

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Person To Contact:

Telephone Number:

Refer Reply To:

CC:CORP:B03 – PLR-140364-03

Date:

October 20, 2003

Re:

Legend

Distributing =

Sub1 =

New Controlled =

Bank =

State A =

State B =

State C =

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Business R =

X =

Dear

This letter responds to a request dated June 19, 2003, for a supplemental ruling with respect to a ruling letter dated April 3, 2003 (PLR-160185-02, LTR 200327051). This letter modifies and supercedes the prior letter dated April 3, 2003. Taxpayer submitted additional information on August 14, 2003 and October 14, 2003.

Distributing is a State A corporation using the accrual method of accounting. Distributing is the common parent of an affiliated group filing a consolidated federal income tax return. Distributing is a publicly traded holding company owning all of the outstanding stock of Bank, Sub1, and New Controlled.

New Controlled is a newly formed subsidiary holding company and a State B corporation. Distributing intends to transfer 100 percent of the stock of Sub1 (referred to as "Controlled" in the prior letter) to New Controlled in exchange for all the stock of New Controlled. New Controlled will have no assets other than Sub1.

Sub1 is currently a wholly-owned subsidiary of Distributing and is a State B corporation. Sub1 joins in the consolidated federal income tax return filed by Distributing and is an accrual basis taxpayer. Sub1 is engaged in Business R.

Bank is a wholly-owned subsidiary of Distributing operating under a national charter with its principal place of business in State C. Bank joins in the consolidated federal income tax return filed by Distributing and is an accrual basis taxpayer. Bank is engaged in the banking business.

Distributing has supplied information which indicates that Sub1's Business R and Bank's banking business each have had gross receipts and operating expenses representative of the active conduct of such businesses for each of the past five years.

Distributing desires to expand Bank through a borrowing or stock offering, but is unable to effectuate a borrowing or stock offering in the current structure. Distributing has demonstrated that it will be able to raise significantly more money through a borrowing or stock offering if Bank and Sub1 are separated. Therefore, Distributing has proposed

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the separation of Bank and Sub1 by effecting a spin-off of New Controlled to the shareholders of Distributing. Accordingly:

- (i) Distributing will transfer all of the stock of Sub1 to New Controlled in exchange for all of the stock of New Controlled.
- (ii) Distributing will transfer to each Distributing shareholder New Controlled voting shares, pro rata according to their ownership of shares in Distributing. Distributing will not retain any stock or securities of New Controlled.
- (iii) Options to purchase Distributing stock issued to Sub1 employees will be canceled and or made exercisable for New Controlled stock.
- (iv) Distributing will raise, within one year of the distribution, at least \$X in a borrowing and/or stock offering, with such proceeds to be used to expand Bank's business. In the case of a stock offering, the stock issued will comprise less than 50 percent of the total combined voting power of all classes of stock of Distributing entitled to vote and also less than 50 percent of the total value of all classes of stock of Distributing.

Taxpayer has made the following representations in connection with the proposed transaction:

- (a) No part of the consideration to be distributed by Distributing will be received by any Distributing shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (b) The 5 years of financial information submitted on behalf of Bank is representative of the present operations of Bank, and with regard to Bank, there have been no substantial operational changes since the date of the last financial statements submitted.
- (c) The 5 years of financial information submitted on behalf of Sub1 is representative of the present operations of Sub1, and with regard to such corporation there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) Immediately after the Distribution, at least 90 percent of the fair market value of the gross assets of Distributing will consist of the stock and securities of Bank, which is engaged in the active conduct of a trade or business as defined in §355(b)(2).

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- (e) Immediately after the distribution, at least 90 percent of the fair market value of the gross assets of New Controlled will consist of the stock and securities of Sub1, which is engaged in the active conduct of a trade or business as defined in §355(b)(2).
- (f) Following the Distribution, Distributing (through Bank) and New Controlled (through Sub1) will each continue the active conduct of its business, independently and with its separate employees.
- (g) The distribution of stock of New Controlled is carried out for the following corporate business purpose: to enable Distributing to achieve the expansion of Bank's business by raising capital through either a borrowing, or stock offering, or some combination of the two. The distribution of the stock of New Controlled is motivated, in whole or in substantial part, by this corporate business purpose.
- (h) There is no plan or intention by any shareholder who owns 5 percent or more of the stock of Distributing, and management of Distributing, to its best knowledge, is not aware of any plan or intention on the part of any particular remaining shareholder or security holder of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in, or securities of, either Distributing or New Controlled after the transaction.
- (i) There is no plan or intention by either Distributing or New Controlled, directly, or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction, other than through stock purchases meeting the requirements of §4.05(1)(b) of Rev. Proc. 96-30.
- (j) There is no plan or intention to liquidate either Distributing or New Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the transaction except in the ordinary course of business.
- (k) There are no liabilities being assumed by New Controlled or Sub1 in connection with the transaction nor are there any liabilities to which the transferred assets are subject.
- (l) No intercorporate debt will exist between New Controlled or Sub1 and Distributing or Bank at the time of, or subsequent to, the distribution of the New Controlled stock.

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- (m) Immediately before the distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transactions regulations.
- (n) Payments made in connection with all continuing transactions, if any, between Distributing or Bank and New Controlled or Sub1, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (o) The distribution is not part of a plan or series of related transactions within the meaning of §355(e) of the Internal Revenue Code 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 entitled to vote or stock possessing 50 percent or more of the total value of all classes of stock of Distributing or New Controlled.

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

(1) The transfer of Sub1 to New Controlled in exchange for stock of New Controlled will qualify as a reorganization under § 368(a)(1)(D). Distributing and New Controlled each will be a "party to a reorganization" under §368(b).

(2) No gain or loss will be recognized by Distributing on the transfer of Sub1 to New Controlled. Section 361(a).

(3) No gain or loss will be recognized by New Controlled upon the receipt of the stock of Sub1 in exchange for the stock of New Controlled. Section 1032(a).

(4) The basis of the stock of Sub1 received by New Controlled in the transfer will equal the basis of the stock of Sub1 in the hands of Distributing immediately before the transfer. Section 362(b).

(5) The holding period of the stock of Sub1 transferred to New Controlled will include the period during which such stock was held by Distributing. Section 1223(2).

(6) No gain or loss will be recognized by Distributing upon the distribution of all of the stock of New Controlled to Distributing shareholders. Section 361(c)(1).

(7) No gain or loss will be recognized to (and no amount shall be includible in the income of) Distributing shareholders upon receipt of New Controlled stock. Section 355(a).

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(8) The aggregate basis of the Distributing stock and of the New Controlled stock in the hands of Distributing shareholders after the distribution will be the same as the aggregate basis of Distributing stock in the hands of Distributing shareholders immediately prior to the distribution, allocated between the Distributing stock and the New Controlled stock in proportion to the fair market value of each corporation's stock in accordance with §1.358-2(a)(2) of the Income Tax Regulations. Sections 358(a)(1), (b) and (c)).

(9) The holding period of the New Controlled stock received by Distributing shareholders will include the holding period of the Distributing stock held by such shareholder immediately before the distribution, provided that such shareholder held the Distributing stock as a capital asset on the date of the distribution. Section 1223(1).

(10) Earnings and profits will be allocated between Distributing and New Controlled in accordance with §§1.1312-10 and 1.1502-33.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code 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.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to Distributing and a second authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

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Ken Cohen  
Senior Technician Reviewer  
Office of Associate Chief Counsel  
(Corporate)

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cc: