Internal Revenue Service

Department of the Treasury
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Date:
February 26, 2009

TY:

Legend

Distributing =

Controlled =

Holding LP =

Holding GP =

DRE 1 =

DRE 2 =

DRE 3 =

LP 1 =

LP 2 =

LP 3 =

LP 4 =

LP 5 =

Other Controlled Shareholders =

Manager =

Company 1 =

Company 2 =

Finance Company 1 =

Finance Company 2 =

Finance Company 3 =

Investor 1 =

Investor 2 =

New Holding LP =

New Holding GP =

New Holdco 1 =

New Holdco 2 =

New Holdco 3 =

New Holdco 4 =

New Holdco 5 =

New Holdco 6 =

Business A =

Date a =

Date b =

Date c =

a% =

b% =

c% =

d% =

e% =

f% =

g% =

h% =

i% =

j% =

k% =

$l =

$m =

$n =

$o =

p% =

q% =

r% =

s% =

t% =

u% =

v =

w =

x =

y =

z =

aa% =

bb =

cc =

dd =

ee =

ff =

gg% =

Dear :

This letter responds to your July 22, 2008 letter requesting that we supplement our letter rulings dated November 7, 2007 (PLR 107342-07; PLR 107326-07) and December 3, 2007 (PLR 151860-07; PLR 151861-07) (the "Prior Rulings"). The information submitted for consideration in this supplemental request is summarized below. Capitalized terms not defined in this ruling have the meanings assigned to them in the Prior Rulings.

The ruling contained in this letter is based on facts and representations submitted by the taxpayers and accompanied by penalty of perjury statements executed by the appropriate parties. This office has not verified any of the materials submitted in support of the request for a ruling. 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, and has not made any determination, regarding: (i) whether Internal Distribution 1, Internal Distribution 2, and the Share Exchange satisfy the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) whether the Proposed Transactions are being 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) whether Internal Distribution 1, Internal Distribution 2, or the Share Exchange are part of a plan (or series of related transactions) pursuant to which one or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing or controlled corporations (see § 355(e) and § 1.355-7).

The Prior Rulings address certain Federal income tax consequences of certain transactions under sections 355 and 368 of the Internal Revenue Code, and other Code provisions. Except as modified below, the representations and caveats set forth in the Prior Rulings remain in effect for purposes of this supplemental ruling letter.

Summary of Supplemental Facts

Distributing is a publicly traded holding company with a single class of stock outstanding, voting common stock. Distributing is the common parent of an affiliated group of corporations that files a consolidated Federal income tax return.

From the completion of the Share Exchange on Date a until the time of the Combination (described below), Controlled was the common parent corporation of an affiliated group of corporations that filed a consolidated Federal income tax return. Controlled is a holding company with a single class of stock outstanding, voting common stock. Controlled, through its subsidiaries, is engaged in Business A. At the time of the Controlled Contribution (described below), the stock in Controlled was owned as follows: LP1, through a disregarded entity, owned approximately p% of the stock; LP2, through a disregarded entity, owned approximately q% of the stock; LP3, through a disregarded entity, owned approximately r% of the stock; and the Other Controlled Shareholders owned the remaining approximately s% of the stock. At the time of the Holding Contribution (described below), New Holding LP owned, directly or indirectly, all the interests in Holding LP, a disregarded entity, and Holding LP directly owned all of the stock in Company 1, engaged in Business A. The limited partner interests in New Holding LP, entitled to an aggregate of a% of the capital and profits of New Holding LP, were owned b% by LP 4, c% by LP 5, d% by Manager, e% by Investor 1 and f% by Investor 2 and certain current and former employees of Holding LP and its subsidiaries. The general partner interest in New Holding LP, entitled to g% of the capital and profits of New Holding LP, was owned by New Holding GP. The limited liability company interests in New Holding GP, entitled to all of the capital and profits of New Holding GP, were owned h% by LP 4, i% by LP 5, j% by Manager and k% by Investor 1.[1]

[1] On or about Date b and Date c, Holding LP, which had also owned all the stock in Company 2, distributed the stock in Company 2 to New Holding LP.

On Date a, Distributing distributed all of the stock in Controlled to DRE 1, DRE 2 and DRE 3, disregarded wholly-owned subsidiaries of LP 1, LP 2 and LP 3, respectively, and to the Other Controlled Shareholders, in exchange for Distributing stock, in the Share Exchange. In connection with the Proposed Transactions, Distributing, LP 1, LP 2, and LP 3 received the Prior Rulings, to the effect that, among other things, the Contribution (as defined in the Prior Rulings), together with the Share Exchange, would qualify as a reorganization under § 368(a)(1)(D). See PLR 107326-07; PLR 107342-07; PLR 151860-07; PLR 151861-07.

Supplemental Transactions

On Date b and Date c, subsequent to the issuance of the Prior Rulings and as part of a single plan of combination, the taxpayers completed the following transactions ("Combination"):

(i) New Holding LP contributed all of the limited partner interests in Holding LP and all of the limited liability company interests in Holding GP, both disregarded entities, to Finance Company 1, a newly-formed corporation and a direct wholly-owned subsidiary of New Holding LP. Finance Company 1, in turn, contributed such interests to Finance Company 2, a newly-formed corporation and a direct wholly-owned subsidiary of Finance Company 1. Finance Company 2, in turn, contributed such interests to Finance Company 3, a newly-formed corporation and a direct wholly-owned subsidiary of Finance Company 2.

(ii) New Holding LP contributed all of the stock of Finance Company 1 to New Holdco 1, a newly-formed corporation, solely in exchange for t% of the common stock of New Holdco 1 (the "Holding Contribution").[2]

(iii) Concurrently, the shareholders of Controlled contributed all of the stock of Controlled to New Holdco 1 solely in exchange for u% in the aggregate of the common stock of New Holdco 1 (the "Controlled Contribution"). The Controlled Contribution together with the Holding Contribution and the LP 5 Equity Contribution (as defined below) are referred to as the "New Holdco 1 Contributions." In the case of LP 1, LP 2 and LP 3, the Controlled Contribution took the form of a contribution by the applicable LP of all of the interests in its disregarded holding company that owns stock of Controlled; for example, LP 1 contributed to New Holdco 1 all of the interests in DRE 1.

[2] A committee of significant investors in each of LP 1, LP 2, LP 3, LP 4 and LP 5 (each, an "Investment Review Committee") has approved a valuation of $l for the aggregate outstanding equity interests of Holding LP, and has further approved an allocation of $m to the outstanding stock of Company 1 and $n to the outstanding stock of Company 2. Each Investment Review Committee also has approved a valuation of $o for the outstanding stock of Controlled.

(iv) Immediately after the New Holdco 1 Contributions, New Holdco 1 contributed all of the property that it received in the New Holdco 1 Contributions to New Holdco 2, a newly-formed corporation and a direct wholly-owned subsidiary of New Holdco 1. New Holdco 2, in turn, contributed such property to New Holdco 3, a newly-formed corporation and a direct wholly-owned subsidiary of New Holdco 2.

(v) Immediately thereafter, New Holdco 3 contributed all of the stock of Controlled that it owned directly, and all of the interests in DRE 1, DRE 2 and DRE 3, to New Holdco 4, a newly-formed corporation and a direct wholly-owned subsidiary of New Holdco 3. New Holdco 4, in turn, contributed all such interests to New Holdco 5, a newly-formed corporation and a direct wholly-owned subsidiary of New Holdco 4. New Holdco 5 contributed all such interests to its wholly-owned disregarded subsidiary, New Holdco 6.

