

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

August 21, 2003

Legend:

Distributing =

Controlled =

Business A =

Business B =

Business C =

Business D =

Sector E =

Shareholder F =

Shareholder G =

a =

b =

Dear _____ :

This is in response to your letter, dated March 21, 2003, on behalf of Distributing, requesting rulings under § 355 of the Internal Revenue Code (the "Code") with respect to a proposed transaction. Additional information was received in letters dated May 8, 2003, June 23, 2003, July 14, 2003, and August 5, 2003.

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. The material information is summarized below.

Distributing is a closely-held corporation that is the common parent of an affiliated group that files a consolidated federal income tax return on a calendar year basis. Distributing has one class of common stock and one class of preferred stock outstanding. The common stock of Distributing is held approximately a% by Shareholder F and b% by Shareholder G. The preferred stock is entirely held by Shareholder G.

Distributing is a holding company whose subsidiaries are engaged principally in Business A, Business B, Business C, and Business D. Controlled is a wholly-owned subsidiary of Distributing. Controlled is a holding company whose subsidiaries are engaged principally in Sector E of Business B. Distributing has supplied information indicating that each of Business A, Business B, Business C, and Business D, including Sector E, have had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

For what has been represented to be a valid business reason, Distributing proposes the following transaction (the "Distribution"):

Distributing will distribute 100% of the stock of Controlled to the shareholders of Distributing in proportion to their total stock holdings in Distributing at the time of the Distribution.

Distributing has made the following representations in connection with the Distribution:

- (a) The indebtedness owed by Controlled to Distributing after the Distribution will not constitute stock or securities.
- (b) No part of the consideration to be distributed by Distributing after the Distribution will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of the corporation.

(c) The five years of financial information submitted on behalf of Distributing and each of the subsidiary corporations of Distributing relied on to satisfy the active business requirement of §355(b) are representative of each such corporation's present operations and with regard to each such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(d) Immediately after the Distribution, at least 90% of the fair market value of the gross assets of Distributing 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 § 355(b)(2).

(e) Immediately after the Distribution, at least 90% of the fair market value of the gross assets of Controlled 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 § 355(b)(2).

(f) Following the Distribution, Distributing and Controlled will each continue the active conduct of its business, independently and with its separate employees.

(g) The distribution of the stock of Controlled is carried out for the following corporate business purpose: to achieve cost savings in Sector E. The transaction is motivated in whole or substantial part by this corporate business purpose.

(h) 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 Distribution, other than through stock purchases meeting the requirements of § 4.05(1)(b) of Rev. Proc. 96-30.

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

(j) 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. Further, any excess loss account of Distributing with respect to the stock of Controlled will be included in income immediately before the Distribution.

(k) 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.

(l) The Distribution is not part of a plan or series of related transactions (within the meaning of Code ' 355(e)) pursuant to which one or more persons will acquire directly or indirectly stock possessing 50% or more of the total combined voting power of all classes of stock of either Distributing or Controlled entitled to vote or stock possessing 50% or more of the total value of all classes of stock of either Distributing or Controlled.

Based solely on the information submitted and the representations made, we have concluded that:

- (1) No gain or loss will be recognized by Distributing upon the distribution of all of the stock of Controlled. Section 355(c)(1).
- (2) No gain or loss will be recognized by (and no amount will be included in the income of) the shareholders of Distributing upon the receipt of the stock of Controlled in connection with the Distribution. Section 355(a)(1).
- (3) The combined basis of the stock of Distributing and Controlled in the hands of each of the shareholders of Distributing immediately after the Distribution will be the same as the basis of the Distributing stock held by each such shareholder immediately prior to the Distribution. Section 358(c).
- (4) The holding period of the stock of Controlled to be received by the Distributing shareholders will in each case include the holding period of the distributing stock held by each such shareholder prior to the Distribution, provided that the shares of Distributing were held as a capital asset on the date of the Distribution. Section 1223(1).
- (5) As provided in § 312(h), proper allocation of earnings and profits between Distributing and Controlled will be made under Treas. Reg. § 1.312-10(a).

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(k)(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,

Marlene P. Oppenheim
Senior Counsel
Office of Associate Chief Counsel
(Corporate)