

This letter responds to your February 2, 2005 request that we supplement our letter ruling dated September 30, 2003 (PLR-116297-03) (the "Prior Ruling"). The information submitted for consideration is summarized below. Capitalized terms not defined in this ruling have the meanings assigned to them in the Prior Ruling.

The ruling contained in this letter is based upon information 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 material 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.

The Prior Ruling addresses the transfer of certain assets and liabilities by Distributing to Controlled in constructive exchange for Controlled Common Stock and the pro rata distribution of all the shares of Controlled Common Stock to holders of Distributing Common Stock (the "External Distribution"). The Prior Ruling held that the External Distribution qualified as tax free under §§ 355 and 368(a)(1)(D) of the Internal Revenue Code. The External Distribution was completed on Date E.

Supplemental Facts

On Date F, Distributing established a non-qualified deferred compensation plan (the "Distributing Plan"), which was amended effective Date G. In connection with the Distributing Plan, Distributing adopted and maintained a "rabbi trust" (the "Distributing Trust") for the purpose of holding assets until paid to Distributing Plan participants or their beneficiaries in accordance with the Distributing Plan. Pursuant to § 671, the Distributing Trust is a grantor trust, and, accordingly, any assets held by the Distributing Trust generally are treated for federal income tax purposes as owned by Distributing.

On Date E, the Distributing Trust held approximately c shares of Distributing Common Stock. In the External Distribution, the Distributing Trust received approximately d shares of Controlled stock in respect of the shares of Distributing Common Stock held by the Distributing Trust.

In connection with the External Distribution, Controlled established a separate non-qualified deferred compensation plan (the "Controlled Plan") and adopted a "rabbi trust" (the "Controlled Trust") for the purpose of holding assets until paid to Controlled Plan participants or their beneficiaries in accordance with the Controlled Plan. Immediately following the External Distribution, Distributing caused the Distributing Trust to transfer to the Controlled Trust the account balances of those participants in the Distributing Plan who became employees of Controlled and elected to have their account balances transferred to the Controlled Plan. Following this transfer to the Controlled Trust, the Distributing Trust held approximately e shares of Distributing Common Stock and approximately f shares of Controlled stock.

The Distributing employees responsible for reviewing the original request for rulings were not aware of the fact that the Distributing Trust held shares of Distributing Common Stock and/or that such shares would be participating in the External Distribution.

Between Date E and Date H, the Distributing Trust disposed of approximately g shares of Controlled stock. As soon as Distributing discovered that the ownership of Controlled stock by the Distributing Trust might constitute a deemed retention by Distributing of Controlled stock, it caused the Distributing Trust to dispose of all

remaining shares of Controlled stock held by the Distributing Trust in an open market transaction and prepared this supplemental request.

Representations

Distributing reaffirms all of the facts, representations and statements contained in the Prior Ruling as of the date of the External Distribution.

Rulings

Based solely on the information and representations submitted with the original and supplemental requests, we reaffirm the rulings and caveats set forth in the Prior Ruling and we rule that the ownership of Controlled stock by the Distributing Trust after the External Distribution did not constitute a retention by Distributing of Controlled stock in pursuance of a plan having as one of its principal purposes the avoidance of federal income tax (§ 355(a)(1)(D)(ii)).

Procedural Statements

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

Each taxpayer involved in the transaction should attach a copy of this supplemental letter to the taxpayer's federal income tax return for the taxable year in which the transaction covered by this letter is completed.

Under a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Richard K. Passales
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Corporate)

cc: