

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:CORP:B05-PLR107067-00
Date:
July 26, 2000

In re:

Distributing =

Controlled =

Business A =

Location A =

Location B =

Shareholder A =

Shareholder B =

Shareholder C =

Shareholder D =

Shareholder E =

Shareholder F =

a =

b =

c =

d =

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e =f =g =h =i =z =

We respond to your March 21, 2000 request for rulings on certain federal income tax consequences of a proposed transaction. The information submitted in your request and in subsequent correspondence is summarized below.

Distributing is an accrual basis corporation that is engaged in Business A in two separate geographic locations, Location A and Location B. Distributing has outstanding z shares of a single class of voting common stock, which is owned by Shareholder A (a percent), Shareholder B (b percent), Shareholder C (c percent), Shareholder D (d percent), Shareholder E (e percent), and Shareholder F (f percent).

Financial information has been received indicating that Distributing has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past 5 years.

Over the last several years, the focus of management in each of the two locations has changed. By separating Distributing's business along geographic lines, it is anticipated that the two management groups will be free to operate their lines of business in accordance with their separate management philosophies. Accordingly, it is proposed that Distributing transfer all assets associated with Location B to Controlled. Distributing will distribute to Shareholder D, Shareholder E, and Shareholder F all of the outstanding shares of Controlled in exchange for their stock in Distributing. Shareholder D will own g percent, Shareholder E will own h percent, and Shareholder F will own i percent of Controlled.

The Representations

In connection with the proposed transaction, the taxpayer has represented that:

- (a) The fair market value of the stock of Controlled to be received by each shareholder will approximately equal the fair market value of the Distributing stock surrendered by each shareholder in the exchange.

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- (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 the corporation.
- (c) The 5 years of financial information submitted on behalf of Distributing is representative of the corporation's present operations, and with regard to such corporation, 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 carried out for the following corporate business purpose: To allow the management group of each location to focus on its respective lines of business and to develop these lines as it sees fit. The distribution of the stock of Controlled is motivated, in whole or substantial part, by this corporate business purpose.
- (f) Distributing is not an S corporation and there is no plan or intention by Distributing or Controlled to make an S corporation election pursuant to § 1362(a) of the Internal Revenue Code.
- (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.
- (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 section 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 equals or exceeds the sum of the liabilities assumed (as determined under § 357(d)) by Controlled.
- (k) The liabilities assumed (as determined under § 357(d)) in the transaction were incurred in the ordinary course of business and are associated with

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the assets being transferred.

- (l) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the distribution of the stock of Controlled.
- (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. There are no continuing, planned or intended transactions between Distributing and Controlled following the distribution.
- (n) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (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 total combined voting power of all classes of stock of Distributing or Controlled or stock possessing 50 percent or more of the total value of all classes of stock of Distributing or Controlled.

Rulings

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

- (1) The transfer by Distributing to Controlled of the Location B assets, in exchange for the stock of Controlled and the assumption of liabilities, followed by the distribution of all of the stock of Controlled to Shareholder D, Shareholder E, and Shareholder F in exchange for all of the stock of Distributing owned by such shareholders will qualify as a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled will each be a "party to a reorganization" within the meaning of § 368(b).
- (2) No gain or loss will be recognized by Distributing upon the transfer of the Location B assets to Controlled solely in exchange for stock of Controlled and the assumption of liabilities (§§ 361(a) and 357(a)).
- (3) No gain or loss will be recognized by Controlled upon the receipt of the Location B assets in exchange for the stock of Controlled (§ 1032).
- (4) No gain or loss will be recognized by Distributing upon the distribution of all of the stock of Controlled to Shareholder D, Shareholder E, and Shareholder F (§ 361(c)(1)).

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- (5) The basis of the Location B assets received by Controlled will be the same as the basis of such assets in the hands of Distributing immediately before their transfer to Controlled (§ 362(b)).
- (6) The holding period of the Location B assets transferred to Controlled will include the period during which such assets were held by Distributing (§ 1223(2)).
- (7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Shareholder D, Shareholder E, or Shareholder F upon receipt of the Controlled stock in exchange for their Distributing stock (§ 355(a)(1)).
- (8) The basis of the Controlled stock in the hands of Shareholder D, Shareholder E, and Shareholder F will be the same as the basis of the Distributing stock surrendered by each of them in exchange therefor (§ 358(a)(1)).
- (9) The holding period of the Controlled stock received by Shareholder D, Shareholder E, and Shareholder F will include the holding period of the Distributing stock surrendered by each of them, provided such stock is held as a capital asset on the date of the transaction (§ 1223(1)).
- (10) As provided in § 312(h), following distribution of the stock of Controlled, proper allocation of earnings and profits will be made among Distributing and Controlled in accordance with § 1.312-10(a) of the Income Tax Regulations.

Caveats

We express no opinion 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.

Procedural Matters

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

It is important that a copy of this letter be attached to the federal income tax returns of the taxpayers involved for the taxable year in which the transaction covered by this letter is consummated.

Pursuant to the power of attorney on file in this office, a copy of this letter has

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been sent to the taxpayer's authorized representative.

Sincerely yours,
Associate Chief Counsel (Corporate)

By: *Filiz A. Serbes*

Assistant to the Chief, Branch 5