

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:

December 23, 2002

Legend

Parent =

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Business A =

Business B =

State X =

State Y =

Type A Company =

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Dear _____ :

This letter responds to your September 13, 2002 request for rulings regarding certain federal income tax consequences of a proposed transaction. The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement 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.

Summary of Facts

Publicly traded Parent is the common parent of a consolidated group whose subsidiaries conduct a variety of businesses, including Business A and Business B.

Parent wholly owns Distributing, Sub 1, and Sub 2. Distributing directly conducts Business A in State X and Business B in numerous states. Sub 1 directly conducts Business B in a number of states. Sub 2 directly conducts Business A in a number of states.

Financial information has been received indicating that Distributing's Business A and Business B each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

The Parent consolidated group has historically conducted Business B through Distributing and Sub 1. To achieve operational efficiencies in a manner that is most favorable from a regulatory perspective, Parent proposes to conduct its Business B operations through a subsidiary of a Type A Company.

Proposed Transaction

To accomplish the combination of Distributing's and Sub 1's Business B operations, Parent has proposed the following transaction (collectively, the "Proposed Transaction"):

(i) Distributing will contribute certain Business B assets to newly formed Controlled in exchange for Controlled stock and Controlled's assumption of the liabilities of Distributing's Business B, if any (the "Contribution"). Distributing will retain certain Business B debt instruments.

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(ii) Distributing will distribute all of the Controlled stock received by it in the Contribution to Parent (the "Distribution").

(iii) Parent will contribute all of the Controlled stock received by it in the Distribution and all of its Sub 1 stock to Sub 2 (the "Stock Transfer").

(iv) Immediately following the Stock Transfer, Controlled will merge into Sub 1 pursuant to State Y law (the "Merger").

Representations

The taxpayer has made the following representations concerning the Contribution and the Distribution:

(a) Any indebtedness owed by Controlled to Distributing after the Distribution will not constitute stock or securities.

(b) No part of the Controlled stock being distributed by Distributing will be received by Parent as a creditor, employee, or in any capacity other than that of a Distributing shareholder.

(c) The five years of financial information submitted on behalf of Distributing's Business A and Business B represents, in each case, its present operation, and with regard to each such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(d) Following the Proposed Transaction, Distributing and Sub 1 will each continue the active conduct of its business, independently and with its separate employees.

(e) The Distribution is being carried out for the following corporate business purpose: fit and focus. The Distribution is motivated, in whole or substantial part, by this corporate business purpose.

(f) Except for the Stock Transfer, there is no plan or intention by Parent to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, Distributing, Controlled, or Sub 2 after the Proposed Transaction.

(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 Proposed Transaction.

(h) Except for the Merger, there is no plan or intention to liquidate either Distributing or Controlled, to merge either corporation with any other corporation, or to

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sell or otherwise dispose of the assets of either corporation after the Proposed Transaction, except in the ordinary course of business.

(i) The total adjusted bases and the fair market value of the assets transferred in the Contribution each equals or exceeds the sum of the liabilities assumed by Controlled (within the meaning of § 357(d)). The liabilities assumed, if any, (as determined under § 357(d)) in the Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.

(j) No intercorporate debt will exist between Distributing and Controlled at the time of, or after, the Distribution.

(k) 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 (See § 1.1502-13 and § 1.1502-14 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).

(l) Payments made in connection with all continuing transactions, if any, between Distributing and Sub 1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(m) No two parties to the Proposed Transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(n) For purposes of § 355(d), immediately after the Distribution, 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 Distribution.

(o) For purposes of § 355(d), immediately after the Distribution, 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 Distribution or (ii) attributable to distributions 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 Distribution.

(p) Except for the Stock Transfer, the Distribution is not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more

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persons will acquire, directly or indirectly, stock possessing 50 percent or more of the total combined voting power of all classes of stock entitled to vote of either Distributing or Controlled, or stock possessing 50 percent or more of the total value of all classes of stock of either Distributing or Controlled.

Rulings

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

(1) The Contribution, followed by the Distribution, will be a reorganization under § 368(a)(1)(D). Distributing and Controlled each will be “a party to a reorganization” under § 368(b).

(2) Distributing will recognize no gain or loss on the Contribution (§§ 361(a) and 357(a)).

(3) Controlled will recognize no gain or loss on the Contribution (§ 1032(a)).

(4) The basis of each asset received by Controlled in the Contribution will equal the basis of that asset in the hands of Distributing immediately before their transfer (§ 362(b)).

(5) The holding period of each asset received by Controlled in the Contribution will include the holding period during which Distributing held that asset (§ 1223(2)).

(6) Distributing will recognize no gain or loss on the Distribution (§ 361(c)(1)).

(7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Parent on Parent’s receipt of Controlled stock in the Distribution (§ 355(a)(1)).

(8) The holding period of the Controlled stock received by Parent will include the holding period of the Distributing stock on which the Distribution is made, provided the Distributing stock is held as a capital asset on the date of the Distribution (§ 1223(1)).

(9) Earnings and profits will be allocated between Distributing and Controlled in accordance with §§ 312(h), 1.312-10(a), and 1.1502-33(f)(2).

(10) The Merger will not prevent the Distribution from qualifying as a tax-free distribution of Controlled stock under § 355.

Caveats

We express no opinion about the tax treatment of the Proposed Transaction under other provisions of the Internal Revenue Code or regulations thereunder 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 was requested and none is expressed regarding:

- (i) the Stock Transfer described in step (iii); and
- (ii) the Merger described in step (iv).

Procedural Statements

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

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

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

Sincerely,

Richard K. Passales

Richard K. Passales
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Corporate)