

Internal Revenue Service

Department of the Treasury
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, ID No.

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Date:

February 02, 2004

Parent =

Distributing =

Controlled 1 =

Controlled 2 =

Industry =

Segment A =

Segment B =

Segment C =

Business A =

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Business B =

Business C =

Dear :

This letter responds to your August 8, 2003 request for rulings on certain federal income tax consequences of a proposed transaction. The information submitted in that request and in later submissions is summarized below.

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.

Summary of Facts

Publicly traded Parent is the common parent of an affiliated group that files a consolidated federal income tax return. Parent, through its indirect subsidiaries, conducts a variety of businesses within the Industry. Parent's businesses are functionally divided into three segments: Segment A, Segment B, and Segment C.

Parent wholly owns Distributing. Distributing conducts businesses within Segment A, Segment B, and Segment C indirectly through its subsidiaries (collectively, the "Distributing Group"). Distributing also directly engages in Business A.

Distributing wholly owns Controlled 1 and Controlled 2. Controlled 1 engages in Business B. Controlled 2 engages in Business C. Business B and Business C are within Segment C.

Financial information has been received indicating that Business A of Distributing, Business B of Controlled 1, and Business C of Controlled 2 each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Controlled 1 and Controlled 2 markets Business B and Business C, respectively, to Distributing Group affiliates, which conduct businesses within Segment A and Segment B. Controlled 1 and Controlled 2 also market Business B and Business C, respectively, to third parties. To avoid certain operational and managerial problems created by engaging in Business B and Business C within the same affiliated subgroup

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operating in Segment A and Segment B, and to ease certain concerns of existing and potential third-party clientele of Controlled 1 and Controlled 2 regarding this affiliation, management has decided to separate Controlled 1 and Controlled 2 from the Distributing Group.

Proposed Transaction

For what have been represented to be valid business reasons, the following transaction has been proposed:

(i) Distributing will distribute all Controlled 1 stock to Parent (the “Controlled 1 Distribution”).

(ii) Distributing will distribute all Controlled 2 stock to Parent (the “Controlled 2 Distribution”).

After the proposed transaction, Distributing will continue providing certain employment services to Controlled 1 and Controlled 2 pursuant to preexisting agreements. Distributing will also continue providing certain management and administrative services to Controlled 1 and Controlled 2 during a brief transitional period.

Representations

The taxpayer has made the following representations in connection with the proposed Controlled 1 Distribution:

(a) The indebtedness owed by Controlled 1 to Distributing after the Controlled 1 Distribution will not constitute stock or securities.

(b) No part of the consideration to be distributed by Distributing will be received by Parent 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 are representative of the corporation’s present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(d) The five years of financial information submitted on behalf of Controlled 1 are representative of the corporation’s present operation, and with regard to such

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corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(e) Following the Controlled 1 Distribution, the Business A directly conducted by Distributing (i) will have a fair market value that is equal to at least five percent of the total fair market value of the gross assets of Distributing; or (ii) will represent at least two of the following: (a) five percent of the aggregate revenues of Distributing, (b) five percent of the total customers of Distributing, or (c) five percent of the total employees of Distributing; or (iii) will satisfy both (i) and (ii). Consequently, immediately after the Controlled 1 Distribution, the Business A directly conducted by Distributing will not be de minimis compared with the other assets or activities of Distributing at that time.

(f) The Controlled 1 Distribution is being carried out for the following corporate business purpose: fit and focus. The Controlled 1 Distribution is motivated in whole or substantial part by this corporate business purpose.

(g) There is no plan or intention by Parent to sell, exchange, transfer by gift, or otherwise dispose of any of its stock in, or securities of, either Distributing or Controlled 1 after the Controlled 1 Distribution.

(h) There is no plan or intention by either Distributing or Controlled 1, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the Controlled 1 Distribution, other than through stock purchases meeting the requirements of section 4.05(1)(a) of Rev. Proc. 96-30, 1996-1 C.B. 696.

(i) There is no plan or intention to liquidate either Distributing or Controlled 1, to merge either corporation with any other corporation or to sell or otherwise dispose of the assets of either corporation after the Controlled 1 Distribution, except in the ordinary course of business.

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

(k) For purposes of § 355(d), immediately after the Controlled 1 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 Controlled 1 Distribution.

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(l) For purposes of § 355(d), immediately after the Controlled 1 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 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 1 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 Controlled 1 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 Controlled 1 Distribution.

(m) The Controlled 1 Distribution 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 stock of either Distributing or Controlled 1 entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either Distributing or Controlled 1.

The taxpayer has made the following representations in connection with the proposed Controlled 2 Distribution:

(n) The indebtedness owed by Controlled 2 to Distributing after the Controlled 2 Distribution will not constitute stock or securities.

(o) No part of the consideration to be distributed by Distributing will be received by Parent as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

(p) The five years of financial information submitted on behalf of Distributing are representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(q) The five years of financial information submitted on behalf of Controlled 2 are representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(r) Following the Controlled 2 Distribution, the Business A directly conducted by Distributing (i) will have a fair market value that is equal to at least five percent of the total fair market value of the gross assets of Distributing; or (ii) will represent at least two of the following: (a) five percent of the aggregate revenues of Distributing, (b) five

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percent of the total customers of Distributing, or (c) five percent of the total employees of Distributing; or (iii) will satisfy both (i) and (ii). Consequently, immediately after the Controlled 2 Distribution, the Business A directly conducted by Distributing will not be de minimis compared with the other assets or activities of Distributing at that time.

(s) The Controlled 2 Distribution is being carried out for the following corporate business purpose: fit and focus. The Controlled 2 Distribution is motivated in whole or substantial part by this corporate business purpose.

(t) There is no plan or intention by Parent to sell, exchange, transfer by gift, or otherwise dispose of any of its stock in, or securities of, either Distributing or Controlled 2 after the Controlled 2 Distribution.

(u) There is no plan or intention by either Distributing or Controlled 2, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the Controlled 2 Distribution, other than through stock purchases meeting the requirements of section 4.05(1)(a) of Rev. Proc. 96-30.

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

(w) Payments made in connection with all continuing transactions between Distributing and Controlled 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(x) For purposes of § 355(d), immediately after the Controlled 2 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 Controlled 2 Distribution.

(y) For purposes of § 355(d), immediately after the Controlled 2 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 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 2 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 Controlled 2 Distribution or (ii) attributable to distributions on Distributing stock that was

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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 Controlled 2 Distribution.

(z) The Controlled 2 Distribution 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 stock of either Distributing or Controlled 2 entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either Distributing or Controlled 2.

Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the Controlled 1 Distribution:

(1) No gain or loss will be recognized by Distributing on the Controlled 1 Distribution (§ 355(c)(1)).

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

(3) The holding period of the Controlled 1 stock to be received by Parent will include the period during which Parent held the Distributing stock with respect to which the distribution is made, provided that such Distributing stock is held as a capital asset on the date of the Controlled 1 Distribution (§ 1223(1)).

(4) As provided in § 312(h), proper allocation of earnings and profits between Distributing and Controlled 1 will be made under Treas. Reg. § 1.312-10(b) and Treas. Reg. § 1.1502-33(f)(2).

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the Controlled 2 Distribution:

(5) No gain or loss will be recognized by Distributing on the Controlled 2 Distribution (§ 355(c)(1)).

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

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(7) The holding period of the Controlled 2 stock to be received by Parent will include the period during which Parent held the Distributing stock with respect to which the distribution is made, provided that such Distributing stock is held as a capital asset on the date of the Controlled 2 Distribution (§ 1223(1)).

(8) As provided in § 312(h), proper allocation of earnings and profits between Distributing and Controlled 2 will be made under Treas. Reg. § 1.312-10(b) and Treas. Reg. § 1.1502-33(f)(2).

Caveat

No opinion is expressed on the tax treatment of the transaction under other provisions of the Code or regulations or on the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions that are not directly covered by the above rulings.

Procedural Statements

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

A copy of this letter should be attached to the federal income tax return of each taxpayer involved for the taxable year in which the transaction covered by this ruling letter is completed.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Richard K. Passales

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

(Corporate)

cc: