

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200346001**
Release Date: 11/14/2003
Index Number: 355.00-00

Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B02 – PLR-117155-03
Date:
July 16, 2003

Legend

Distributing =

Controlled =

A =

B =

X =

Y =

Z =

Dear _____ :

This is in response to your letter dated February 25, 2003, in which you requested rulings as to the federal income tax consequences of a proposed transaction. Additional information was received in a letter dated June 11, 2003. The information submitted for consideration is summarized below.

The information submitted for consideration indicates that Distributing is a State X corporation engaged in Business Y. Distributing's tax year ends on Date Z, and it

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utilizes the cash method of accounting for book and tax purposes. Distributing has outstanding voting common stock owned in equal amounts by Shareholders A & B. Controlled will be incorporated in State X as a part of the transaction. Distributing has submitted financial information indicating that Business Y, as operated by Distributing, had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Shareholders A and B disagree on a number of fundamental business matters, including the allocation of corporate resources. It is represented that the conflicts between the two equal shareholders are having an adverse effect on the day-to-day operations of Distributing. Distributing has proposed the transaction described below, which will allow Shareholder A and Shareholder B to each separately engage in Business Y, running independent enterprises according to the way each sees fit.

The Proposed Transaction is as follows:

1. Distributing will transfer to Controlled 50% of its net assets and liabilities in exchange for 100% of the outstanding stock of Controlled (the "Transfer").
2. Distributing will distribute all of its stock in Controlled to Shareholder A (the "Distribution") in exchange for all his stock of Distributing (the "Exchange").

REPRESENTATIONS

The taxpayer has made the following representations concerning the Transfer and the Distribution:

- (a) The fair market value of Controlled stock to be received by Shareholder A in the Distribution will be approximately equal to the fair market value of Distributing stock surrendered by Shareholder A in the exchange.
- (b) No part of the consideration to be distributed by Distributing will be received by Shareholder A as a creditor, employee, or in any other 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 with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

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(d) 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 Business X conducted by Distributing prior the transaction.

(e) The distribution of the stock of Controlled is carried out for the following corporate business purpose: to eliminate shareholder disputes that, if permitted to continue, would jeopardize the operation and continued success of the corporate business.

(f) Distributing is a C corporation with no plans to elect S status for itself or Controlled.

(g) There is no plan or intention by the shareholders or security holders of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in, or securities of, either Distributing or Controlled after the transaction, except for transfers by gift to family members of the transferor.

(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) The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing each equals or exceeds the liabilities assumed (as determined under § 357(d)) by Controlled. The liabilities assumed (as determined under § 357(d)) 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) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the distribution of Controlled stock.

(l) There will be no continuing transactions between Distributing and Controlled subsequent to the separation.

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

(n) No Distributing shareholder will hold, immediately after the distribution, disqualified stock within the meaning of § 355(d)(3) which constitutes a 50 percent or greater

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interest in Distributing or Controlled.

(o) 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 combined voting power of all classes of stock entitled to vote 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.

(p) The income tax liability for the taxable year in which investment credit property (including any building to which § 47(d) applies) is transferred will be adjusted pursuant to § 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 539 (1990), if applicable) to reflect an early disposition of the property.

Based solely upon the information and representations set forth above, we hold as follows:

(1) The Transfer, followed by the Distribution, will be a reorganization transaction within the meaning of § 368(a)(1)(D) of the Code. Distributing and Controlled will each be a "party to the reorganization" within the meaning of § 368(b). Treas. Reg. § 1.1361-5(b)(3), Example 4.

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

(3) No gain or loss will be recognized by Controlled upon the receipt of assets transferred from Distributing in exchange for the stock of Controlled. Section 1032(a).

(4) The basis of each of the assets received by Controlled in the transaction will equal the basis of such assets in the hands of Distributing immediately prior to the Transfers. Section 362(b).

(5) The holding period of each of the assets to be received by Controlled in the transaction will include the period during which such assets were held by Distributing. Section 1223(2).

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

(7) No gain or loss will be recognized by Shareholder A upon the Distribution. Section

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355(a)(1).

(8) The basis of the Controlled stock to be received by Shareholder A will be the same as the basis of the Distributing stock surrendered by each in exchange therefor. Section 358(a)(1).

(9) The holding period of the Controlled stock received by Shareholder A will include the holding period of the Distributing stock surrendered in exchange therefor, provided that the Distributing stock is held as a capital asset on the date of the exchange. Section 1223(1).

(10) Proper allocation of earnings and profits between Distributing and Controlled will be made under § 312(h) and Treas. Reg. § 1.312-10(a).

No opinion is expressed about the tax treatment of the proposed transaction under other provisions of the Code and regulations or about 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.

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 a copy of this letter is being sent to your authorized representatives.

Sincerely,

Edward S. Cohen

Edward S. Cohen
Chief, Branch 2
Office of Associate Chief Counsel
Corporate

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cc: