

Dear _____ :

This is in response to a letter dated December 10, 2004, submitted on behalf of Distributing, requesting rulings under section 355 and section 368 of the Internal Revenue Code (the "Code") with respect to a proposed transaction. Additional information was received in letters dated February 21, 2005, March 30, 2005, and April 25, 2005.

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. 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 Internal Revenue 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 § 1.355-7).

Distributing is a calendar year corporation engaged in Business X and Business Y. Distributing has supplied information indicating that it has had gross receipts and operating expenses representative of the active conduct of a trade or business for each business for each of the past five years. Distributing has one class of stock outstanding, owned approximately a% by Shareholder A, b% by Shareholder B, and c% by Shareholder C.

For what is represented to be a valid business purpose, the following series of transactions is proposed:

1. Distributing will form a new corporation, Controlled, and will contribute to Controlled: (1) all assets used in connection with Business Y, except the f acres of land retained by Distributing; (2) the approximate d acres of land used in Business X that will be leased to Distributing by Controlled; (3) Real Property Z; and (4) cash and accounts receivable totaling approximately \$ to make the value of the assets distributed to Controlled correspond to the value of the assets remaining with Distributing.

2. Controlled will be a cash basis corporation.

3. Distributing will distribute to Shareholder A all of its Controlled stock (the "Distribution" or "transaction") in exchange for the surrender of all of Distributing stock.

Distributing has made the following representations with respect to the proposed transaction:

- (a) The fair market value of the stock of Controlled to be received by Shareholder A will be approximately equal to the fair market value of the stock of Distributing surrendered by Shareholder A 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 of a shareholder of Distributing.
- (c) The five years of financial information submitted on behalf of Distributing is representative of Distributing's present operations, and with regard to Distributing, there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) Following the transaction, Distributing and Controlled will each continue the active conduct of its business, independently and with its separate employees.
- (e) The distribution of the stock of Controlled is for the following corporate business purpose: To alleviate disputes among the shareholders as to the future direction for growth, development and expansion of the businesses and to enable each shareholder to focus his attention to fully developing and expanding the business he is most interested in. The distribution of the stock of Controlled is motivated, in whole or substantial part, by this corporate business purpose.
- (f) There is no acquisition of stock of Distributing or Controlled (including any predecessor or successor of any such corporation) that is part of a plan or series of related transactions (within the meaning of § 1.355-7) that includes the distribution of the Controlled stock.
- (g) Controlled is not assuming any liabilities of Distributing or receiving any assets subject to liabilities from Distributing.
- (h) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Distribution.

- (i) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the distribution of the Controlled stock.
- (j) No two parties to the Distribution are investment companies as defined in Code § 368(a)(2)(F)(iii) and (iv).
- (k) The transaction is not being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (l) Proper allocation of earnings and profits between Distributing and Controlled will be made pursuant to section 312(h) of the Code and section 1.312-10(a) of the Treasury Regulations.
- (m) 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.

Based solely on the information submitted and the representations set forth above, we have concluded that:

- (1) The transfer by Distributing of part of its assets in exchange for all of the common stock of Controlled, followed by the distribution of all the Controlled stock to the Distributing shareholder, 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 Controlled stock, as described above (section 361(a)).
- (3) Controlled will recognize no gain or loss on the receipt of the assets in exchange for all the shares of Controlled (section 1032(a)).
- (4) 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)).
- (5) 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)).

- (6) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the Distributing shareholder on its receipt of Controlled stock in the Distribution (section 355(a)(1)).
- (7) The basis of the Controlled stock in the hands of the Distributing shareholder will be the same as the basis of the Distributing stock held immediately before the exchange by such shareholder (section 358(a)).
- (8) The holding period of the Controlled stock received by the Distributing shareholder will include the holding period of the Distributing stock held by such shareholder, provided that such shareholder held the Distributing stock as a capital asset on the date of the Distribution (section 1223(1)).
- (9) No gain or loss will be recognized to Distributing upon the distribution of its Controlled stock (section 361(c)).

No opinion is expressed about the tax treatment of the proposed transaction 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 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 transaction is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see, §§ 355(a)(1)(B) and 1.355-2(d));
- (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 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 taxpayer's representative.

A copy of this letter should be attached to the Federal income tax returns of the taxpayers involved for the taxable year in which the transaction covered by this ruling

PLR-166097-04

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letter is consummated.

Sincerely,

Virginia S. Voorhees

Virginia S. Voorhees
Sr. Technician Reviewer, Branch 5
Office of Associate Chief Counsel

(Corporate)

cc: