

**Internal Revenue Service**

Department of the Treasury

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LEGEND

Distributing =

Controlled =

Company X =

a =

b =

c =

d =

e =

x =

y =

z =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =  
Date 10 =  
Date 11 =  
Date 12 =  
A =  
B =  
C =  
D =  
E =

This letter responds to a letter dated May 25, 2001, requesting rulings supplementing our prior letter ruling dated March 14, 2001 (PLR-111625-01) (the "Original Ruling") and a supplemental letter ruling dated May 17, 2001 (PLR-121115-01)(the "First Supplemental Ruling," and, together with the Original Ruling, the "Prior Rulings").

The Prior Rulings addressed (1) a contribution of certain assets to Controlled (the "Contribution"), (2) an initial public offering of Controlled stock (the "IPO"), (3) a pro rata distribution of Controlled stock to the shareholders of Distributing (the "Distribution"), (4) transfers by Distributing of shares of Controlled Class A common stock to Distributing's creditors in exchange for Distributing obligations before the Distribution (the "Exchange"), and (5) a proposed acquisition by Company X of a 50-percent or greater interest (within the meaning of § 355(e)(2)(A)(ii)) in Distributing (the "Proposed Combination"). The Prior Rulings hold that the Contribution followed by the Distribution will constitute a tax-free reorganization under §§ 368(a)(1)(D) and 355 of the Internal Revenue Code, that the Exchange will not result in the recognition of gain or loss to Distributing under §§ 361(c)(1) and (3), and that the Proposed Combination will not be taken into account for purposes of § 355(e). Since the issuance of the Prior Rulings, the Proposed Combination has been abandoned.

Before the Contribution, Distributing made several acquisitions in exchange for its common stock. The Prior Rulings expressed no opinion on whether the last five of those acquisitions (the "Recent Acquisitions") would be taken into account for purposes of § 355(e).

The Recent Acquisitions consisted of the acquisition of the stock of A on Date 1, the stock of B on Date 2, the stock of C on Date 3, the stock of D on Date 4, and the stock of E on Date 5. A, B and C were each engaged in the x business, D was engaged in the y business, and E was engaged in the z business. The Recent Acquisitions were part of Distributing's strategy to fill critical product gaps, particularly in its high-growth business segments. All of the Recent Acquisitions, except the acquisition of E, occurred before the public announcement of the Distribution on Date 6.

On Date 7, a shares of Controlled Class A common stock were sold in the IPO. On Date 8, Distributing exchanged b shares of Controlled Class A common stock pursuant to the Exchange. Distributing owns an additional c shares of Controlled Class A common stock that may be exchanged for Distributing obligations pursuant to further Exchanges. If Distributing exchanges the additional c shares of Controlled stock for Distributing obligations, and the Recent Acquisitions and convertible preferred stock issuance (described below) are taken into account for purposes of § 355(e), a 50-percent or greater interest in the stock of Controlled will have been acquired as part of a plan (or series of related transactions) within the meaning of § 355(e).

After the Contribution, Distributing pledged the stock of Controlled to its creditors as collateral to support Distributing's obligation to repay borrowings under its credit facilities. The Distribution cannot be completed until Distributing's creditors release their security interest in Controlled stock. Under the terms of the credit facilities, Distributing must satisfy certain financial covenants for the security interest to be released, including an obligation to raise a specified amount of cash from certain asset sales and capital markets transactions and having a minimum level of net worth.

As part of its efforts to satisfy the financial covenants, Distributing issued \$d of convertible preferred stock (the "Preferred Stock") on Date 9. Each share of Preferred Stock is initially convertible into e shares of Distributing common stock. Immediately after the Distribution, the conversion ratio of the Preferred Stock will be adjusted. Because Distributing will become a smaller and less valuable company as a result of the Distribution, the Preferred Stock will be convertible into a larger number of shares of Distributing common stock after the Distribution.

The Preferred Stock is not convertible into common stock of Distributing until the earlier of Date 11 or the day after the Distribution. Only Distributing shareholders who own Distributing common stock as of the record date for the Distribution will receive Controlled stock in the Distribution. The record date for the Distribution will be before Date 11. Accordingly, holders of the Preferred Stock will not receive any Controlled stock in the Distribution with respect to their ownership of the Preferred Stock.

The Prior Rulings are based on Distributing's representation that the Distribution will be consummated no later than the end of the taxable year of Distributing in which the Contribution occurred, i.e., by Date 10. Recent amendments to Distributing's credit facilities impose additional obligations on Distributing before the security interest in

Controlled stock can be released. The amendments were necessary to enable Distributing to implement a restructuring program and to report a related charge to its earnings. As a result of the amendments to the credit facilities, Distributing expects to complete the Distribution after Date 10 but no later than Date 12.

In connection with the request for supplemental rulings, Distributing has made the following representations:

(a) All representations in the Prior Rulings, except as modified herein or in the First Supplemental Ruling, are still valid.

(b) Before the acquisitions of A, B, C, and D, neither Distributing nor Controlled (or their respective officers or directors) discussed the Distribution with A, B, C or D, their respective officers or directors, or the persons who acquired Distributing stock in those acquisitions.

(c) The Distribution was never motivated to any degree by a business purpose to facilitate the acquisition of Distributing stock in any of the Recent Acquisitions.

(d) The Distribution will occur at the same time and in a similar form regardless of any of the Recent Acquisitions.

(e) All of the Recent Acquisitions, except the acquisition of E, occurred at a time when Distributing had not yet made a final decision to proceed with the Distribution.

(f) All of the Recent Acquisitions occurred before Distributing received requisite regulatory approval for the Distribution, and thus were undertaken at a time when it was uncertain whether the Distribution would occur.

(g) The record date for the Distribution will be before Date 11 and the Distribution will be completed no later than Date 12.

(h) Holders of the Preferred Stock will not receive any Controlled stock in the Distribution with respect to their Preferred Stock.

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

(1) The issuance by Distributing of its stock in the acquisition of A, B, C, and D will not be taken into account for purposes of § 355(e).

(2) Because the holders of the Preferred Stock will not receive any Controlled

stock in the Distribution, and because any indirect interest in Controlled acquired by the holders of the Preferred Stock will be terminated upon the Distribution, the issuance of the Preferred Stock will not be taken into account for purposes of determining whether a 50-percent or greater interest in Controlled has been acquired as part of a plan (or series of related transactions) with the Distribution within the meaning of § 355(e).

(3) Completion of the Distribution on or before Date 12 will not affect any of the rulings issued in the Prior Rulings.

In addition to the caveats in the Prior Rulings, we continue to express no opinion regarding whether the issuance of Distributing stock in the acquisition of E will be taken into account for purposes of § 355(e).

This ruling is directed only to the taxpayers who requested it. Section 6110(j)(3) of the Code provides that this private letter ruling may not be used or cited as precedent.

It is important that a copy of this letter, together with copies of the Prior Rulings, be attached to the federal income tax returns of the taxpayers involved for the taxable year in which the transactions covered by this letter are consummated.

Pursuant to the power of attorney on file in this matter, a copy of this letter is being sent to your authorized representatives.

Sincerely,  
Associate Chief Counsel (Corporate)  
By Michael J. Wilder  
Senior Technician Reviewer, Branch 1