**Internal Revenue Service**

Number: **200931004**
Release Date: 7/31/2009

Index Number: 355.01-00, 368.04-00

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:01
PLR-112657-09
Date:

April 28, 2009

Legend

Distributing 1 =

Distributing 2 =

Controlled =

Shareholder A =

Shareholder B =

Shareholder C =

Shareholder D =

Shareholder E =

Shareholder F =

Business A =

Location A =

Location B =

Service A =

State A =

State B =

a =

b =

c =

d =

x =

Dear

This letter responds to your representative's letter dated March 5, 2009, requesting rulings as to the Federal income tax consequences of a proposed transaction. Additional information was submitted by emails dated April 7, 2009 and April 24, 2009. The material information submitted for consideration is summarized below.

The rulings contained in this letter are based upon facts 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. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Internal Distribution and Split-Off (each described below): (i) satisfy the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) are 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, as amended (the "Code") and § 1.355-

2(d)), or (iii) are 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

Distributing 2, a State A corporation, is the common parent of an affiliated group of corporations that files a consolidated return for Federal income tax purposes. Distributing 2 is owned a percent by Shareholder A, b percent by Shareholder B, c percent Shareholder C, and d percent by Shareholder D, Shareholder E and Shareholder F (together the "Other Shareholders"). Distributing 2 wholly owns Distributing 1. Controlled, a State B corporation, is a wholly owned subsidiary of Distributing 1. Controlled was formed to effectuate the proposed transaction described below.

Distributing 1 directly conducts Business A in Location A (the "Location A Business") and Location B (the "Location B Business"). The financial information submitted by Distributing 2 indicates that the Location A Business and the Location B Business each have 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 and to effect the separation, Distributing 2 proposes the following steps (the "Proposed Transaction"):

(i) Distributing 1 will transfer the assets of the Location B Business to Controlled in exchange for all of the Controlled stock and the assumption by Controlled of related liabilities, if any (the "Contribution").

(ii) Distributing 1 will distribute the stock of Controlled to Distributing 2 (the "Internal Distribution").

(iii) Distributing 2 will distribute the Controlled stock to Shareholder C in exchange for all of his Distributing 2 stock (the "Split-Off").

(iv) Controlled and Distributing 2 will enter into an agreement not to exceed x months under which Distributing 1 will provide services relating to Business A to Controlled (the "Service Agreement").

## REPRESENTATIONS

The following representations have been made in connection with the Contribution and the Internal Distribution:

(a) Any indebtedness owed by Controlled to Distributing 1 after the Internal Distribution will not constitute stock or securities.

(b) No part of the consideration distributed by Distributing 1 will be received by Distributing 2 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.

(c) The five years of financial information submitted on behalf of the Location A Business conducted by Distributing 1 are representative of its present operations, and with regard to that business, there have been no substantial operational changes since the date of the last financial statements submitted. Throughout the five-year period ending on the date of the Internal Distribution, Distributing 1 and Distributing 2 will have been the principal owners of the goodwill and significant assets of the Location A Business, and they will continue to be the owners following the Internal Distribution.

(d) The five years of financial information submitted on behalf of the Location B Business to be conducted by Controlled immediately after the Internal Distribution are representative of its present operation, and with regard to that business, there have been no substantial operational changes since the date of the last financial statements submitted. Distributing 1 and Distributing 2 will have been principal owners of the goodwill and significant assets of the Location B Business through the five-year pre-distribution period until the Split-Off, and Controlled will be principal owner of these assets after the Split-Off.

(e) Following the Internal Distribution, Distributing 1 will continue the active conduct of the Location A Business, independently and with its separate employees.

(f) Following the Internal Distribution, Controlled will continue the active conduct of the Location B Business, independently and with its separate employees.

(g) Neither the Location A Business conducted by Distributing 1 nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Reg. § 1.355-3) in whole or in part.

(h) Neither the Location B Business to be conducted by Controlled nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Reg. § 1.355-3) in whole or in part.

(i) The Internal Distribution will be carried out to facilitate the Split-Off. The Split-Off will separate the Location A Business from the Location B Business and thereby eliminate management disagreements that have developed over how best to conduct operations at the two locations. The Internal Distribution is motivated, in whole or substantial part, by this corporate business purpose.

(j) The Internal Distribution will not be used principally as a device for the distribution of earnings and profits of Distributing 1 or Controlled or both.

(k) The Internal 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 persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 1 or Controlled (including any predecessor or successor of any such corporation).

(l) The total adjusted basis of the assets transferred to Controlled by Distributing 1 in the Contribution will equal or exceed the sum of (i) the total liabilities assumed (as determined under § 357(d)) by Controlled and (ii) the total amount of any money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing 1 and transferred to its creditors in connection with the reorganization.

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

(n) The total fair market value of the assets transferred to Controlled by Distributing 1 in the Contribution will exceed the sum of (i) the amount of any liabilities assumed (as determined under § 357(d)) by Controlled in connection with the exchange, (ii) the amount of any liabilities owed to Controlled by Distributing 1 that are discharged or extinguished in connection with the exchange, and (iii) the amount of any 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 1 in connection with the exchange, if any. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.

(o) Distributing 1 will neither accumulate its receivables nor make extraordinary payments of its payables in anticipation of the Internal Distribution.

(p) No intercorporate debt will exist between Distributing 1 and Distributing 2, on the one hand, and Controlled on the other, at the time of, or subsequent to, the Internal Distribution.

(q) Immediately before the Internal 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 -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, any excess loss account that Distributing 1 has in the Controlled stock will be included in income immediately before the Internal Distribution to the extent required by regulations (*see* § 1.1502-19).

(r) At the time of the Internal Distribution, Distributing 1 will not have an excess loss account in the stock of Controlled.

(s) Payments made in connection with any continuing transactions between Distributing 1 and Controlled, including the Service Agreement, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(t) Distributing 1 is not, and Controlled after its formation will not be, an investment company as defined in § 368(a)(2)(F)(iii) and (iv).

(u) The Internal Distribution will not be a disqualified distribution (as defined in § 355(d)(2)) because, immediately after the Internal Distribution: (i) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Distributing 1 that constitutes a 50-percent or greater interest (defined in § 355(d)(4)) in Distributing 1; and (ii) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Controlled that constitutes a 50-percent or greater interest (defined in § 355(d)(4)) in Controlled.

(v) Immediately after the transaction (as defined in § 355(g)(4)), neither Distributing 1 nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

Distributing 2 makes the following representations for the Split-Off:

(w) Any indebtedness owed by Controlled to Distributing 2 after the Split-Off will not constitute stock or securities.

(x) The fair market value of Controlled stock received by Shareholder C will be approximately equal to the fair market value of the Distributing 2 stock surrendered by Shareholder C in the Split-Off.

(y) No part of the consideration distributed by Distributing 2 will be received by Shareholder C as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.

(z) The five years of financial information submitted on behalf of the Location A Business conducted by Distributing 1 (a member of the Distributing 2 separate affiliated group ("SAG" as defined in § 355(b)(3)(B))) are representative of its present operation, and with regard to that business, there have been no substantial operational changes since the date of the last financial statements submitted. Distributing 1 is, and immediately after the Split-Off will be, affiliated with Distributing 2 in a manner that satisfies section 1504(a), without regard to section 1504(b).

(aa) The five years of financial information submitted on behalf of the Location B Business to be conducted by Controlled are representative of its present operation, and with regard to that business, there have been no substantial operational changes since the date of the last financial statements submitted.

(bb) Following the Split-Off, Distributing 2 will continue the Location A Business (through Distributing 1), independently and with its separate employees.

(cc) Following the Split-Off, Controlled will continue the Location B Business, independently and with its separate employees.

(dd) Neither the Location A Business conducted by Distributing 1 nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Split-Off in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Reg. § 1.355-3) in whole or in part.

(ee) Neither the Location B Business to be conducted by Controlled nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Split-Off in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Reg. § 1.355-3) in whole or in part.

(ff) The Split-Off will be carried out for the following corporate business purpose: to separate the Location B Business from the Location A Business and thereby eliminate management disagreements that have developed over how best to conduct operations at the two locations. The

Split-Off is motivated, in whole or substantial part, by this corporate business purpose.

(gg) The Split-off will not be used principally as a device for the distribution of earnings and profits of Distributing 2 or Controlled or both.

(hh) The Split-Off is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire (other than as a result of the Split-Off) directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 2 or Controlled (including any predecessor or successor of any such corporation).

(ii) No intercorporate debt will exist between Distributing 1 and Distributing 2, on the one hand, and Controlled, on the other, at the time of, or subsequent to, the Split-Off.

(jj) Immediately before the Split-Off, 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 -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, any excess loss account that Distributing 2 has in the Controlled stock will be included in income immediately before the Split-Off to the extent required by regulations (*see* § 1.1502-19). At the time of the Split-Off, Distributing 2 will not have an excess loss account in the stock of Controlled.

(kk) Payments made in connection with any continuing transactions between Distributing 1 and Controlled, including the Service Agreement, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(ll) The Split-Off will not be a disqualified distribution (as defined in § 355(d)(2)) because immediately after the Split-Off: (i) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Distributing 2 that constitutes a 50-percent or greater interest (defined in § 355(d)(4)) in Distributing 2; and (ii) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Controlled that constitutes a 50-percent or greater interest (defined in § 355(d)(4)) in Controlled.

(mm) Immediately after the transaction (as defined in § 355(g)(4)), neither Distributing 2 nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

**RULINGS**

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

(1) The Contribution, followed by the Internal Distribution, will qualify as a reorganization within the meaning of § 368(a)(1)(D). Distributing 1 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 1 on the Contribution. Sections 357(a) and 361(a).

(3) No gain or loss will be recognized by Controlled on the Contribution. Section 1032(a).

(4) The basis Controlled has in each asset received in the Contribution will equal the basis of that asset in the hands of Distributing 1 immediately before its transfer. Section 362(b).

(5) The holding period Controlled has in each asset received in the Contribution will include the period during which Distributing 1 held that asset. Section 1223(2).

(6) No gain or loss will be recognized by Distributing 1 on the Internal Distribution. Section 361(c).

(7) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 2 on the Internal Distribution. Section 355(a)(1).

(8) The aggregate basis of the stock of Distributing 1 and Controlled in the hands of Distributing 2 immediately after the Internal Distribution will equal Distributing 2's aggregate basis in the stock of Distributing 1 immediately before the Internal Distribution. This aggregate basis will be allocated between the Distributing 1 stock and the Controlled stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2). Sections 358(a)(1), (b), and (c)).

(9) The holding period Distributing 2 has in the Controlled stock will include the holding period of the Distributing 1 stock on which the Internal Distribution is made, provided that the Distributing 1 stock is held as a capital asset on the date of the Internal Distribution. Section 1223(1).

(10) Earnings and profits will be allocated between Distributing 1 and Controlled in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33(f)(2).

Based solely on the information submitted and the representations set forth above, we rule as follows on the Split-Off:

(11) No gain or loss will be recognized by Distributing 2 on the Split-Off. Section 355(c)(1).

(12) No gain or loss will be recognized by (and no amount will be included in the income of) Shareholder C on the Split-Off. Section 355(a)(1).

(13) The aggregate basis Shareholder C has in the Controlled stock immediately after the Split-Off will equal his aggregate basis in the Distributing 2 stock immediately before the Split-Off in accordance with § 1.358-2(a)(2). Sections 358(a)(1) and (b).

(14) The holding period Shareholder C has in the Controlled stock will include the holding period of the Distributing 2 stock exchanged in the Split-Off, provided the Distributing 1 stock is held as a capital asset on the date of the Split-Off. Section 1223(1).

(15) Earnings and profits will be allocated between Distributing 2 and Controlled in accordance with § 312(h) and §§ 1.312-10(b) and 1.1502-33(e)(3).

## CAVEATS

No opinion is expressed about the Federal income tax treatment of the Proposed Transaction under other provisions of the Code or regulations or the Federal income 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. In particular, no opinion is expressed regarding: (i) Whether the Internal Distribution and Split-Off satisfy the business purpose requirement of § 1.355-2(b); (ii) Whether the Internal Distribution or Split-Off is used principally as a device for the distribution of the earnings and profits of Distributing 1, Distributing 2, or Controlled; and (iii) Whether the Internal Distribution or Split-Off and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

## 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.

A copy of this ruling letter must be attached to the Federal income tax return of each party involved in the Proposed Transaction for the taxable year in which the Proposed Transaction is completed. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their returns that provides the date and control number of the letter ruling.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Mark J. Weiss
Assistant to Branch Chief, Branch 1
Office of Associate Chief Counsel (Corporate)

cc: