



LEGEND:

Parent =

FSub 1 =

FSub 2 =

FSub 3 =

FSub 4 =

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

FSub 11 =

Sub 12 =

FSub 13 =

Sub 14 =

FSub 15 =

Partnership =

Business A =

Business B =

Name A =

Date A =

Country A =

State A =

a =

Dear :

This letter responds to your April 27, 2005, letter requesting rulings on certain federal income tax consequences of a proposed transaction. The information provided in that letter and in later correspondence is summarized below.

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. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the 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) and § 1.355-7).

### Summary of Facts

Parent (a foreign corporation) is the common parent of a corporate group composed of various domestic and foreign corporations engaged in Business A and Business B. Parent wholly owns FSub 1, FSub 3, FSub 4, and Distributing.

Distributing is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Distributing is a holding company that conducts Business A and Business B indirectly through subsidiaries.

Distributing wholly owns Controlled, Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, Sub 8, Sub 9, Sub 10 and FSub 11. Sub 1 wholly owns Sub 12. Sub 10 wholly owns Sub 14. Sub 14 wholly owns FSub 15. FSub 11 wholly owns FSub 13.

Financial information has been received indicating that Business A (as conducted by Controlled) and Business B (as conducted by Sub 10) has each had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

### **Proposed Transaction**

For what are represented to be valid business purposes, Distributing has proposed the following transaction to separate its Business A from its Business B:

(i) Distributing will contribute all of the outstanding stock of Sub 7 and Sub 9 to Sub 8 in constructive exchange for Sub 8 stock.

(ii) Sub 7 and Sub 9 will convert from State A corporations to State A limited liability companies. Each of Sub 7 and Sub 9 will thus be disregarded as an entity separate from Sub 8. Sub 7 will change its name to Name A. Sub 7, Sub 8, and Sub 9 will together be referred to as the "Service Companies" hereinafter.

(iii) FSub 13 will declare and pay a cash dividend to FSub 11 of up to approximately \$a, and FSub 11 will then declare and pay a cash dividend of approximately the same amount to Distributing.

(iv) Distributing will contribute all of the outstanding stock of FSub 11 to Sub 10 in constructive exchange for Sub 10 stock.

(v) Controlled will pay an intercompany payable that it owes to Distributing using cash, and Sub 1 may merge downstream into Sub 12.

(vi) Distributing will contribute all of the outstanding stock of Sub 1 (or Sub 12 if Sub 1 merges downstream into Sub 12), Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, and Sub 8 and any intercompany receivables and payables related to these corporations to Controlled in constructive exchange for Controlled stock (the "Contribution").

(vii) After steps (i) - (v) and the Contribution, Distributing will distribute all of the outstanding stock of Controlled to Parent (the "Distribution").

(viii) Parent will contribute all of the outstanding stock of Distributing and the other Business B companies to FSub 1 in exchange for additional FSub 1 stock.

(ix) Parent will form FSub 2 as a wholly owned subsidiary and contribute all of the outstanding stock of FSub 1 to FSub 2 in exchange for additional FSub 2 stock.

(x) Parent will contribute all of the outstanding stock of FSub 2 to FSub 3 in exchange for additional FSub 3 stock.

(xi) Following step (x), Parent may contribute all of the outstanding stock of FSub 3 to FSub 4 in exchange for additional FSub 4 stock.

(xii) Sub 10 may contribute all of the outstanding stock of FSub 11 to Sub 14 in constructive exchange for Sub 14 stock.

(xiii) Sub 14 may contribute all of the outstanding stock of FSub 15 to FSub 11 in constructive exchange for FSub 11 stock.

(xiv) FSub 15 may merge with or be dissolved into FSub 13 pursuant to Country A law.

### **Representations**

The taxpayer has made the following representations regarding the Contribution and the Distribution:

(a) Any indebtedness owed by Controlled to Distributing after the Distribution will not constitute stock or securities.

(b) No part of the consideration to be distributed by Distributing will be received by Parent 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 Sub 10 is representative of Sub 10's present operations, and with regard to Sub 10, there have been no substantial operational changes since the date of the last financial statements submitted.

(d) The five years of financial information submitted on behalf of Controlled is representative of Controlled's present operations, and with regard to Controlled, there have been no substantial operational changes since the date of the last financial statements submitted, except for the sale of the interest in Partnership in Date A.

(e) Immediately after the Distribution, at least 90 percent of the fair market value of the gross assets of Distributing will consist of the stock and securities of controlled corporations that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(f) Following the Distribution, Distributing and Controlled will each continue the active conduct of its business, independently and with their own separate employees, although certain services will be provided by the Service Companies to Distributing.

(g) The Distribution is carried out for the corporate business purposes of fit and focus and risk reduction. The Distribution is motivated, in whole or substantial part, by one or more of these corporate business purposes.

(h) The Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing, Controlled, or both.

(i) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing in the Contribution will each equal or exceed the sum of the liabilities assumed (as determined under § 357(d)) by Controlled.

(j) The liabilities assumed (as determined under § 357(d)) by Controlled in the Contribution will have been incurred in the ordinary course of business and will be associated with the assets transferred.

(k) To the extent any transfer in the proposed transaction is an early disposition of property for which an investment credit has been (or will be) claimed under § 46, the income tax liability for the taxable year in which the 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, 536 (1990), if applicable) to reflect the early disposition of the property.

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

(m) Immediately before the Distribution, any items of income, gain, loss, deduction, and 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). Further, Distributing's excess loss account, if any, with respect to the Controlled stock will be included in income immediately before the Distribution (see § 1.1502-19).

(n) Payments made in connection with all continuing transactions 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.

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

(p) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(q) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(r) The Distribution is not part of a plan or a series of related transactions (within the meaning of § 1.355-7T) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).

(s) Neither Distributing nor Controlled was a United States real property holding corporation (as defined in § 897(c)(2)) at any time during the five-year period ending on the Distribution date, and neither Distributing nor Controlled will be a United States real property holding corporation immediately after the Distribution.

(t) The total fair market value of the assets transferred to Controlled by Distributing in the Contribution will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled in connection with the exchange, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.

(u) The total fair market value of the assets transferred to Controlled by Distributing in the Contribution will equal or exceed the aggregate adjusted basis of the transferred assets.

### **Rulings**

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

(1) The Contribution, followed by the Distribution, will qualify as a reorganization under § 368(a)(1)(D). Distributing and Controlled will each be “a party to a reorganization” under § 368(b).

(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 on the Contribution (§ 1032(a)).

(4) The basis of each asset received by Controlled in the Contribution will equal the basis of that asset in the hands of Distributing immediately before its transfer (§ 362(b)).

(5) The holding period of each asset received by Controlled in the Contribution will include the period during which Distributing held that asset (§ 1223(2)).

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

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

(8) The aggregate basis of the Distributing stock and the Controlled stock in the hands of Parent immediately after the Distribution will equal the aggregate basis of the Distributing stock held by Parent immediately before the Distribution, allocated between the stock of Distributing and Controlled in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§§ 358(b)(2) and 358(c)).

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

(10) Earnings and profits will be allocated between Distributing and Controlled in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33.

### **Caveats**

We express no opinion about the tax treatment of the proposed transaction described above under other provisions of the Code and regulations or the tax treatment of any condition 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 Distribution is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both; (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); and (iv) steps (i) through (v) and steps (viii) through (xiv) of the proposed transaction.

### **Procedural Statements**

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

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

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

Sincerely,

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