled to Distributing 1's sole shareholder, Distributing 2.
- IV. Distributing 2 will distribute all of the stock of Controlled to Distributing 2's sole shareholder, FP.

The following representations have been given concerning steps I and II of the proposed transaction:

- a. 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.
- b. The five years of financial information submitted on behalf of the X Business is representative of the X Business's present operations, and with regard to such business there have been no substantial operational changes since the date of the last financial statement submitted.
- c. 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.
- d. Following the transaction, Distributing and Controlled will each continue the active conduct of its business, independently and with its separate employees. Distributing and Controlled will not share the services of any employees. In addition, there is no planned or intended substantial reduction in business activity for any active business.
- e. The distribution of the stock of Controlled is carried out for the following corporate business purpose: to permit the management of Controlled and the Group to separately focus exclusively on strategies and objectives geared to the very different operations of their respective businesses. The distribution of the stock of Controlled is motivated, in whole or in substantial part, by this corporate business purpose.
- f. Distributing intends to distribute all of its stock of Controlled to Distributing 1. Other than the subsequent distribution of such Controlled stock by Distributing 1 to Distributing 2 and by Distributing 2 to FP, to the best of

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the knowledge of the management of the Group, there is no plan or intention by Distributing 1 to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of Distributing after the distributions.

- g. There is no plan or intention by either Distributing or Controlled, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction, other than through stock purchases meeting the requirements of Section 4.05(1)(B) of Rev. Proc. 96-30.
- h. There is no plan or intention to liquidate Distributing or Controlled, to merge Distributing or Controlled with any other corporation, or to sell or otherwise dispose of the assets of Distributing or Controlled after the transaction, except in the ordinary course of business.
- i. The total adjusted bases and the fair market value of the asset transferred to Controlled by Distributing each equals or exceeds the sum of the liabilities assumed by Controlled plus any liabilities to which the transferred assets are subject.
- j. The liabilities assumed in the transaction by Controlled and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the asset being transferred to Controlled.
- k. The property to be transferred to Controlled will not be subject to investment tax credit recapture.
- l. Distributing did not accumulate its receivables or make extraordinary payments of its payables in anticipation of the transaction.
- m. No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the distribution of Controlled.
- n. 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.
- o. 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.
- p. No parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv) of the Internal Revenue Code.

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- q. Distributing will not transfer any stock of foreign subsidiaries to Controlled as part of the X Business.

The group makes the following representations with respect to Step III of the proposed transaction

- r. No part of the consideration to be distributed by Distributing 1 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of the corporation.
- s. The five years of financial information submitted on behalf of the X Business is representative of the X Business's present operations, and with regard to such business there have been no substantial operations changes since the date of the last financial statements submitted.
- t. The five years of financial information submitted on behalf of Distributing 1 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.
- u. Following the transaction, Distributing 1 and Controlled will each continue the active conduct of its business, independently and with its separate employees. Distributing 1 and Controlled will not share the services of any employees. In addition, there is no planned or intended substantial reduction in business activity for any active business.
- v. The distribution of the stock of Controlled is carried out for the following corporate business purpose: to permit the management of Controlled and the Group to separately focus exclusively on strategies and objectives geared to the very different operations of their respective businesses. The distribution of the stock of Controlled is motivated, in whole or in substantial part, by this corporate business purpose.
- w. Distributing 1 intends to distribute all of its stock of Controlled to Distributing 2. Other than the subsequent distribution of such Controlled stock by Distributing 2 to FP, to the best of the knowledge of the management of Distributing 1, there is no plan or intention by Distributing 2 to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of Distributing 1 after the distributions.
- x. There is no plan or intention by either Distributing 1 or Controlled, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction, other than through stock purchases meeting the requirements of Section 4.05(1)(b) of Rev. Proc. 96-30.

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- y. There is no plan or intention to liquidate Distributing 1 or Controlled, to merge Distributing 1 or Controlled with any other corporation, or to sell or otherwise dispose of the assets of Distributing or Controlled after the transaction, except in the ordinary course of business.
- z. No intercorporate debt will exist between Distributing 1 and Controlled at the time of, or subsequent to, the distribution of Controlled.
- aa. 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.
- bb. Payments made in connection with all continuing transaction, if any, between Distributing 1 and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- cc. No parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).

The Group makes the following representations with respect to Step IV of the proposed transaction:

- dd. No part of the consideration to be distributed by Distributing 2 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of the corporation.
- ee. The five years of financial information submitted on behalf of the X Business is representative of the X Business's present operations and with regard to such business there have been no substantial operational changes since the date of the last financial statements submitted.
- ff. Following the transaction, at least 90 percent of the fair market value of the gross assets of Distributing 2 will consist of the stock and securities of controlled corporations that are engaged in the active conduct or a trade or business as defined in section 355(b)(2) or of the stock and securities of controlled corporations, at least 90 percent of the fair market value of the gross assets of which will consist of the stock and securities of controlled corporations that are engaged in the active conduct of a trade or business as defined in section 355(b)(2).
- gg. Following the transaction, at least 90 percent of the fair market value of the gross assets of Sub 1 will consist of the stock and securities of

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controlled corporations that are engaged in the active conduct of a trade or business as defined in section 355(b)(2) or of the stock and securities of controlled corporations, at least 90 percent of the fair market value of the gross asset of which will consist of the stock and securities of controlled corporations that are engaged in the active conduct of a trade or business as defined in section 355(b)(2).

- hh. Following the transaction, at least 90 percent of the fair market value of the gross assets of Sub 2 will consist of the stock and securities of controlled corporation that are engaged in the active conduct of a trade or business as defined in section 355(b)(2) or of the stock and securities of controlled corporations, at least 90 percent of the fair market value of the gross assets of which will consist of the stock and securities of controlled corporations that are engaged in the active conduct of a trade or business as defined in section 355(b)(2).
- ii. Following the transaction, Distributing 2 (indirectly through Sub 3) and Controlled will each continue the active conduct of its business, independently and with its separate employees. Distributing 2 (indirectly through Sub 3) and Controlled will not share the services of any employees. In addition, there is no planned or intended substantial reduction in business activity for any active business.
- jj. The five years of financial information submitted on behalf of Sub 1, Sub 2, and Sub 3 is representative of each of the corporations' present operations and with regard to such corporations, there have been no substantial operational changes since the date of the last financial statements.
- kk. The distribution of the stock of Controlled is carried out for the following corporate business purpose: to permit the management of Controlled and the Group to separately focus exclusively on strategies and objectives geared to the very different operations of their respective businesses. The distribution of the stock of Controlled is motivated, in whole or in substantial part, by this corporate business purpose.
- ll. Distributing 2 intends to distribute all of its stock in Controlled to FP. To the best of the knowledge of the management of Distributing 2 there is no plan or intention by FP to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of Distributing 2 or Controlled after the distributions.
- mm. There is no plan or intention by either Distributing 2 or Controlled, directly or through any subsidiary corporation, to purchase any of its outstanding

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stock after the transaction, other than through stock purchases meeting the requirements of Section 4.05(1)(b) of Rev. Proc. 96-30.

- nn. There is no plan or intention to liquidate Distributing 2 or Controlled, to merge Distributing 2 or Controlled with any other corporation, or to sell or otherwise dispose of the assets of Distributing 2 or Controlled after the transaction, except in the ordinary course of business.
- oo. No intercorporate debt will exist between Distributing 2 and Controlled at the time of, or subsequent to, the distribution of Controlled.
- pp. 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.
- qq. Payments made in connection with all continuing transactions, if any, between the Distributing 2 and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- rr. No parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- ss. Distributing, Distributing1, and Controlled do not have any foreign shareholders.
- tt. All of Distributing 2's common stock is owned, and will be owned after the distribution of Controlled stock, by FP, a foreign shareholder.
- uu. Neither Distributing, Distributing 1, Distributing 2, nor Controlled was a United States real property holding corporation (as defined in section 897(c)(2)) at any time during the 5-year period ending on the date of the distributions of Controlled stock.

Based solely on the information submitted and the representations set forth above, with respect to Steps I and II as described above, we rule as follows:

1. The transfer by Distributing to Controlled of the Transferred Property to newly created Controlled in exchange for Controlled common stock and the assumption by Controlled of certain related liabilities, followed by a distribution of the Controlled common stock by Distributing will be a reorganization within the meaning of section 368(a)(1)(D) of the Code and Distributing and Controlled will each be "a party to the reorganization" within the meaning of section 368(b).

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2. No gain or loss will be recognized by Distributing upon the transfer of the Transferred Property to Controlled in exchange for Controlled common stock. Sections 361(a) and 357 of the Code.
3. No gain or loss will be recognized by Controlled upon receipt of the Transferred Property from Distributing in exchange for Controlled common stock. Section 1032(a) of the Code.
4. The basis of the Transferred Property received by Controlled will be the same as the basis of such property in the hands of Distributing immediately prior to the transfer. Section 362(b) of the Code.
5. The holding period of the Transferred Property received by Controlled will include the period during which such property was held by Distributing. Section 1223(2) of the Code.
6. No gain or loss will be recognized to (and no amount shall be includible in the income of) Distributing 1 upon receipt of the Controlled stock in the distribution described above. Section 355(a)(1) of the Code.
7. No gain or loss will be recognized by Distributing upon the distribution of all of its stock of Controlled as described above. Section 361(c) of the Code.
8. The aggregate basis of the Controlled and Distributing common stock in the hands of Distributing 1 immediately after the distribution of Controlled stock to Distributing 1 will equal the aggregate basis of the Distributing common stock held by Distributing 1 immediately prior to such distribution, allocated in proportion to the fair market value of each in accordance with 358(b) and (c) and the regulations promulgated thereunder.
9. Distributing 1's holding period in the Controlled stock received in the transaction will include the holding period of Distributing common stock held by Distributing 1, provided that such stock is held as a capital asset on the date of the distribution. Section 1223(1) of the Code.
10. As provided in section 312(h), proper allocation of earnings and profits between Distributing and Controlled will be made under section 1.312-10(a) and 1.1502-33 of the regulations.

Based solely on the information submitted and the representations set forth above, with respect to Step III as described above, we rule as follows:

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11. No gain or loss will be recognized to (and no amount shall be includible in the income of) Distributing 2 upon receipt of the Controlled stock in the distribution described above. Section 355(a)(1) of the Code.
12. No gain or loss will be recognized by Distributing 1 upon the distribution of all of its stock of Controlled as described above. Section 355(c) of the Code.
13. The aggregate basis of the Controlled and Distributing 1 common stock in the hands of Distributing 2 immediately after the distribution of Controlled stock to Distributing 2 will equal the aggregate basis of the Distributing 1 common stock held by Distributing 2 immediately prior to such distribution, allocated in proportion to the fair market value of each in accordance with 358(b) and (c) and the regulations promulgated thereunder.
14. Distributing 2's holding period in the Controlled stock received in the transaction will include the holding period of Distributing 1 common stock held by Distributing 2, provided that such stock is held as a capital asset on the date of the distribution. Section 1223(1) of the Code.
15. As provided in section 312(h), proper allocation of earnings and profits between Distributing 1 and Controlled will be made under section 1.312-10(a) and 1.1502-33 of the regulations.

Based solely on the information submitted and the representations set forth above, with respect to Step IV as described above, we rule as follows:

16. No gain or loss will be recognized to (and no amount shall be includible in the income of) FP upon receipt of the Controlled stock in the distribution described above. Section 355(a)(1) of the Code.
17. No gain or loss will be recognized by Distributing 2 upon the distribution of all of its stock of Controlled as described above. Section 355(c) of the Code.
18. The aggregate basis of the Controlled and Distributing 2 common stock in the hands of FP immediately after the distribution of Controlled stock to FP will equal the aggregate basis of the Distributing 2 common stock held by FP immediately prior to such distribution, allocated in proportion to the fair market value of each in accordance with 358(b) and (c) and the regulations promulgated thereunder.
19. FP's holding period in the Controlled stock received in the transaction will include the holding period of Distributing 2 common stock held by FP,

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provided that such stock is held as a capital asset on the date of the distribution. Section 1223(1) of the Code.

20. As provided in section 312(h), proper allocation of earnings and profits between Distributing 2 and Controlled will be made under section 1.312-10(a) and 1.1502-33 of the regulations.
21. Distributing 2 will recognize no gain or loss under section 367(e)(1) on its distribution of Controlled stock to FP. Section 1.367(e)-1(c) of the regulations.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(j)(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 representative.

A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,

Philip J. Levine
Assistant Chief Counsel

By: _____

Lewis K Brickates
Assistant to the Branch Chief