(vi) At the closing of the Combination, Finance Company 3 borrowed approximately $v from unrelated third party banks under a Credit Agreement, dated Date b, by and among Finance Company 3, as borrower, and the several lenders from time to time party thereto (the “New Bridge Debt”). The New Bridge Debt has a term of w days, subject to a possible extension of up to one year in the case of a portion of the New Bridge Debt, a variable interest rate based on the Prime Rate or the Eurodollar rate and is unsecured. LP 2 and LP 4 each provided a guarantee of the New Bridge Debt, in the maximum amount of $x million and $y million, respectively.

(vii) In addition, Finance Company 3 issued $z in principal amount of aa% subordinated notes to LP 5 (the “New LP 5 Notes”). In connection with the issuance of the New LP 5 Notes, LP 5 made an equity contribution of $bb to New Holdco 1 in exchange for cc% of the common stock in New Holdco 1 (the “LP 5 Equity Contribution”).

(viii) The proceeds of the New Bridge Debt and the New LP 5 Notes were used as follows: (a) $dd was loaned by Finance Company 3 to a wholly-owned indirect subsidiary, through an intercompany loan to repay existing indebtedness, (b) $ee was placed by Finance Company 3 in an interest-bearing account that is intended to secure the payment of interest on the New Bridge Debt and (c) the remaining amounts were used to pay fees and expenses of the parties and the lenders.

(ix) In connection with the closing of the Combination, New Holdco 1 adopted a Stockholders Agreement, to which LP 1, LP 2, LP 3, LP 5 (in respect of its direct holding in New Holdco 1), New Holding LP and the other direct holders of stock in New Holdco 1 are parties. In addition, LP 4, LP 5, Manager and Investor 1 are parties to the Stockholders Agreement, substantially as if each held directly the percentage of the stock of New Holdco 1 held by each through New Holding LP. Under the Stockholders Agreement, the Board of Directors of New Holdco 1 consists of one director designated by each of LP 1, LP 2, LP 3, LP 4 and LP 5 (each, an “LP”, and collectively, the “LPs”) (five directors), ff directors designated by Investor 1 and one

additional director who is a member of management and who is designated by the LPs. On any matter considered by the Board, each of the five directors designated by an LP will be entitled to cast votes representing a percentage of the total voting power of the Board equal to the percentage share of the stock of New Holdco 1 owned at the time, directly or indirectly, by the LP designating that director. (For this purpose, LP5 will take into account its acquisition of cc% of the shares in New Holdco 1.) On any matter considered by the Board, the directors designated by Investor 1 will be entitled to cast votes in the aggregate representing a percentage of the total voting power of the Board equal to the percentage share of the stock of New Holdco 1 owned at the time, directly or indirectly, by Investor 1. The remaining voting power of the Board, representing only approximately gg%, is held by the management director.

(x) In connection with the Combination, New Holdco 1 adopted a stock option plan (the "Option Plan"). The Option Plan provides for the grant of nonqualified options to acquire the common stock of New Holdco 1 ("Options"), on customary terms and conditions, to employees of, or other service providers to, New Holdco 1 and its subsidiaries ("Grantees"), in connection with the Grantee's performance of services as an employee, director or independent contractor of or to New Holdco 1 and its subsidiaries. In each case, the Option will be nontransferable within the meaning of § 1.83-3(d), the Option will not have a readily ascertainable fair market value, as defined in § 1.83-7(b), and the acquisition of stock, if any, by the Grantee on the exercise of the Option will be subject to § 83. In each case, the stock acquired by a Grantee on the exercise of an Option will not be excessive by reference to the services performed by the Grantee. Apart from the potential effect of the coordinating group rules of § 1.355-7(h)(4), no Grantee will be a controlling shareholder of Controlled, within the meaning of § 1.355-7(h)(3), or a ten percent shareholder of Controlled, within the meaning of § 1.355-(h)(14). No Option will be issued, transferred or listed with a principal purpose to avoid the application of § 355(e).

