Internal Revenue Service

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Department of the Treasury
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CC:CORP:6
PLR-117610-09
Date:
March 23, 2010

Legend

Distributing =

Controlled =

Holding LP =

Holding GP =

DRE 1 =

DRE 2 =

DRE 3 =

LP 1 =

LP 2 =

LP 3 =

LP 4 =

LP 5 =

Manager =

Company 1 =

Company 2 =

Investor 1 =

Investor 2 =

New Holding LP =

New Holding GP =

New Holdco 1 =

Business A =

Date a =

Date b =

Date c =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

o =

p =

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r =

s =

t =

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v =

w =

x =

y =

z =

aa =

bb =

cc =

dd =

ee =

ff =

gg =

hh =

ii =

Dear :

This letter responds to your letter of March 25, 2009, 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 "Original Rulings"), as supplemented by our letter rulings dated February 26, 2009 (PLR 137742-08 and related rulings) (the "Supplemental Rulings," and together with the Original Rulings, the "Prior Rulings"). The information submitted in that request and in later correspondence is summarized below. Capitalized terms not defined in this ruling have the meanings assigned to them in the Prior Rulings.

The rulings contained in this letter are 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 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, 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 will acquire directly or indirectly stock representing a 50% or greater interest in the distributing corporation or the controlled corporation (*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 letter ruling.

Summary of Facts

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

On Date a, Distributing distributed all of the stock of 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 Share Exchange, Distributing, LP 1, LP 2, and LP 3 received the Original Rulings, to the effect that, among other things, the Contribution (as defined in the Original 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.

Controlled is a holding company. From the completion of the Share Exchange on Date a until the time of the Phase I Combination (as defined below), Controlled was the common parent corporation of an affiliated group of corporations that filed a consolidated federal income tax return. Controlled, through its subsidiaries, is engaged in Business A. At the time of the Controlled Contribution, the stock in Controlled was owned as follows: LP 1, through DRE 1, owned a% of the stock; LP 2, through DRE 2, owned b% of the stock; LP 3, through DRE 3, owned c% of the stock; and the Other Controlled Shareholders owned the remaining d% of the stock. At the time of the Holding Contribution, New Holding LP owned, directly or indirectly, all the interests in Holding LP, a disregarded entity, and all of the stock in Company 2, and Holding LP directly owned all of the stock in Company 1. Each of Company 1 and Company 2 is engaged in Business A. The limited partner interests in New Holding LP, entitled to an aggregate of e% of the capital and profits of New Holding LP, were owned f% by LP 4, g% by LP 5, h% by Manager, i% by Investor 1, and j% 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 k% 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 l% by LP 4, m% by LP 5, n% by Manager, and o% by Investor 1. Collectively, there were p (several hundred) limited partners in the LPs. Of these limited partners, q (a substantial number) historically indirectly owned stock of Controlled (through LP 1, LP 2, and LP 3) and also historically indirectly owned stock of Company 1 and Company 2 (through LP 4 and LP 5). In addition, the LPs each had a general partner. Overlap also existed among a number of owners of the general partners, such that collectively the same persons owned over 50% of the voting interests in each general partner.

On Date b and Date c, as part of a single plan, the taxpayers completed a series of transactions (collectively, and including the acquisition of stock by LP 5 described immediately below, the "Phase I Combination") that resulted in Controlled and Company 1 being transferred below a chain of new holding companies, the common parent of which is New Holdco 1. Immediately after the Phase I Combination, New Holding LP owned r%, and the former shareholders of Controlled owned s%, of the stock of New Holdco 1. LP 5 owned the remaining t% of the stock of New Holdco 1, which it acquired from New Holdco 1 for cash. New Holding LP continued to own all of the stock of Company 2. In connection with the Phase I Combination, Distributing and LP 1, LP 2, LP 3, LP 4, and LP 5 (collectively, the "LPs") received the Supplemental Rulings.

Supplemental Proposed Transactions

As part of a single plan, the taxpayers propose to transfer Company 2 to New Holdco 1, so that New Holdco 1 will wholly own, directly or indirectly, each of Controlled,

Company 1, and Company 2 (including the Interim Contributions described immediately below, the "Phase II Combination," and together with the Phase I Combination, the "Combination"). In order to effect the Phase II Combination, New Holding LP will transfer to New Holdco 1 all of the stock of Company 2 solely in exchange for additional voting common stock of New Holdco 1. Prior to the closing of the Phase II Combination, Company 2 has distributed $u of its excess cash flow to New Holding LP; New Holding LP has contributed that cash to New Holdco 1 (the "Interim Contributions") in exchange for voting common stock of New Holdco 1. The stock of New Holdco 1 received by New Holding LP in the Interim Contributions will reduce correlatively the amount of stock of New Holdco 1 that New Holding LP will receive on the contribution of Company 2.

After the completion of the Phase II Combination, New Holding LP and LP 5 will hold v% (more than 50%) of the stock of New Holdco 1, and the owners of New Holding LP and LP 5 will own through intermediate entities more than 50% of the stock of Controlled. However, because of the substantial overlap in the identity of the limited partners of the LPs that historically owned stock of Controlled (LP 1, LP 2, and LP 3) and the limited partners of the LPs that historically owned, indirectly, stock of Company 1 and Company 2 (LP 4 and LP 5), the taxpayers have determined that persons that were indirect owners of the stock of Controlled prior to the Combination will continue to own, indirectly, after the Combination, more than 50% of the stock of Controlled. In making this determination, the taxpayers relied on the following assumptions (the "Counting Assumptions"):

(i) The methodology (a "net decrease" methodology or a "minimum ownership percentage" approach) of the example in the 1998 legislative history to § 355(e)(3)(A)(iv) is applicable to the Phase I Combination and the Phase II Combination for purposes of testing whether there has been an acquisition of a 50% or greater interest in Controlled under § 355(e).

(ii) In applying the "overlap rule" of § 355(e)(3)(A)(iv) and the net decrease methodology described in assumption (i), the taxpayers may look through New Holdco 1, New Holding LP, and each of LP 1, LP 2, LP 3, LP 4, and LP 5 to the indirect owners of the Controlled stock at the level of the partners in the LPs, and may take into account the actual overlap in the indirect ownership of Controlled stock at that level, based on their actual knowledge. A limited partner that holds an interest both in LP 1, LP 2, and/or LP 3 and in LP 4 and/or LP 5 is hereinafter referred to as an overlap partner.

(iii) In applying the overlap rule of § 355(e)(3)(A)(iv) and assumptions (i) and (ii) to the Phase I Combination or the Phase II Combination, as the case may be, the baseline for the application of the overlap rule to a particular overlap partner will be the number of non-plan shares of Controlled stock, and the non-plan percentage ownership in Controlled, held by the overlap

partner immediately prior to the time of the applicable Phase of the Combination (or, as the case may be, applicable Interim Contribution).

(iv) In applying § 355(e)(3)(A)(iv) and assumptions (i)-(iii), a limited partner in LP 1, LP 2, LP 3, LP 4, or LP 5 that is described in any of the following categories will be treated as the ultimate indirect owner (without further look-through) of its indirect percentage share of the Controlled stock – (i) any United States pension trust described in § 401(a) and § 501(a), (ii) any United States charitable organization described in § 501(c)(3) (including an endowment or private foundation), and (iii) any state, local, or foreign government (or agency or instrumentality thereof).

(v) In applying § 355(e)(3)(A)(iv) and the assumptions (i)-(iii), changes in the direct or indirect ownership in any partner in LP 1, LP 2, LP 3, LP 4, or LP 5 that is not described in assumption (iv) (for example, acquisitions of interests in a partner in LP 1, LP 2, LP 3, LP 4, or LP 5 that is itself a taxable corporation, partnership, or trust) will be disregarded, so long as those changes are not part of a plan that includes the Share Exchange.

In connection with the closing of the Phase I 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 party. In addition, LP 4, LP 5, Manager, and Investor 1 are party to the Stockholders Agreement, substantially as if each held directly the percentage of the stock of New Holdco 1 held by it through New Holding LP. Under the Stockholders Agreement, the Board of Directors of New Holdco 1 consists of w director designated by each of LP 1, LP 2, LP 3, LP 4, and LP 5, x directors designated by Investor 1, and y 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 z 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. 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 is held by the y management director. Except for certain registration rights and related provisions, the Stockholders Agreement will automatically terminate immediately after: (i) an initial public offering of the common stock of New Holdco 1, or (ii) generally, a sale of stock of New Holdco 1 possessing the voting power to elect at least a majority of its Board of Directors or a sale of all or substantially all of the assets of New Holdco 1 on a consolidated basis.

In connection with the Phase I 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).

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 Phase I Combination. These Grantees were party 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 party.

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

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. 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.

Supplemental Representations

Distributing makes the following representations:

(a) No acquisition of stock in Distributing (including any predecessor or successor of such corporation) occurred pursuant to a plan (or series of related transactions), within the meaning of § 355(e)(2)(A)(ii) (a "plan"), that included the Share Exchange.

The LPs make the following representations:

(b) Except as described in the Prior Rulings and below, no direct or indirect acquisition of stock in Controlled (including any predecessor or successor of such corporation) occurred pursuant to a plan that included the Share Exchange. In particular, no direct or indirect acquisition of any of the following interests is or was part of a plan that includes the Share Exchange: (i) an interest in any of LP 1, LP 2, LP 3, LP 4, or LP 5 by a new or existing partner of such LP, (ii) an interest in any partner (including any overlap partner) in the LPs, or (iii) an interest in any person or persons at any higher level.

(c) Each of the following acquisitions of stock of Controlled (including any predecessor or successor) is or may be part of a plan that includes the Share Exchange: The indirect acquisitions of stock in Controlled by New Holding LP and the partners of New Holding LP, and by LP 5 and the partners of LP 5, resulting from the Phase I Combination and the Phase II Combination. Based on the Counting Assumptions, taking all of these acquisitions into account, stock representing a 50% or greater interest (within the meaning of § 355(d)(4)) in Controlled (including any predecessor or successor of such corporation) will not be acquired by any person or persons within the meaning of § 355(e)(2)(A).

(d) Anything that is part of a plan with the Share Exchange is part of a plan with Internal Distribution 1 and Internal Distribution 2.

(e) Anything that is not part of a plan with the Share Exchange is not part of a plan with Internal Distribution 1 and Internal Distribution 2.

(f) The overlap partners' "minimum ownership percentage," as computed by the taxpayers in accordance with the Counting Assumptions, indirectly held in Controlled was approximately aa% as a result of the Phase I Combination, and is expected to be approximately bb% as a result of the Phase II Combination.

(g) The identity of the p limited partners and their ownership interests in each LP has remained relatively constant throughout the period from Date a to the present, and is expected to remain relatively constant from the present until the completion of the Phase II Combination, with changes occurring from Date a to the present with respect to only cc transferor limited partners and dd transferee limited partners across all five LPs, corresponding to changes in ownership of percentage interests in LP committed capital of ee% in LP 1, ff% in LP 2, gg% in LP 3, hh% in LP 4, and ii% in LP 5.

(h) The shareholders of New Holdco 1 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.

(i) No Option was or will be issued, transferred, or listed with a principal purpose of avoiding the application of § 355(e).

(j) Each Option: (i) is or will be issued to an employee, independent contractor, or director of or to New Holdco 1 or its subsidiaries, (ii) is not excessive in reference to the services performed, (iii) is not transferable within the meaning of § 1.83-3(d), and (iv) does not have a readily ascertainable value within the meaning of § 1.83-7(b).

Supplemental Rulings

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

(1) The Phase II Combination, together with the Phase I Combination, will not affect the continuing validity of the Prior Rulings (including that no gain or loss will be recognized by Distributing in the Share Exchange under section 361(c), taking into account section 355(e)).

(2) An Option for stock of New Holdco 1 that is never exercised, including an Option that is converted into a right to receive cash on a sale of New Holdco 1 or on a termination of the employment of the Grantee, will not be taken into account under § 355(e).

(3) For purposes of applying § 1.355-7(d)(7), Safe Harbor VII, and § 1.355-7(d)(8), Safe Harbor VIII, to common stock of New Holdco 1 acquired by a Grantee pursuant to the exercise of an Option at or after the time of an initial public offering, the Grantee will not be treated as a member of a coordinating group, within the meaning of § 1.355-7(h)(4), with any of LP 1, LP 2, LP 3, LP 4, or LP 5.

Caveats

No opinion is expressed about the tax treatment of the Combination or the Proposed Transactions 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 rulings or by the Prior Rulings. In particular, no opinion is expressed regarding: (i) whether Internal Distribution 1, Internal Distribution 2, and the Share Exchange satisfied 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 the distributing corporation or the controlled corporation or both (*see* § 355(a)(1)(B) and § 1.355-2(d)); and (iii) whether Internal Distribution 1, Internal Distribution 2, or the Share Exchange are part of a plan (or series of related

transactions) under § 355(e)(2)(A)(ii). In addition, no opinion is expressed regarding the valuation of any partner's interest for § 355(e) purposes, and the percentage interest that any partner had or will have, directly or indirectly, in any of the LPs or in Controlled.

Procedural Statements

This ruling letter is directed only to the taxpayer 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 ruling letter.

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

Sincerely,

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

cc: