

Internal Revenue Service

Department of the Treasury

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Date:

August 10, 2000

Distributing =
S1 =
S3 =
S5 =
UF1 =
UF2 =
Year 1 =
Year 2 =
Year 3 =
Country U =
Business A =
Business B =

We respond to your April 28, 2000 request for rulings on certain federal income tax consequences of a series of proposed transactions. The information submitted with the request and in later correspondence is summarized below. Distributing's predecessors received rulings on prior transactions during Year 1, Year 2, and Year 3 (the "Prior Ruling Letters"). Further, this ruling letter, two other ruling letters issued with this letter (PLR-109430-00 and PLR-109435-00), and a ruling letter issued to Distributing on June 15, 2000 (PLR-105240-00) all address aspects of the same overall

transaction (the "Overall Transaction").

The rulings in this letter are based on the facts and representations submitted under penalties of perjury in support of the request. This office has not verified any of the materials submitted in support of the request for a ruling. Verification of this information may be required as part of the audit process.

Summary of Facts

Publicly traded Distributing is the common parent of a corporate group whose includible affiliates join in filing a consolidated return. Distributing wholly owns S1 (a domestic corporation); S1 wholly owns S3 (also domestic); S3 wholly owns S5 (domestic); and S5 wholly owns UF1 and UF2 (both Country U corporations). Distributing and S5 are holding companies.

S1 conducts Business A, S3 owns branches and subsidiaries engaged in Business A and Business B, UF1 conducts Business B, and UF2 conducts Business A. We have received financial information indicating that each of these business operations has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

The operation of Business A and Business B within the same group creates managerial, systemic, and other problems and produces no significant synergies. Distributing's management has therefore decided, based on the advice of consultants and other information, that the two businesses should be separated (the "Separation").

Proposed Transactions

To accomplish the Separation, Distributing proposes the following series of transactions to be carried out in conjunction with the other steps of the Overall Transaction:

(i) S3 will organize three new Country U entities ("NU1," "NU2," and "NU3"). NU1 will be liquidated as part of the proposed transactions, and NU2 and NU3 both will be disregarded as entities separate from their owners pursuant to § 301.7701-3(c) of the Procedure and Administration Regulations.

(ii) S3 will transfer the stock of S5 to NU1 in exchange for all of the stock of NU1.

(iii) S5 will transfer the stock of UF1 to NU1 in exchange for a nominal amount of cash and S5 will immediately distribute the cash back to NU1.

(iv) NU1 will be placed into liquidation and the liquidator will transfer the shares of UF1 and S5 to NU2 and NU3, respectively. NU2 and NU3 will issue their

shares to S3. NU1 will complete its liquidation and will be dissolved in due course. (Steps (i) through (iv), as recharacterized in ruling (1) below, will be referred to hereinafter as "Distribution 1").

(v) S3 will distribute the shares of NU2 to S1 ("Distribution 2").

(vi) S1 will distribute the shares of NU2 to Distributing ("Distribution 3").

Representations

Distribution 1

Distributing has made the following representations concerning Distribution 1 (based on the recharacterization of steps (i) through (iv) above in ruling (1) below, which treats S5 as distributing the stock of UF1 directly to S3):

(a) No part of the UF1 stock distributed by S5 will be received by S3 as a creditor, employee, or in any capacity other than that of an S5 shareholder.

(b) The five years of financial information submitted for UF1 (regarding its Business B) and UF2 (regarding its Business A) represents the present business operations of UF1 and UF2, and as to each business, there have been no substantial operational changes since the date of the last financial statements submitted.

(c) Immediately after Distribution 1, at least 90 percent of the fair market value of the gross assets of S5 will consist of the stock and securities of UF2, a controlled corporation that is engaged in the active conduct of a trade or business as defined in § 355(b) of the Internal Revenue Code. Following Distribution 1, UF1 and UF2 each will continue the active conduct of its business, independently and with its separate employees.

(d) Distribution 1 is being undertaken to resolve managerial, systemic, and other problems that have arisen from operating Business A and Business B within a single affiliated group. Distribution 1 is motivated, in whole or substantial part, by this corporate business purpose and for other business reasons.

(e) Except for Distribution 2, there is no plan or intention by S3 to sell, exchange, transfer by gift, or otherwise dispose of any stock in S5 or UF1 after Distribution 1.

(f) There is no plan or intention by S5 or UF1, directly or through any subsidiary corporation, to purchase any of its outstanding stock after Distribution 1.

(g) There is no plan or intention to liquidate S5 or UF1, to merge either corporation with any other corporation, or to sell or otherwise dispose of any of the

assets of either corporation after Distribution 1, except in the ordinary course of business.

(h) Any indebtedness owed by UF1 to S5 following the Separation will not be stock or securities under § 355.

(i) Immediately before Distribution 1, any 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 of the Income Tax Regulations 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).

(j) Payments made in any continuing transactions between S5 and UF1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(k) Distribution 1 is not a part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire, directly or indirectly, stock possessing 50 percent or more of the total combined voting power of all classes of either S5 or UF1 stock entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either S5 or UF1.

Distribution 2

Distributing has made the following representations concerning Distribution 2 (based on the recharacterization of steps (i) through (iv) above in ruling (1) below, which treats S5 as distributing the stock of UF1 directly to S3):

(l) No part of the UF1 stock distributed by S3 will be received by S1 as a creditor, employee, or in any capacity other than that of an S3 shareholder.

(m) The five years of financial information submitted for S3 (regarding its Business A and Business B) and UF1 represents the present business operations of S3 and UF1, and as to each business, there have been no substantial operational changes since the date of the last financial statements submitted.

(n) Following Distribution 2, S3 and UF1 each will continue the active conduct of its business, independently and with its separate employees.

(o) Distribution 2 is being undertaken to resolve managerial, systemic, and other problems that have arisen from operating Business A and Business B within a single affiliated group. Distribution 2 is motivated, in whole or substantial part, by this corporate business purpose and for other business reasons.

(p) Except for Distribution 3 and except for the transfer of the S3 shares to a

new corporation that will be distributed to the shareholders of Distributing (described in step (vi) of the ruling letter issued to Distributing on June 15, 2000 (PLR-105240-00)), there is no plan or intention by S1 to sell, exchange, transfer by gift, or otherwise dispose of any stock in S3 or UF1 after Distribution 2.

(q) There is no plan or intention by S3 or UF1, directly or through any subsidiary corporation, to purchase any of its outstanding stock after Distribution 2.

(r) There is no plan or intention to liquidate either S3 or UF1, to merge either corporation with any other corporation, or to sell or otherwise dispose of any of the assets of either corporation after Distribution 2, except in the ordinary course of business.

(s) Any indebtedness owed by UF1 to S3 following the Separation will not be stock or securities under § 355.

(t) Immediately before Distribution 2, any 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 and as currently in effect; § 1.1502-13 as published by T.D. 8597).

(u) Payments made in any continuing transactions between S3 and UF1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(v) Distribution 2 is not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire, directly or indirectly, stock possessing 50 percent or more of the total combined voting power of all classes of either S3 or UF1 stock entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either S3 or UF1.

Distribution 3

Distributing has made the following representations concerning Distribution 3:

(w) No part of the stock of UF1 distributed by S1 will be received by Distributing as a creditor, employee, or in any capacity other than that of a S1 shareholder.

(x) The five years of financial information submitted for S1 (regarding its Business A) and UF1 represents the present business operations of S1 and UF1, and as to each business, there have been no substantial operational changes since the date of the last financial statements submitted.

(y) Following Distribution 3, S1 and UF1 each will continue the active conduct of

its business, independently and with its separate employees.

(z) Distribution 3 is being undertaken to resolve managerial, systemic, and other problems that have arisen from operating Business A and Business B within a single affiliated group. Distribution 3 is motivated, in whole or substantial part, by this corporate business purpose and for other business reasons.

(aa) Except for the transfer of S1 to a new corporation that will be distributed to the shareholders of Distributing (described in step (vi) of the ruling letter issued to Distributing on June 15, 2000 (PLR-105240-00)), there is no plan or intention by Distributing to sell, exchange, transfer by gift, or otherwise dispose of any stock in S1 or UF1 after Distribution 3.

(bb) There is no plan or intention by S1 or UF1, directly or through any subsidiary corporation, to purchase any of its outstanding stock after Distribution 3.

(cc) There is no plan or intention to liquidate S1 or UF1, to merge either corporation with any other corporation, or to sell or otherwise dispose of any of the assets of either corporation after Distribution 3, except in the ordinary course of business.

(dd) Any indebtedness owed by UF1 to S1 following the Separation will not be stock or securities under § 355.

(ee) Immediately before Distribution 3, any 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 and as currently in effect; § 1.1502-13 as published by T.D. 8597).

(ff) Payments made in any continuing transactions between S1 and UF1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(gg) Distribution 3 is not a part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire, directly or indirectly, stock possessing 50 percent or more of the total combined voting power of all classes of either S1 or UF1 stock entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either S1 or UF1.

International Representation

(hh) UF1 is a corporation for federal tax purposes and will be a controlled foreign corporation within the meaning of § 957 immediately before and immediately after the proposed transactions.

Rulings

Distribution 1

Based on the information submitted and the representations made, we rule as follows on Distribution 1:

(1) For federal income tax purposes, the transactions described in steps (i) through (iv) of the proposed transactions will be treated as if S5 had distributed all of the UF1 stock directly to S3.

(2) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) S3 on Distribution 1 (§ 355(a)(1)).

(3) No gain or loss will be recognized by S5 on Distribution 1 (§ 355(c)).

(4) Immediately following Distribution 1, the basis of the UF1 stock in the hands of S3 will be the lesser of the adjusted basis of the UF1 stock in the hands of S5 or the substituted basis allocated to the UF1 stock in accordance with §1.358-2(a)(2) (§ 1248(f)(2); Notice 87-64, 1987-2 C.B. 375).

(5) Immediately following Distribution 1, the holding period S3 has in the UF1 stock received in the § 355 distribution will be the greater of the holding period of the UF1 stock in the hands of S5 or the holding period of the S5 stock in the hands of S3 (§ 1248(f)(2); Notice 87-64).

Distribution 2

Based on the information submitted and the representations made, we rule as follows on Distribution 2:

(6) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) S1 on Distribution 2 (§ 355(a)(1)).

(7) No gain or loss will be recognized by S3 on Distribution 2 (§ 355(c)).

(8) Immediately following Distribution 2, the basis of the UF1 stock in the hands of S1 will be the lesser of the adjusted basis of the UF1 stock in the hands of S3 or the substituted basis allocated to the UF1 stock in accordance with § 1.358-2(a)(2) (§ 1248(f)(2); Notice 87-64).

(9) Immediately following Distribution 2, the holding period S1 has in the UF1 stock received in the § 355 distribution will be the greater of the holding period of the UF1 stock in the hands of S3 or the holding period of the S3 stock in the hands of S1 (§ 1248(f)(2); Notice 87-64).

Distribution 3

Based on the information submitted and the representations made, we rule as follows on Distribution 3:

(10) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing on Distribution 3 (§ 355(a)(1)).

(11) No gain or loss will be recognized by S1 on Distribution 3 (§ 355(c)).

(12) Immediately following Distribution 3, the basis of the UF1 stock in the hands of Distributing will be the lesser of the adjusted basis of the UF1 stock in the hands of S1 or the substituted basis allocated to the UF1 stock in accordance with § 1.358-2(a)(2) (§ 1248(f)(2); Notice 87-64).

(13) Immediately following Distribution 3, the holding period Distributing has in the UF1 stock received in the § 355 distribution will be the greater of the holding period of the UF1 stock in the hands of S1 or the holding period of the S1 stock in the hands of Distributing (§ 1248(f)(2); Notice 87-64).

Miscellaneous

(14) The proposed transactions will not adversely affect the Prior Ruling Letters, which will retain full force and effect.

Caveats

We express no opinion on the tax effects of the proposed transactions under any other provisions of the Code or regulations, or the tax effects of any conditions existing at the time of, or effects resulting from, the transactions that are not specifically covered by the rulings.

In addition, no opinion is expressed on whether any or all of the above-described foreign corporations are passive foreign investment companies within the meaning of § 1297(a) and the related regulations to be promulgated. If it is determined that any of the above-described foreign corporations are passive foreign investment companies, no opinion is expressed related to the application of §§ 1291 through 1298 to the proposed transactions. In particular, in a transaction in which gain is not recognized, regulations under § 1291(f) may require gain recognition notwithstanding any other provision of the Code.

Procedural Statements

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

Each taxpayer involved in these transactions should attach a copy of this letter to the taxpayer's federal income tax return for the taxable year in which the transactions covered by this ruling letter are consummated.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to the taxpayer.

Sincerely,

Assistant Chief Counsel (Corporate)

By: _____

Wayne T. Murray
Senior Technician/Reviewer
Branch 4