

**Internal Revenue Service**

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Person to Contact:

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Date:  
February 4, 2000

Distributing =

Controlled =

Acquiring =

A =

State W =

State X =

F =

G =

Business D =

a =

Date E =

b =

c =

d =

This responds to a request dated October 1, 1999, submitted on your behalf by your authorized representative, that we supplement our letter ruling dated May 13, 1997 (PLR-252563-96, LTR 9732026)(the "Prior Ruling") regarding certain federal income tax consequences of a series of transactions, which included the distribution of all of the outstanding capital stock of Controlled by Distributing to A. The Prior Ruling held, *inter alia*, that the Distribution qualified as a tax-free distribution under § 355 of the Internal Revenue Code. Except as modified herein, all facts and representations set forth in the

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Prior Ruling are still valid. Additional information was submitted in a letter dated January 31, 2000..

Distributing, a State W corporation, is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Distributing operates as a holding company and is engaged through various subsidiaries in the operation of a diverse group of businesses. A, a general partnership, owns all of the outstanding Distributing voting common stock. The partners of A are five trusts. The beneficiaries of the five trusts are descendants (and spouses of descendants) of E, who is deceased. Also, individual G and three trusts own all of the outstanding Distributing nonvoting preferred stock.

Controlled, a State X corporation, is an accrual basis, calendar-year taxpayer and is the common parent of an affiliated group of corporations engaged in Business D. Controlled has a shares of common stock outstanding which represents the only class of Controlled's outstanding stock. As a result of a distribution of the stock of Controlled by Distributing to its sole shareholder, A, on Date E, A currently owns all of the outstanding stock of Controlled.

Acquiring, a State X corporation, is an accrual basis, calendar-year taxpayer and is the common parent of an affiliated group of corporations. Acquiring is a publicly held corporation whose shares are traded in the over-the-counter market and are quoted on the National Association of Securities Dealers Automated Quotation System ("NASDAQ").

In connection with obtaining the Prior Ruling, Controlled represented that it intended to engage in an IPO of its common stock within three years after the date on which Distributing distributed the Controlled stock to A. See representation (bn) in the Prior Ruling. Moreover, representation (bo) in the Prior Ruling provides, "In accordance with Rev. Proc. 96-39, 1996-3 I.R.B. 11, Distributing would control Controlled immediately before the spin-off for purposes of §355(a)(1)(A) if Controlled's outstanding stock at that time were deemed to include the shares later sold to the public in Controlled's IPO and also to include the shares which were purchased or which could be purchased by Controlled's management through exercise of employee stock options granted to management in replacement of the current cash bonus plans, counting, for this purpose, options exercised on or before the date of the IPO and unexercised options outstanding (whether or not then exercisable) on the date of the IPO."

It is now proposed that, instead of an IPO, Controlled will merge with and into Acquiring, in accordance with State X law, with Acquiring surviving, in a transaction intended to qualify as a reorganization under § 368(a)(1)(A) (the "Merger"). Under the terms of the merger agreement, A, the sole shareholder of Controlled, will receive b shares of Acquiring stock as the merger consideration in exchange for all of its Controlled stock. A will receive no other consideration in exchange for all of its

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Controlled stock. Under the merger agreement, each of the c outstanding management stock options to purchase one share of Controlled common stock will be converted into an option to purchase d shares of Acquiring common stock (the total number of options held by each management option holder will be rounded up to the nearest whole share after applying the foregoing conversion ratio). The Merger will occur within three years of Date E. Representation (bo) in the Prior Ruling is deleted.

Distributing and Controlled make the following representations in connection with the proposed transaction:

- (a) The transactions described in the Prior Ruling in paragraphs (i) through (ix) and (xi) were carried out in all material respects as described in the Prior Ruling, the Prior Ruling request and the exhibits and supplements thereto.
- (b) Representations (bg) and (bi) in the Prior Ruling concerning, *inter alia*, the shareholders lack of intention to dispose of their stock and Controlled's intention to merge with another company, respectively, were correct at the time of the spin-off and prior thereto.
- (c) The Distribution was not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons would acquire directly or indirectly stock possessing 50 percent or more of the total combined voting power of all classes of stock of Distributing or Controlled, or stock possessing 50 percent or more of the total value of all classes of stock of Distributing or Controlled.
- (d) For the time period commencing two years before the spin-off distribution of Controlled stock and ending two years after the spin-off distribution of such stock, there will not have been any direct or indirect transfers or acquisitions of a percentage of Controlled's stock or of the stock of Acquiring, Controlled's successor, (and there will not exist any agreement, understanding, arrangement, or substantial negotiations with regard to the stock of Controlled or Acquiring) which stock, when added to: (i) shares purchased or which could be purchased by Controlled's management or the management of its successor, Acquiring, through the exercise of all employee stock options granted or authorized to be granted to management and (ii) all other outstanding shares of Acquiring other than those owned by A, would result in A's failing to own more than 50 percent of (x) the total combined voting power of all classes of stock entitled to vote or (y) the total value of the shares of all classes of stock, of Acquiring, so as to cause the spin-off distribution of Controlled stock to be presumed to be a transaction described in § 355(e)(2).
- (e) The merger of Controlled with and into Acquiring will qualify as a reorganization within the meaning of § 368(a)(1)(A) of the Code.

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Based on the information submitted and the representations set forth above, we hold as follows:

(1) Representation (bn) and step (x) in the Prior Ruling will be deemed satisfied upon completion of the proposed transaction involving the merger of Controlled with and into Acquiring, an unrelated, publicly-held corporation more than 50 percent of whose outstanding stock will be owned by A.

(2) Notwithstanding any change or additions in facts or representations as discussed herein and provided that the Merger qualifies as a reorganization within the meaning of §368(a)(1)(A), rulings (22) through (26) of the Prior Ruling remain in full force and effect.

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. Specifically, no opinion was requested and no opinion is expressed as to the effect, if any, of the above described changes on rulings (1) through (21) of the Prior Ruling.

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

Each taxpayer involved in the transaction should attach a copy of this supplemental ruling letter to the taxpayer's federal income tax return for the taxable year in which the transaction is consummated.

Under a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely yours,  
Assistant Chief Counsel (Corporate)

By: *Ken Cohen*

Senior Technician Reviewer, Branch 3