

Internal Revenue Service

Department of the Treasury

Index Number: 355.01-01

Washington, DC 20224

Number: **199932041**

Person to Contact:

Release Date: 8/13/1999

Telephone Number:

Refer Reply To:

CC:DOM:CORP:Br4 PLR-102499-99

Date:

May 19, 1999

Distributing =

Controlled =

A =

B =

C =

D =

a =

Dear :

This letter responds to your January 4, 1999 request for rulings on certain federal income tax consequences of a proposed transaction. The information submitted in that request and in later correspondence is summarized below.

Facts

Distributing wholly owns, and files a consolidated return with, Controlled. The Distributing stock is owned a percent by A and B jointly ("Family 1") and the rest by C and D jointly ("Family 2").

Financial documentation has been submitted indicating that Distributing and Controlled each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Family 1 wishes to concentrate on the business conducted by Controlled, while Family 2 wishes to concentrate on the business conducted by Distributing.

Proposed Transaction

To allow each family to go its separate way, Distributing proposes to distribute the Controlled stock to A and B in exchange for their Distributing stock (the "Distribution").

Representations

The taxpayer has made the following representations concerning the proposed transaction:

(a) The fair market value of the Controlled stock received by Family 1 will approximately equal the fair market value of the Distributing stock surrendered by Family 1 in the Distribution.

(b) No part of the consideration 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 and Controlled represents the present operations of each corporation, and there have been no substantial changes in these operations since the date of the last submitted financial statements.

(d) Following the proposed transaction, Distributing and Controlled each will continue the active conduct of its business, independently and with its own employees.

(e) The Distribution will allow Family 1 to concentrate on the business conducted by Controlled, and Family 2 to concentrate on the business conducted by Distributing. The Distribution is motivated, in whole or substantial part, by this and other corporate business purposes.

(f) There is no plan or intention by the shareholders of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any stock in Distributing or Controlled after the proposed transaction.

(g) 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 proposed transaction.

(h) 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 proposed transaction, except in the ordinary course of business.

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

(j) No income items, including accounts receivable or any other item resulting from a sale, exchange, or disposition of property, that would have resulted in income to Distributing, and no items of expense will be transferred to Controlled if Distributing has earned the right to receive the income or could claim a deduction for the expense under the accrual or similar method of accounting.

(k) No intercorporate debt will exist between Distributing and Controlled at the time of, or after, the Distribution.

(l) There will be no continuing transactions between Distributing and Controlled after the proposed transaction.

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

(n) Immediately before the Distribution, items of income, gain, loss, deduction, or credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Distributing does not have an excess loss account in its Controlled stock.

(o) Distributing is not an S corporation (within the meaning of § 1361(a)), and there is no plan or intention by either Distributing or Controlled to make an S corporation election under § 1362(a) after the proposed transaction. S

Rulings

Based solely on the information submitted and representations set forth above,

we rule as follows on the proposed transaction:

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

(2) The basis of the Controlled stock received by Family 1 will equal the basis of the Distributing stock surrendered by Family 1 in the Distribution (§ 358(a)(1)).

(3) The holding period of the Controlled stock received by Family 1 will include the holding period of the Distributing stock surrendered by Family 1 in the Distribution, provided the Distributing stock is held as a capital asset on the date of the Distribution (§ 1223(1)).

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

(5) As provided in § 312(h), proper allocation of earnings and profits between Distributing and Controlled will be made under § 1.312-10(b) of the Income Tax Regulations.

Caveat

We express no opinion about the tax treatment of the proposed transaction under any other section of the Code or 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 in the above rulings.

Procedural Matters

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

A copy of this letter must be attached to the federal income tax return of each taxpayer involved for the taxable year in which the proposed transaction is consummated.

Under a power of attorney on file in this office, a copy of this letter is being sent to the taxpayer and to the taxpayer's second-named representative.

Sincerely,

Assistant Chief Counsel (Corporate)

By: _____
Wayne T. Murray
Senior Technician/Reviewer
Branch 4