(xi) Certain of the Grantees, who are senior employees of Company 1, were limited partners in Holding LP, and became limited partners in New Holding LP as a result of the Combination. These Grantees were parties to the limited partnership agreement of Holding LP and are subject to the limited partnership agreement of New Holding LP, to each of which LP 4 and LP 5 also are parties.

(xii) No Grantee is a party to the Stockholders Agreement, in his capacity as a Grantee or otherwise.

(xiii) Each Option will be exercisable (for common stock of New Holdco 1) only at and after the time of an initial public offering of the common stock of New Holdco 1. If, prior to the occurrence of an initial public offering, there is a sale of New Holdco 1, then the Option, if then vested, will be converted into a right to receive an amount in cash equal to the difference between the fair market value of the common stock for which the Option is exercisable and the strike price of the Option. If, prior to the occurrence of an initial public offering, the employment of a Grantee with New Holdco 1

and its subsidiaries terminates for any reason, then the Option, if then vested, will be converted into a right to receive an amount in cash equal to the difference between the fair market value of the common stock for which the Option is exercisable and the strike price of the Option.

(xiv) At the time of an initial public offering of the stock of New Holdco 1, New Holding LP will distribute to any Grantee that is a partner in New Holding LP his proportionate share of the stock of New Holdco 1 held by New Holding LP, and the Stockholder's Agreement will be terminated.

(xv) After completion of the Combination, and only if the taxpayers receive certain additional rulings under § 355, the taxpayers contemplate that they would transfer Company 2 to New Holdco 1.

Supplemental Representations

Distributing, Controlled, New Holding LP, and the LPs, as applicable, make the following representations:

1. Except as described below, no acquisition of stock of Distributing or Controlled, of Sub 2 or Company, or of Sub 1 or Company (including any predecessor or successor of each such corporation) occurred or will occur pursuant to a plan (or series of related transactions), within the meaning of § 355(e)(2)(A)(ii), that includes the Share Exchange, Internal Distribution 1, or Internal Distribution 2, respectively.

2. Each of the following acquisitions of stock of Controlled (including any predecessor or successor) is or may be part of a plan or series of related transactions (within the meaning of § 1.355-7) that includes the Share Exchange, Internal Distribution 1, or Internal Distribution 2: The indirect acquisitions of stock in Controlled by New Holding LP, the partners of New Holding LP, and LP 5 resulting from the Combination, and, if it occurs, the proposed transfer of Company 2 to New Holdco1. Taking all of these acquisitions into account, 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) will not be acquired by any person or persons.

3. New Holding LP and the LPs contemplate that they may ultimately exit their position in New Holdco 1 through an initial public offering of the stock of New Holdco 1. However, there has been no agreement, understanding, arrangement or substantial negotiations, within the meaning of § 1.355-7(h)(1), concerning any such initial public offering.

Supplemental Ruling

Based on the information and representations set forth herein and submitted with the Prior Rulings, we rule as follows:

The Combination will not affect the continuing validity of the Prior Rulings.

Caveats

No opinion is expressed about the tax treatment of the Combination or the Proposed Transactions in the Prior Rulings 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 Combination or the Proposed Transactions that are not specifically covered by the above ruling or by the Prior Rulings. In particular, no opinion is expressed regarding: (i) whether Internal Distribution 1, Internal Distribution 2, and the Share Exchange satisfy the business purpose requirement of § 1.355-2(b); (ii) whether the Proposed Transactions are being used principally as a device for the distribution of the earnings and profits of any of the distributing or controlled corporations (see § 355(a)(1)(B) and § 1.355-2(d)); and (iii) whether Internal Distribution 1, Internal Distribution 2, or the Share Exchange are acquisitions that are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

Procedural Statements

This ruling is directed only to the taxpayers requesting 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.

In accordance with the power of attorney on file in this office, a copy of this ruling letter will be sent to the taxpayers' authorized representatives.

Sincerely,

Mary E. Goode
Senior Counsel, Branch 6
Office of Associate Chief Counsel (Corporate)

cc: