

Internal Revenue Service

Department of the Treasury

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Re:

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

State X =

Business A =

Business B =

Dear

This is in reply to a letter dated May 7, 1998, in which rulings were requested regarding the federal income tax consequences of a proposed transaction. Additional information was received in letters dated June 10, July 6, July 27, August 17, September 21, November 23, November 30, and December 10, 1998. The information submitted is summarized below.

Distributing is the common parent of an affiliated group of corporations, consisting of itself, Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, and Sub 7. Distributing uses the accrual method of accounting and is engaged indirectly through its various subsidiaries in two divergent businesses: Business A and Business B. Sub 1 is a holding company and wholly owns Sub 5, which is engaged in Business A, and Sub 6, which is engaged in Business B. Sub 7 is a wholly owned subsidiary of Sub 6 and also is engaged in Business B. Sub 2 is a shell corporation formed for state law purposes and will remain with Distributing. Sub 3 and Sub 4 are engaged in Business A.

To improve the fit and focus of the operations of Business A and Business B and to protect Business A from the risks associated with Distributing's Business B, it is proposed as follows:

- (i) Sub 1 will merge into Distributing in a transaction represented to qualify under §§ 332 and 337;
- (ii) Distributing will form Controlled as a State X corporation;
- (iii) Sub 3 and Sub 4 will merge into Controlled in transactions represented to qualify under §368(a)(1)(A);
- (iv) Distributing will transfer the stock of Sub 5 to Controlled; and
- (v) Distributing will distribute the stock of Controlled on a pro-rata basis to its shareholders.

The taxpayer has made the following representations in connection with the proposed transaction:

- (a) The five years of financial information submitted on behalf of Distributing and its subsidiaries is representative of each corporation's present operation, and, with regard to each corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- (b) Following the transaction, Distributing and Controlled each will continue the active conduct of its business, independently and with its separate employees.
- (c) The distribution of the stock of Controlled is carried out in order to minimize the risk to Business A from potential liability claims against Distributing, Sub 6, and Sub 7 and in order to permit each business to focus on its particular business line. The distribution of the stock of Controlled is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (d) There is no plan or intention by any shareholder who owns five percent or more of the stock of Distributing, and the 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 stock in, or securities of, either Distributing or Controlled after the transaction.
- (e) 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 transaction, other than through stock purchases meeting the requirements of section 4.05(1)(b) of Revenue Procedure 96-30.
- (f) 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 corporation after the transaction, except in the ordinary course of business.
- (g) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.
- (h) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the distribution of the Controlled stock.
- (i) Immediately before the 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 § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-21

I.R.B. 6, and as currently in effect, § 1.1502-13 as published by T.D. 8597). Further, any excess loss account with respect to the Controlled stock will be included in income immediately before the distribution (See § 1.1502-19).

- (j) 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.
- (k) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (l) Immediately after the distribution, at least 90 percent of the fair market value of the gross assets of Distributing will consist of the stock of Sub 6 and Sub 7, which companies are engaged in the active conduct of a trade or business as defined in § 355(b)(2).
- (m) The liabilities of Distributing assumed by Controlled plus the liabilities, if any, to which the transferred assets are subject were incurred by Distributing in the ordinary course of business and are associated with the assets transferred.
- (n) The fair market value of the assets of Distributing transferred to Controlled will equal or exceed the sum of the liabilities assumed by Controlled, plus the amount of liabilities, if any, to which the transferred assets are subject.
- (o) The total adjusted basis of the assets of Distributing transferred to Controlled will equal or exceed the sum of the liabilities to be assumed by Controlled, plus the amount of liabilities, if any, to which the transferred assets are subject.
- (p) The distribution of Controlled stock is not part of a plan or series of related transactions within the meaning of § 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:

- (1) Distributing's transfer to Controlled of the stock of Sub 5, solely in exchange for shares of Controlled stock, followed by the distribution of the

Controlled stock to Distributing's shareholders, will be a reorganization within the meaning of §§ 368(a)(1)(D) and 355(a). Distributing and Controlled each will be a party to the reorganization within the meaning of § 368(b).

- (2) Distributing will recognize no gain or loss on the transfer of the stock of Sub 5 to Controlled in exchange for Controlled stock as described above (§§ 361(a) and 357(a)).
- (3) Controlled will recognize no gain or loss upon the receipt of the stock of Sub 5 in exchange for Controlled stock (§ 1032(a)).
- (4) The basis of the stock of Sub 5 received by Controlled will be the same as the basis of such stock in the hands of Distributing immediately prior to the contribution of such stock to Controlled (§ 362(b)).
- (5) The holding period of the Sub 5 stock received by Controlled will include the period during which such stock was held by Distributing (§1223(2)).
- (6) No gain or loss will be recognized by Distributing upon the distribution to Distributing's shareholders of all of the Controlled common stock (§361(c)).
- (7) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing's shareholders upon the receipt of Controlled common stock (§ 355(a)(1)).
- (8) The basis of the Controlled and Distributing common stock in the hands of such Distributing shareholders will be the same as the aggregate basis of the Distributing stock held by said shareholders immediately before the distribution, allocated in proportion to the fair market value of each in accordance with §1.358-2(a) of the regulations (§ 358(a)(1) and (b)).
- (9) The holding period of the Controlled common stock received by Distributing's shareholders will include the holding period of Distributing's common stock with respect to which the distribution will be made, provided that such stock is held as a capital asset on the date of the exchange (§1223(1)).

No opinion is expressed about the tax treatment of the transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding whether the merger of Sub 1 into Distributing will qualify as a liquidation under §§ 332 and 337,

and whether the mergers of Sub 3 and Sub 4 into Controlled will qualify as reorganizations within the meaning of § 368(a)(1)(A) or (D).

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter should be attached to the federal income tax returns of the taxpayers involved for the taxable year in which the transaction covered by this ruling letter is consummated.

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

Sincerely yours,

Assistant Chief Counsel (Corporate)

By _____
Filiz A. Serbes
Assistant to the Chief, Branch 5