

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

In Re:

Refer Reply To:

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Date:

September 28, 2004

Legend:

Distributing =

Controlled =

Individual A =

Individual B =

Individual C =

Business X =

Business Y =

Asset Z =

Dear :

This is in response to a letter dated March 15, 2004, 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 received April 26, 2004, July 26, 2004, August 27, 2004, and September 27, 2004.

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. 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 calendar year corporation engaged in Business X and Y. Distributing does not join in the filing of a consolidated federal income tax return. Distributing has supplied information indicating that Business X and Y has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years. Distributing's stock is owned by Individual A and by trusts for the benefit of Individual A, Individual B, Individual C (collectively the "Withdrawing Shareholders") and other shareholders.

For what is represented to be a valid business purpose, the following series of transactions is proposed of which step (1) has already been completed:

1. Distributing will form Controlled and will contribute to Controlled the Business Y assets in exchange for all of the shares of Controlled stock.
2. Distributing will distribute to the Withdrawing Shareholders all of its Controlled Stock in exchange for all of their Distributing stock.
3. Distributing will sell to one or more of the Withdrawing Shareholders, or their assigns ("Buyers") Asset Z, an asset related to but not an essential part of Business Y.

No indebtedness has been or will be canceled in connection with the transaction. Controlled is not assuming liabilities (within the meaning of § 357(d)) in the transaction.

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

(a) The fair market value of the Controlled stock and other consideration to be received by each shareholder of Distributing will be approximately equal to the fair market value of the Distributing stock surrendered by the shareholder in the exchange.

(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 as a shareholder of Distributing.

(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 Distributing, and then Controlled, is representative of the latter 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 will each continue, independently and with its separate employees, the active conduct of its share of all the integrated activities of the business conducted by Distributing prior to consummation of the transaction.

(f) The distribution of the stock, or stock and securities, of Controlled is carried out for the following corporate business purpose: resolution of management and shareholder discord. The distribution of the stock, or stock and securities, of Controlled is motivated, in whole or substantial part, by this corporate business purpose.

(g) The transaction is not used principally as a device for the distribution of the earnings and profits of Distributing, or Controlled, or both.

(h) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.

(i) No inter-corporate debt will exist between Distributing and Controlled at the time of, or immediately subsequent to, the distribution of the Controlled stock.

(j) 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.

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

(l) There is no acquisition of Distributing or Controlled stock (including any predecessor or successor of any such corporation) that is part of a plan or series of related transactions (with the meaning of § 1.355-7T) that includes the distribution of Controlled stock.

(m) The distribution of stock will not be a disqualified distribution (as defined in § 355(d)(2)) because immediately after the distribution of stock: (i) no person (determined after applying §355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Distributing that will constitute a 50 percent or greater interest (defined in § 355(d)(4)) in Distributing, and (ii) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Controlled that will constitute a 50 percent or greater interest (defined in § 355(d)(4)) in Controlled.

(n) Buyers do not plan or intend to contribute Asset Z to Controlled.

(o) Neither Distributing nor Controlled will provide funds to Buyers to enable Buyers to purchase Asset Z.

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

(1) The transfer by Distributing of the Business Y assets in exchange for all of the Controlled stock, followed by the distribution of all the Controlled stock to the Withdrawing Shareholders, 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 all of the Controlled stock (section 361(a)).

(3) Distributing will recognize no gain or loss on the distribution of the Controlled stock (section 361(c)(1)).

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

(5) 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)).

(6) 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)).

(7) The Withdrawing Shareholders will recognize no gain or loss (and no amount will be included in the income of the Withdrawing Shareholders) upon the receipt of Controlled stock in exchange for their Distributing stock (section 355(a)(1)).

(8) The basis of the Controlled stock in the hands of the Withdrawing Shareholders 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)).

(9) The holding period of the Controlled stock to be received by the Withdrawing Shareholders 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)).

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 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.

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

It is important that a copy of this letter be attached to the federal income tax returns of the taxpayers involved for the taxable year in which the transaction covered by this letter is consummated.

Sincerely yours,

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Victor Penico  
Senior Counsel, Branch 1  
Office of Associate Chief Counsel (Corporate

cc: