

Internal Revenue Service

Number: **200405006**

Release Date: 01/30/2004

Index Number: 355-00-00; 368-04-00

Department of the Treasury

Washington, DC 20224

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B02 – PLR-141085-03

Date:

October 28, 2003

Legend

Distributing =

Controlled =

Shareholder A =

Shareholder B =

Shareholder C =

Shareholder D =

Shareholder E =

Shareholder F =

PLR-141085-03

Shareholder G =

a =

b =

c =

d =

e =

f =

g =

Business X =

Facility Y =

Facility Z =

Partnership =

Dear

This is in response to a letter dated June 12, 2003, submitted on behalf of Distributing, requesting rulings under §§ 355 and 368 of the Internal Revenue Code (the “Code”) with respect to a proposed transaction. Additional information was received in letters dated September 5, 2003 and September 25, 2003.

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

PLR-141085-03

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. In particular, this Office has made no determination regarding whether the transaction satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, whether the transaction is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)), or whether the transaction is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7T).

Distributing is a corporation engaged in Business X, which it conducts at Facility Y and Facility Z. Distributing files its federal income tax return on the cash method using a tax year ending March 31. Distributing has supplied information indicating that Business X has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years. Distributing has one class of stock outstanding, owned approximately a% by Shareholder A, b% by Shareholder B, b% by Shareholder C, c% by Shareholder D, d% together by Shareholder B and Shareholder E (Shareholder B's spouse), d% together by Shareholder C and Shareholder F (Shareholder C's spouse), and e% together by Shareholder D and Shareholder G (Shareholder D's spouse).

For what is represented to be a valid business purpose, the following series of transactions is proposed:

1. Distributing will form a new corporation, Controlled, and will contribute to Controlled the assets associated with the Facility Y operation, not including the land upon which the Facility Y operation is carried out. That land is and will remain the property of Partnership, which will enter into a lease with Controlled with respect to the Facility Y property.
2. Distributing will distribute all the stock of Controlled to Shareholder C and Shareholder F in exchange for all their shares of Distributing. It is intended that the assets transferred to Controlled in Step 1 above will equal f% (b%+ d%) of the net value of Distributing immediately prior to the transfer. If the value of the assets transferred is less than f% of such net value, Distributing will deliver a note (the "Note") to Controlled equal to the difference between the value of the transferred assets and the sum of f% of the net value of Distributing immediately prior to the transfer. Any such note will have a term of one year and will bear interest at g% annually.

PLR-141085-03

Distributing has made the following representations with respect to the Distribution:

- (a) The fair market value of the stock of Controlled and other consideration to be received by Shareholder C and Shareholder F will be approximately equal to the fair market value of the stock of Distributing surrendered by Shareholder C and Shareholder F in the exchange.
- (b) No part of the consideration to be distributed by Distributing will be received by a shareholder of Distributing as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (c) The five years of financial information submitted on behalf of Distributing is representative of Distributing's present operation, and there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) Following the Distribution, Distributing and Controlled will each continue, independently and with its separate employees, the active conduct of its share of all of the integrated activities of Business X conducted by Distributing prior to the consummation of the Distribution.
- (e) The Distribution is being carried out for the following corporate business purpose: to alleviate disputes among Shareholder C and Shareholder F, on the one hand, and the other shareholders of Distributing, on the other, regarding the operation of Business X and thereby enhance the success of that business. The Distribution is motivated in whole or substantial part by that business purpose.
- (f) There is no plan or intention by any shareholder or security holder of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, either Distributing or Controlled after the Distribution.
- (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 transaction, other than through purchases meeting the requirements of § 4.05(1)(b) of Rev. Proc. 96-30.
- (h) 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

PLR-141085-03

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

- (i) The Distribution is not part of a plan or series of related transactions (within the meaning of §1.355-7T) pursuant to which one or more persons will acquire directly or indirectly a 50% or greater interest (within the meaning of §355(d)(4)) of Distributing or Controlled.
- (j) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing each equals or exceeds the sum of the liabilities assumed by Controlled plus any liabilities to which the transferred assets are subject. The liabilities assumed in the transaction and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.
- (k) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Distribution.
- (l) With the possible exception of the Note described above, no intercorporate debt will exist between Distributing and Controlled at the time of or subsequent to the distribution of the Controlled stock.
- (m) 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.
- (n) No two parties to the Distribution are investment companies as defined in Code § 368(a)(2)(F)(iii) and (iv).
- (o) Distributing is not an S corporation (within the meaning of § 1361(a)), and there is no plan or intention by Distributing or Controlled to make an S corporation election pursuant to § 1362(a).
- (p) The transaction is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled.

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

(1) The transfer by Distributing of part of its assets in exchange for all of the common stock of Controlled, followed by the distribution of all the Controlled stock to

PLR-141085-03

Shareholder C and Shareholder F, will constitute a reorganization within the meaning of section 368(a)(1)(D) of the Code. Distributing and Controlled will each be "a party to a reorganization" within the meaning of section 368(b) of the Code.

(2) Distributing will recognize no gain or loss upon the transfer of assets to Controlled in exchange for Controlled stock and the assumption of liabilities, as described above (sections 361(a) and 357(a)).

(3) Controlled will recognize no gain or loss on the receipt of the assets in exchange for all the shares of Controlled (section 1032(a)).

(4) Controlled's basis in the Distributing assets received by Controlled in the transaction will be the same as the basis of such assets in the hands of Distributing immediately prior to the transaction (section 362(b)).

(5) Controlled's holding period of the Distributing assets received by Controlled in the transaction will include the period during which such assets were held by Distributing (section 1223(2)).

(6) Neither Shareholder C nor Shareholder F will recognize gain or loss (and no amount will be included in the income of either Shareholder C or Shareholder F) upon the receipt of Controlled stock in exchange for their Distributing stock, as described above (section 355(a)(1)).

(7) The basis of the Controlled stock in the hands of Shareholder C and Shareholder F will in each instance be the same as the basis of the Distributing stock held immediately before the exchange by each such shareholder (section 358(a)).

(8) The holding period of the Controlled stock to be received by Shareholder C and Shareholder F, as described above, will in each instance include the period of the Distributing stock surrendered in the exchange, provided that such stock is held as a capital asset by each such shareholder on the day of the exchange (section 1223(1)).

(9) No gain or loss will be recognized to Distributing upon the distribution of all its Controlled stock (section 361(c)).

(10) A proper allocation of earnings and profits between Distributing and Controlled will be made pursuant to section 312(h) of the Code and section 1.312-10(a) of the Income Tax Regulations.

No opinion is expressed about the tax treatment of the Proposed Transactions under other provisions of the Code or regulations or the tax treatment of

PLR-141085-03

any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

(i) Whether the Distribution satisfies the business purpose requirement of § 1.355-2(b);

(ii) Whether the transaction is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both; and

(iii) Whether the Distribution and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2) (A)(ii).

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.

Sincerely,

Gerald B. Fleming

Gerald B. Fleming

Senior Technician Reviewer, Branch 2

Office of Office of Associate Chief Counsel
(Corporate)

cc: