

Internal Revenue Service

Number: **200747010**
Release Date: 11/23/2007

Index Number: 355.00-00, 355.01-00,
368.00-00, 368.04-00,
368.06-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B04
PLR-120628-07

Date:
August 24, 2007

LEGEND:

Parent =

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Spinco =

Newco =

State A =

A =

Date 1 =

Country X =

Business A =

Business B =

Dear :

This letter responds to your April 26, 2007 letter requesting rulings on certain federal income tax consequences of a series of proposed transactions. The information submitted 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 distribution: (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 ("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 State A corporation, is a holding company and the common parent of a consolidated group of corporations that file a consolidated federal income tax return. Parent, through its subsidiaries, is engaged in two businesses, Business A and Business B.

Parent wholly owns each of Sub 1 and Sub 2. Sub 1 owns the issued and outstanding voting stock of Sub 3 and Parent owns the issued and outstanding nonvoting stock of Sub 3. Sub 3 wholly owns Distributing. Distributing wholly owns Controlled and is engaged in Business A. Controlled is engaged in Business B. Parent has made elections under § 1504(d) to treat Distributing and Controlled as domestic corporations for federal income tax purposes and as members of its consolidated group.

Parent seeks to restructure its business by _____, removing Controlled from the oversight of Distributing's board of directors and removing Controlled from certain additional regulatory burdens associated with its operations in Country X. After the proposed transaction set forth in steps (i) through (x) below, the parent group intends to engage in certain additional transactions that are not the subject of this ruling request.

Financial information has been submitted indicating that Business A (as conducted by Distributing) and Business B (as conducted by 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.

Proposed Transaction

For what is represented to be a valid business purpose, Distributing has proposed the following partially completed and proposed transaction (the "Proposed Transaction").

- (i) On Date 1, Sub 3 formed Spinco as a Country X corporation.
- (ii) Distributing will create a new series of preferred stock (the "Distributing Series 1 Preferred Stock") with a total of A authorized shares. The Distributing Series 1 Preferred stock will be redeemable with cash or by issuance of a non-interest bearing promissory note for an amount equal to the aggregate fair market value of the Controlled common stock owned by Distributing plus the amount of any declared but unpaid dividends on the redemption date.
- (iii) Distributing will declare and pay to Sub 3 a stock dividend in the form of A shares of Distributing Series 1 Preferred Stock. The aggregate fair market value of the Distributing Series 1 Preferred Stock will be equal to the

- aggregate fair market value of the Controlled common stock owned by Distributing.
- (iv) Sub 3 will transfer the Distributing Series 1 Preferred Stock to Spinco in exchange for A shares of Spinco common stock.
 - (v) Distributing will transfer to Spinco all of the Controlled common stock in exchange for A shares of Spinco Class A Preferred Stock.
 - (vi) Distributing will redeem from Spinco all of the Distributing Series 1 Preferred Stock by issuing a non-interest bearing demand promissory note ("Note 1") with a principal amount equal to the aggregate fair market value of the Distributing Series 1 Preferred Stock.
 - (vii) Spinco will redeem from Distributing all of the Spinco Class A Preferred Stock by issuing to Distributing a non-interest bearing demand promissory note ("Note 2") with a principal amount equal to the aggregate fair market value of the Spinco Class A Preferred Stock.
 - (viii) Note 1 and Note 2 will be offset and cancelled simultaneously.
 - (ix) In connection with the Distribution, Distributing and Controlled will enter into certain continuing transactions including an expense sharing agreement for human resource services, financial services, information technology and administration services. Steps (i) through (ix) (the "Distribution").
 - (x) Spinco and Controlled will amalgamate under the laws of Country X (the "Amalgamation"). The Amalgamation will result in the combination of Spinco and Controlled into one Country X corporation ("Newco").

Representations

The taxpayer makes the following representations regarding the Distribution:

- (a) Distributing, Controlled and Sub 3 each will pay their own expenses, if any, incurred in connection with the Distribution.
- (b) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more person will acquire, directly or indirectly, stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4) in either Distributing or Controlled (including any predecessor or successor of any such corporation).
- (c) Except for certain continuing transactions as set forth in step (ix) above and for debt incurred in the ordinary course of business, no intercorporate debt will exist

between Distributing and Controlled at the time of, or subsequent to, the Distribution. Any such indebtedness will not constitute stock or securities.

(d) No part of the consideration to be distributed by Distributing in the Distribution will be received by Sub 3 as a creditor, employee, or in any capacity other than that of a Distributing shareholder.

(e) No person will hold a 50-percent or greater interest in the stock of Distributing or Controlled, after the Distribution, within the meaning of § 355(g), who did not hold such an interest immediately before the transaction.

(f) The five years of financial information submitted on behalf of Distributing is representative of its present operations, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(g) The five years of financial information submitted on behalf of Controlled is representative of its present operations, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(h) Following the Distribution, Distributing and Controlled will each continue the active conduct of its respective business independently and with its separate employees, except as set forth in step (ix) above.

(i) The Distribution is being carried out for the following corporate business purposes:

, to remove Controlled from the oversight of Distributing's board of directors and to remove Controlled from certain additional regulatory burdens associated with its operations in Country X. The Distribution is motivated, in whole or substantial part, by one or more of these Corporate Business Purposes.

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

(k) 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.

(l) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying the aggregation rules of § 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.

(m) 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.

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

(o) Immediately before the Distribution, 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 its shares of Controlled common stock will be included in income immediately before the Distribution (see § 1.1502-19).

The taxpayer makes the following representations regarding the Amalgamation:

(p) Immediately prior to the Amalgamation, Spinco will be engaged solely in activities related to the Distribution. Spinco, neither has nor will have any assets, liabilities, tax attributes, or business activities other than the nominal capital required for Spinco's formation under Country X law, the activities related to managing such nominal capital, and the assets and activities necessary to facilitate the Distribution.

(q) The fair market value of the Newco common stock will be approximately equal to the fair market value of the Controlled common stock surrendered in the exchange.

(r) Immediately following the consummation of the Amalgamation, Sub 3 will own all of the outstanding Newco common stock and will own such stock solely by reason of its deemed ownership of the Controlled common stock immediately prior to the Amalgamation.

(s) Immediately following the consummation of step (x) above, Newco will possess the same assets and liabilities as those possessed by Controlled immediately prior to the Amalgamation.

(t) At the time of the transaction, Controlled will not have any outstanding warrants, options, convertible securities or any other type of right pursuant to which any person could acquire stock in Controlled.

(u) The liabilities of Controlled assumed by Newco plus the liabilities, if any, to which the transferred assets are subject, were incurred by Controlled in the ordinary course of its business and are associated with the assets transferred.

(v) Controlled is not under the jurisdiction of a court in a title 11 or similar case within the meaning of § 368(a)(3)(A).

(w) Each of Sub 3 and Controlled will pay its own expenses, if any, incurred in connection with the Amalgamation.

Rulings

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

(1) For federal income tax purposes, steps (i) through (ix) will be treated as if Distributing distributed all of the stock of Controlled to Sub 3 (see Rev. Rul. 83-142, 1983-2 C.B. 68; Rev. Rul. 77-191, 1977-1 C.B. 94; Rev. Rul. 73-427, 1973-2 C.B. 301; and Rev. Rul. 67-448, 1967-2 C.B. 144).

(2) No gain or loss will be recognized by Distributing on the distribution of its stock in Controlled to Sub 3 (§355(c)(1)).

(3) No gain or loss will be recognized by (and no amount will be includible in the income of) Sub 3 upon the receipt of the Controlled stock in the Distribution. (§ 355(a)(1)).

(4) The holding period of the Controlled stock received by Sub 3 will include the holding period of the Distributing stock on which the distribution is made, provided that such Distributing stock is held as a capital asset on the date of the Distribution (§ 1223(1)).

(5) Earnings and profits will be allocated between Distributing and Controlled in accordance with § 312(h), § 1.312-10(b) and § 1.1502-33(f)(2).

Other Rulings

(6) For federal income tax purposes, the Amalgamation will be treated as a transfer by Controlled of all of its assets to Newco in exchange for Newco stock and the

assumption by Newco of all of the liabilities of Controlled, followed by the distribution of the Newco stock received by Controlled to Sub 3 in complete dissolution of Controlled. The transaction will qualify as a reorganization within the meaning of § 368(a)(1)(F). Controlled and Newco will each be a 'party to a reorganization' within the meaning of § 368(b) (Rev. Rul. 96-29, 1996-1 C.B. 50).

(7) No gain or loss will be recognized by Controlled upon the transfer of its assets to Newco in exchange for Newco stock and Newco's assumption of Controlled's liabilities in the Amalgamation (§§ 361(a) and 357(a)).

(8) No gain or loss will be recognized by Newco upon the receipt of Controlled's assets in exchange for Newco stock (§ 1032(a)).

(9) No gain or loss will be recognized by Sub 3 upon its exchange of Controlled stock for Newco stock in the Amalgamation (§ 354(a)(1)).

(10) The basis of Controlled's assets acquired by Newco will be the same as Controlled's basis in such assets immediately prior to the Amalgamation (§ 362(b)).

(11) The holding period of Controlled's assets acquired by Newco will include the periods during which the assets were held by Controlled (§ 1223(2)).

(12) The basis of the Newco stock received by Sub 3 will be the same as the basis of the Controlled stock exchanged therefore, allocated in the manner described in § 1.358-2.

(13) The holding period of the Newco stock received by Sub 3 will include the holding period of the Controlled stock exchanged therefore, provided that the Controlled shares are held as capital assets on the date of the Amalgamation (§ 1223(1)).

(14) For purposes of § 381, Newco will be treated as Controlled would have been treated if there had been no reorganization. The taxable year of Controlled will not end on the date of the transfer because of the transfer. The tax attributes of Controlled enumerated in § 381(c) shall be taken into account by Newco as if there had been no reorganization (§ 381 and § 1.381(b)-1(a)(2)).

Caveats

Except as specifically set forth above, we express no opinion concerning the tax consequences of the Proposed Transaction under any other provision of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Distribution and the Amalgamation that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding whether the Distribution: (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) and § 1.355-2(d)), (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) and, (iv) no opinion is expressed regarding the tax treatment of any restructuring or other transaction that occurs after the Amalgamation.

In addition, no opinion is expressed as to the validity of the § 1504(d) elections made with respect to Distributing and Controlled or whether Distributing and Controlled are properly classified as domestic corporations for federal income tax purposes. In the event that the § 1504(d) elections are not valid, we express no opinion as to the applicability of the international provisions of the Code to the Proposed Transaction, including § 367(a); § 367(b) and § 1.367(b)-5; § 1248(f) and Notice 87-64, 1987-2 C.B. 375; §§ 897 and 1445; and §§ 1291 through 1298. Furthermore, we express no opinion as to the application of § 1503(d) to any dual resident corporation that may be involved in a putative triggering event in connection with the Proposed Transaction.

Procedural Statements

This ruling is directed only to the taxpayer 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 any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling. Pursuant to a power of attorney on file with this office, a copy of this letter will be sent to your authorized representative.

Sincerely,

Richard K. Passales

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