

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200515009**

Release Date: 4/15/2005

Index Numbers: 355.00-00; 368.04-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:BO1 – PLR-146141-04

Date:

December 24, 2004

In Re:

Distributing =

Controlled 1 =

Controlled 2 =

Controlled 3 =

Controlled 4 =

Controlled 5 =

Controlled 6 =

Controlled 7 =

Controlled 8 =

Controlled 9 =

Controlled 10 =

Shareholder A =

Shareholder B =

Business C =

d =

e =

Dear :

This is in response to a letter dated August 26, 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 dated October 18 and November 15, 2004.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty 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. Moreover, no information provided by the taxpayer has been reviewed and no determination has been made regarding whether the proposed transaction: (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) 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 Code and § 1.355-2(d)), or (iii) 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)(2)(A)(ii) and § 1.355-7T).

Distributing is a fiscal year corporation engaged in Business C. Distributing has supplied information indicating that Business C has had gross receipts and operating expenses representing the active conduct of a trade of business for each of the past five years. Business C is currently being operated at e separate locations. Distributing has outstanding d shares of voting common stock, which is equally owned by Shareholder A and Shareholder B.

For what is represented to be a valid business purpose, Distributing proposes the following transaction (the "Proposed Transaction"):

- (i) Distributing will form Controlled 1, Controlled 2, Controlled 3 Controlled 4, Controlled 5, Controlled 6, Controlled 7, Controlled 8, Controlled 9, and Controlled 10. Distributing will contribute a portion of the assets and liabilities of Business C to each of Controlled 1, Controlled 2, Controlled 3 Controlled 4, Controlled 5, Controlled 6, Controlled 7, Controlled 8, Controlled 9, and Controlled 10 in exchange for all of the issued and outstanding shares of Controlled 1, Controlled 2, Controlled 3 Controlled 4, Controlled 5, Controlled 6, Controlled 7, Controlled 8, Controlled 9, and Controlled 10 stock (the "Contribution").
- (ii) Distributing will distribute all of the outstanding stock of Controlled 1, Controlled 2, Controlled 3 Controlled 4, Controlled 5, Controlled 6, Controlled 7, Controlled 8, Controlled 9, and Controlled 10 to Shareholder A and Shareholder B on a pro rata basis (the "Distribution").

After the Proposed Transaction, the corporations will share an employee who will be responsible for repairs and maintenance, and each corporation will share the costs of those services based upon the employee's labor-time attributed to that corporation.

The following representations have been made with respect to the Proposed Transaction:

(a) 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.

(b) 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.

(c) Following the Distribution, Distributing and each of Controlled 1, Controlled 2, Controlled 3, Controlled 4, Controlled 5, Controlled 6, Controlled 7, Controlled 8, Controlled 9, and Controlled 10 will continue the active conduct of its business, independently and with its separate employees, except for one shared employee.

(d) The distribution of the stock of Controlled 1, Controlled 2, Controlled 3, Controlled 4, Controlled 5, Controlled 6, Controlled 7, Controlled 8, Controlled 9, and Controlled 10 is being carried out for the following corporate business purpose: (i) to protect the value of Distributing's assets from erosion from potential future litigation. The distribution of the stock of Controlled 1, Controlled 2, Controlled 3, Controlled 4, Controlled 5, Controlled 6, Controlled 7, Controlled 8, Controlled 9, and Controlled 10 is motivated, in whole or substantial part, by this corporate business purpose.

(e) The Proposed Transaction is not used principally as a device for the distribution of the earnings and profits of Distributing, or any Controlled, or any combination of Distributing and any of the Controlled corporations.

(f) The total adjusted basis and fair market value of the assets transferred to each of Controlled 1, Controlled 2, Controlled 3, Controlled 4, Controlled 5, Controlled 6, Controlled 7, Controlled 8, Controlled 9, and Controlled 10 by Distributing in connection with the Contribution each equals or exceeds the sum of the liabilities assumed by Controlled 1, Controlled 2, Controlled 3, Controlled 4, Controlled 5, Controlled 6, Controlled 7, Controlled 8, Controlled 9, and Controlled 10, respectively, plus any liabilities to which the transferred assets are subject (as determined under § 357(d)). 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.

(g) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Proposed Transaction.

(h) No intercorporate debt will exist between Distributing and any of Controlled 1, Controlled 2, Controlled 3, Controlled 4, Controlled 5, Controlled 6, Controlled 7, Controlled 8, Controlled 9, and Controlled 10 at the time of, or subsequent to, the Distribution.

(i) Payments made in connection with all continuing transactions, if any, between Distributing and any of Controlled 1, Controlled 2, Controlled 3, Controlled 4, Controlled 5, Controlled 6, Controlled 7, Controlled 8, Controlled 9, and Controlled 10, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(j) None of the parties to the Proposed Transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(k) There is no acquisition of the stock of Distributing or Controlled 1, Controlled 2, Controlled 3 Controlled 4, Controlled 5, Controlled 6, Controlled 7, Controlled 8, Controlled 9, or Controlled 10 (including any predecessor or successor of any such corporation) that is part of a plan or series of related transactions (within the meaning of § 1.355-7T) that includes the distribution of the stock of Controlled 1, Controlled 2, Controlled 3 Controlled 4, Controlled 5, Controlled 6, Controlled 7, Controlled 8, Controlled 9, and Controlled 10.

(l) The Distribution will not be a disqualified distribution (as defined in § 355(d)(2)) because immediately after the Distribution: (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 any of Controlled 1, Controlled 2, Controlled 3 Controlled 4, Controlled 5, Controlled 6, Controlled 7, Controlled 8, Controlled 9, or Controlled 10 that will constitute a 50 percent or greater interest (defined in § 355(d)(4)) in such corporation.

Based solely on the information submitted and the representations made, we rule as follows:

(1) The Contribution, followed by the Distribution, will constitute a reorganization within the meaning of § 368(a)(1)(D) of the Code. Distributing and each of Controlled 1, Controlled 2, Controlled 3 Controlled 4, Controlled 5, Controlled 6, Controlled 7, Controlled 8, Controlled 9, and Controlled 10 will be “a party to a reorganization” within the meaning of § 368(b) of the Code.

(2) No gain or loss will be recognized by Distributing on the Contribution (§§ 357(a) and 361(a)).

(3) No gain or loss will be recognized by Controlled 1, Controlled 2, Controlled 3 Controlled 4, Controlled 5, Controlled 6, Controlled 7, Controlled 8, Controlled 9, and Controlled 10 on the Contribution (§§ 1032(a) and 357(a)).

(4) Controlled 1, Controlled 2, Controlled 3 Controlled 4, Controlled 5, Controlled 6, Controlled 7, Controlled 8, Controlled 9, and Controlled 10's basis in each asset received in the Contribution will equal the basis of such asset in the hands of Distributing immediately prior to the Proposed Transaction (§ 362(b)).

(5) Controlled 1, Controlled 2, Controlled 3 Controlled 4, Controlled 5, Controlled 6, Controlled 7, Controlled 8, Controlled 9, and Controlled 10's holding period for each asset received in the Contribution will include the period during which such asset was held by Distributing (§ 1223(2)).

(6) No gain or loss will be recognized by Distributing upon the Distribution (§ 361(c)).

(7) No gain or loss will be recognized by (and no amount will be included in the income of) Shareholder A and Shareholder B, respectively, upon their receipt of Controlled 1, Controlled 2, Controlled 3 Controlled 4, Controlled 5, Controlled 6, Controlled 7, Controlled 8, Controlled 9, and Controlled 10 stock in the Distribution (§ 355(a)).

(8) The aggregate basis of the Distributing and Controlled 1, Controlled 2, Controlled 3 Controlled 4, Controlled 5, Controlled 6, Controlled 7, Controlled 8, Controlled 9, and Controlled 10 stock in the hands of Shareholder A and Shareholder B, respectively, will equal such shareholder's basis in the Distributing stock held immediately before the Distribution, allocated between the Distributing stock and the Controlled stock in proportion to the relative fair market value of each immediately following the Distribution in accordance with § 1.358-2(a)(2) (§ 358(a)(1) and (b)).

(9) The holding period of the Controlled 1, Controlled 2, Controlled 3 Controlled 4, Controlled 5, Controlled 6, Controlled 7, Controlled 8, Controlled 9, and Controlled 10 stock received by Shareholder A and Shareholder B, respectively, will include the holding period of the Distributing stock on which the Distribution is made, provided that such Distributing stock is held as a capital asset on the date of the Distribution (§ 1223(1)).

(10) As provided in § 312(h), proper allocation of earnings and profits between Distributing and each of Controlled 1, Controlled 2, Controlled 3 Controlled 4, Controlled 5, Controlled 6, Controlled 7, Controlled 8, Controlled 9, and Controlled 10, respectively, will be made under § 1.312-10(a).

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty 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.

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code or Income Tax Regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction 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 Proposed Transaction is not used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporations or both (see § 355(a)(1)(B) and § 1.355-2(d)); and (iii) whether the Distribution and any acquisition or acquisitions of the stock of Controlled 1, Controlled 2, Controlled 3 Controlled 4, Controlled 5, Controlled 6,

Controlled 7, Controlled 8, Controlled 9, and Controlled 10 or Distributing are not 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. 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 in this office, a copy of this ruling letter will be forwarded to the taxpayer and another representative.

Sincerely yours,  
Associate Chief Counsel (Corporate)

---

Lisa A. Fuller  
Assistant to Chief, Branch 1