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Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:CORP:4 PLR-100044-99
Date:
July 2, 1999

Distributing =

A =

B =

C =

D =

E =

F =

G =

H =

I =

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Business X =

Business Y =

Date a =

We respond to your letter dated December 17, 1998 requesting rulings on certain federal income tax consequences of a proposed transaction. The information submitted in that request and in later correspondence is summarized below.

Distributing is engaged in Business X and Business Y. As of Date a, Distributing's single class of stock is owned in equal parts by two families as follows:

Family A	Percentage
A	23.86
B	6.54
C	6.54
D	6.52
E	6.54
	50.00

Family F	
F	22.88
G	13.56
H	13.56
	50.00

A and F are siblings. B, C, D, and E are children of A. G and H are children of F. I, a sibling of A and F, has gifted shares over a period of years in equal parts to Family A and Family F. I is no longer a shareholder. F's shares will be gifted to G and H within six months after the proposed transaction. All stock gifts have been and will be pursuant to established gift-giving programs.

Financial documentation has been submitted which indicates that Business X and Business Y each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

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Because of disputes between Family A and Family F regarding the direction and operation of Distributing, the following transaction has been proposed to separate the businesses, with Family A operating Business X and Family F operating Business Y:

(i) Distributing will transfer the Business X assets to newly formed Controlled in exchange solely for Controlled stock and the assumption by Controlled of related liabilities (the "Contribution").

(ii) Distributing will distribute all of the Controlled stock to A, B, C, D, and E in exchange for all of their respective Distributing stock (the "Distribution").

The following representations have been made concerning the proposed transaction:

(a) The fair market value of the Controlled stock received by each of A, B, C, D, and E will approximately equal the fair market value of the respective Distributing stock surrendered by each of A, B, C, D, and E in the exchange.

(b) No part of the consideration 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 five years of financial information submitted on behalf of Distributing is representative of its present operations, and with regard to these operations, there have been no substantial changes since the date of the last financial statements submitted.

(d) Except for F's possible continued employment with both Distributing and Controlled following the proposed transaction, Distributing and Controlled will each continue, independently and with its separate employees, the active conduct of its business.

(e) The Distribution will be carried out to resolve disputes between Family A and Family F regarding the direction and operation of Distributing. The Distribution is motivated, in whole or substantial part, by this corporate business purpose.

(f) There is no plan or intention by the shareholders of Distributing to sell, exchange, transfer by gift (except for F's gift of Distributing stock to F's children, G and H), or otherwise dispose of any stock in Distributing or Controlled after the proposed transaction.

(g) 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 proposed transaction.

(h) 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 of these corporations after the proposed transaction, except in the ordinary course of business.

(i) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing in the Contribution will, in each case, equal or exceed the sum of the liabilities assumed by Controlled, plus any liabilities to which the transferred assets are subject.

(j) The liabilities assumed in the proposed transaction and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.

(k) No § 38 property will be transferred in the Contribution.

(l) Distributing has neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the proposed transaction.

(m) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.

(n) 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.

(o) No two parties to the proposed transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv) of the Internal Revenue Code.

(p) Distributing is not an S corporation (within the meaning of § 1361(a)), and there is no plan or intention by Distributing or Controlled to make an S corporation election pursuant to § 1362(a).

(q) The Distribution is not part of a plan or series of related transactions (within the meaning of section 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 either Distributing or Controlled, or stock possessing 50 percent or more of the total value of all classes of stock of either Distributing or Controlled.

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

(1) The Contribution followed by the Distribution will be a reorganization under § 368(a)(1)(D). Distributing and Controlled will each be "a party to a reorganization" under § 368(b).

(2) No gain or loss will be recognized by Distributing on the Contribution (§§ 361(a) and 357(a)).

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

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

(5) The holding period of each asset received by Controlled in the Contribution will include the period during which Distributing held that asset (§ 1223(2)).

(6) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) A, B, C, D, and E on their receipt of Controlled stock in exchange for their respective Distributing stock (§ 355(a)(1)).

(7) The basis of the Controlled stock in the hands of A, B, C, D, and E will equal the basis of the Distributing stock surrendered in exchange therefor (§ 358(a)(1)).

(8) The holding period of the Controlled stock received by A, B, C, D, and E will include the holding period of the Distributing stock surrendered in exchange therefor, provided the Distributing stock is held as a capital asset on the date of the exchange (§ 1223(1)).

(9) No gain or loss will be recognized by Distributing on the Distribution (§ 361(c)).

(10) As provided in § 312(h), proper allocation of earnings and profits between Distributing and Controlled will be made under § 1.312-10(a) of the Income Tax Regulations.

We express no opinion about the tax treatment 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 proposed transaction

that are not specifically covered in the above rulings. In particular, we express no opinion on the tax treatment of the possible transfer of certain life insurance policies to present or former Distributing shareholders.

The rulings in this letter are based on the facts and representations submitted under penalties of perjury in support of the request. Verification of that information may be required as part of the audit process.

This letter has no effect on any earlier document and 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 the federal income tax return of each taxpayer involved for the taxable year in which the proposed transaction is consummated.

Under a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Assistant Chief Counsel (Corporate)

By: Robert T. Hawkes
Robert T. Hawkes
Assistant to the Chief
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