

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

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Date:

February 06, 2004

Distributing =

Controlled =

State A =

Exchange =

Shareholder U =

Shareholder V =

Shareholder W =

Shareholder X =

Shareholder Y =

Business A =

Business B =

PLR-146760-03

Investment Banker1 =

Investment Banker2 =

a =b =c =d =

Dear

We respond to your request dated August 7, 2003, for rulings about the Federal income tax consequences of a proposed transaction. Additional information was provided in letters dated November 14, 2003, December 18, 2003, December 22, 2003, and January 28, 2004. The information submitted for consideration is summarized below.

Distributing is a publicly traded State A corporation that is the common parent of an affiliated group that files a consolidated tax return. Distributing's common stock is traded on the Exchange. Shareholder X and family members collectively beneficially own approximately a percent of the common stock and Shareholder Y and family member collectively beneficially own approximately b percent of the common stock; the remainder is widely held by the public and the management of Distributing. Distributing is engaged, directly and indirectly through a number of subsidiaries, in Business A.

Controlled is a State A corporation that is directly involved in Business B. Controlled is a wholly owned subsidiary of Distributing.

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

Distributing has concluded and information has been received indicating that the operation of Business A and Business B under the same corporate structure has adversely affected the ability of Controlled to raise the equity capital necessary to expand the operation of Business B. Based in part on the advice of Investment Banker1 and Investment Banker2, Distributing has concluded that the separation of Business A and Business B would enhance Controlled's ability to raise capital.

To accomplish this objective, the taxpayer has proposed the following transaction (the Proposed Transaction):

- (i) Controlled will be recapitalized in a transaction intended to qualify as a reorganization under §368(a)(1)(E) of the Internal Revenue Code. In the recapitalization, Controlled will issue a new class of voting common stock ("Controlled Common Stock") in exchange for all the currently outstanding shares of Controlled Class A voting common stock and Class B nonvoting common stock.
- (ii) Controlled will engage in an initial public offering (IPO) in which Controlled will issue additional shares of Controlled Common Stock in an amount that is less than c percent of the outstanding shares of Controlled following the IPO.
- (iii) Six to nine months after the IPO, Distributing will distribute all of the shares of Controlled Common Stock that it owns *pro rata* to the shareholders of Distributing (the "Distribution"). The shareholders of Distributing will not surrender any Distributing common stock, and, after the Distribution, Distributing will not own any stock in Controlled.

With respect to the Proposed Transaction, the taxpayer has made the following representations:

- (a) Apart from short-term payables arising in the ordinary course of business, including in connection with the parties' transitional services and tax allocation agreements, no intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the distribution of the controlled corporation stock.
- (b) No part of the consideration to be distributed by Distributing 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 is 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 is 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.

- (e) Following the transaction, Distributing and Controlled each will continue the active conduct of its business, independently and with its separate employees.
- (f) The distribution of the stock, or stock and securities, of Controlled is carried out for the following corporate business purpose: to ensure the success of the IPO and thereby raise much-needed equity capital. The distribution of the stock, or stock and securities, of Controlled is motivated, in whole or substantial part, by this corporate business purpose.
- (g) There is no plan or intention by any shareholder who owns five percent or more of the stock of Distributing, and the management of Distributing, to its best knowledge, is not aware of any plan or intention on the part of any particular remaining 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 transaction, except as follows:
  - (1) It is anticipated that Shareholder X will (i) continue his program of making annual gifts of Distributing (and after the Distribution, Distributing and Controlled) stock to family members and charities; and (ii) sell on the open market proportional amounts of shares of Distributing and Controlled stock, not to exceed d percent per calendar year of the outstanding stock of either company; and
  - (2) It is anticipated that Shareholder U, Shareholder V, and Shareholder W each will individually sell on the open market proportional amounts of shares of Distributing and Controlled stock, not to exceed d percent each, per calendar year of the outstanding stock of either company.
- (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 transaction, 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 transaction, except in the ordinary course of business.
- (j) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.

- (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 Treas. Reg. §1.1502-13). Distributing's excess loss account, if any, with respect to the Controlled stock will be included in income immediately before the Distribution (see §1.1502-19).
- (l) Payments made in connection with all continuing transactions 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.
- (m) No two parties to the transaction are investment companies as defined in §368(a)(2)(F)(iii) and (iv).
- (n) 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 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, or stock possessing 50 percent 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 set forth above, we hold as follows:

- (1) No gain or loss will be recognized to (and no amount will otherwise be included in the income of) the shareholders of Distributing common stock upon the receipt of the Controlled Common Stock in the Distribution (§355(a)(1)).
- (2) No gain or loss will be recognized to Distributing upon the distribution of all of the Controlled Common Stock to the shareholders of Distributing in the Distribution (§355(c)).
- (3) The basis of the Controlled Common Stock and Distributing common stock in the hands of the shareholders of Distributing after the Distribution will, in each instance, be the same as the aggregate basis of the shareholders in the Distributing Common Stock immediately before the Distribution, allocated in proportion to the fair market value of each (§358(b)(2) and §1.358-2(a)(2) of the Income Tax Regulations).
- (4) The holding period of the Controlled Common Stock received by the shareholders of Distributing as a result of the Distribution will, in each instance, include the holding period of the Distributing common stock with

respect to which the Controlled Common Stock was received, provided that such Distributing common stock is held as a capital asset on the date of the Distribution (§1223(1)).

- (5) Earnings and profits will be allocated between Distributing and Controlled in accordance with §312(h) and Reg. §1.312-10(b).

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. Specifically, we do not express any opinion as to whether the recapitalization qualifies as a reorganization under §368(a)(1)(E).

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.

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.

A copy of this letter must be attached to any income tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your taxpayer.

Sincerely,

Filiz A. Serbes

Filiz A. Serbes

Chief, Branch 3

Office of Associate Chief Counsel

(Corporate)