

Trust 2 =

a =

c =

e =

g =

i =

k =

b% =

d% =

f%

h% =

j% =

l% =

m% =

State X =

Dear :

This letter responds to your July 18, 2007 letter from your authorized representative requesting rulings on certain federal income tax consequences of a proposed transaction. The information provided in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. 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 pertaining to, and has made no determination regarding, whether the distribution (described below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is 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) is 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).

Distributing is engaged in Business X. Distributing is a lessee under a lease agreement with State X. Distributing's lease agreement allows it to use certain State X property at a below-market rate. This lease agreement is nonassignable. Distributing's stock is owned by individuals and custodial trusts, as follows:

Shareholder	Number of Shares	Percent
A	<u>a</u>	b%
B	<u>c</u>	d%
C	<u>e</u>	f%
D	<u>g</u>	h%
Trust 1 & Trust 2	<u>i</u>	j%
Total	<u>k</u>	l%

Financial information has been received indicating that Business X has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

For what are represented as valid business reasons, Distributing has proposed the following transaction:

(i) Distributing will transfer to Controlled certain assets of Business X in exchange for all of the outstanding stock of Controlled and the assumption by Controlled of the liabilities associated with the transferred business, including liabilities to which such assets are subject. The assets, minus any associated liabilities, will represent approximately m% of the net fair market value of all of the operating assets, i.e., minus any associated liabilities, of Distributing.

(ii) Since, as noted above, the lease agreement is nonassignable, then, after the proposed exchange, the portion of Business X conducted by Controlled will no longer have the legal right to use the State X property described in that agreement. In other

words, Controlled will not have the benefit, i.e., below-market lease rate, of the lease agreement in conducting its business. To make up for this loss, Distributing and Controlled will enter into a Lease Payment Agreement. That Agreement requires Distributing to make an annual payment to Controlled, determined by a formula, based on what would be its share of the after-tax benefit it would have derived from using the lease had the proposed exchange not occurred. Controlled will use this payment to enter into alternative arrangements. This payment will continue as long as the lease remains in effect.

(iii) Distributing will distribute all of the outstanding Controlled stock to A and C, two of the four shareholders of Distributing, in exchange for all of the outstanding Distributing stock owned by A and C. The distribution of Controlled stock will be proportionate to the stock A and C had in Distributing.

In connection with the proposed transaction, Distributing makes the following representations:

(a) With respect to each of the Controlled shareholders, the fair market value of the Controlled stock and other consideration to be received by such Controlled shareholder will be approximately equal to the fair market value of the Distributing stock surrendered by such shareholder.

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

(c) The five years of financial information, submitted on behalf of Distributing, is representative of its present operations and there have been no substantial operational changes since the date of the last financial statements, submitted.

(d) Following the distribution, Distributing and Controlled will each continue, independently and with its separate employees, the active conduct of its share of all of the integrated activities of Business X conducted by Distributing prior to the consummation of the transaction.

(e) The proposed transaction will be carried out for the following corporate business purposes: (i) to end the disagreement and difference of opinions existing between A and D regarding the future operations of Distributing by separating the interests of those shareholders; and (ii) to allow these shareholders to devote their attention to their respective corporations. The distribution is motivated, in whole or substantial part, by these corporate business purposes.

(f) The distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(g) For purposes of § 355(d), immediately after the distribution, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of

Distributing stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the distribution.

(h) For purposes of § 355(d), immediately after the distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled stock that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the distribution, or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the distribution.

(i) The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing in exchange for the Controlled shares will equal or exceed the sum of the amount of the liabilities (if any) assumed (within the meaning of § 357(d)) by Controlled in connection with the exchange, including the amount of any liabilities to which the transferred assets are subject.

(j) The total fair market value of the assets transferred to Controlled by Distributing in exchange for Controlled shares will equal or exceed the aggregate adjusted basis of the transferred assets.

(k) The liabilities (if any) to be assumed (within the meaning of § 357(d)) in the exchange, including liabilities to which the transferred assets are subject, were incurred in the ordinary course of business and are associated with the assets being transferred. The fair market value of the assets of Controlled will exceed the amount of the liabilities of Controlled immediately after the exchange.

(l) If applicable, the income tax liability for the taxable year in which investment credit property (including any building to which § 47(d) applies) is transferred will be adjusted pursuant to § 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by P.L. 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect an early disposition of such property.

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

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

(o) Payments made in connection with all continuing transactions after the distribution, 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.

(p) No two parties to the proposed transaction will be investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(q) The 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 or Controlled (including any predecessor or successor of any such corporation).

(r) Distributing, Controlled, and their respective shareholders will each pay their own expenses, if any, incurred in connection with the distribution.

(s) Immediately after the Distribution, neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

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

(1) The contribution of assets from Distributing to Controlled, as part of the proposed transaction, will qualify as a reorganization under § 368(a)(1)(D). Distributing and Controlled each will be "a party to a reorganization" under § 368(b).

(2) Distributing will not recognize any gain or loss on the contribution of assets that are part of the proposed transaction (§ 361(a)).

(3) Controlled will not recognize any gain or loss on the receipt of assets from Distributing that are part of the proposed transaction (§ 1032(a)).

(4) Controlled's basis in each asset received from Distributing, as part of the proposed transaction, will be the same as the basis of that asset in the hands of Distributing immediately before its transfer (§ 362(b)).

(5) Controlled's holding period in each asset received from Distributing, as part of the proposed transaction, will include the period during which Distributing held that asset (§ 1223(2)).

(6) Distributing will not recognize any gain or loss on the distribution of all of the Controlled stock to A and C in exchange for all of their Distributing stock as part of the proposed transaction (§ 361(c)).

(7) Neither A nor C will recognize any gain or loss (and will not otherwise include any amount in income) on the receipt of all of the shares of Controlled stock in exchange for all of their Distributing stock as part of the proposed transaction (§ 355(a)(1)).

(8) The basis of the Controlled stock in the hands of each of A and C immediately after the exchange will be the same as that shareholder's basis in the Distributing stock held immediately before the exchange (§ 358(a)(1)).

(9) The holding period of the Controlled stock received by each of A and C as part of the proposed transaction will include the holding period of the Distributing stock exchanged therefor, provided the Distributing stock is held as a capital asset on the date of the Distribution (§ 1223(1)).

(10) Earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with §§ 312(h) and 1.312-10(a).

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 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. 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 letter ruling.

Sincerely,

Steven J. Hankin
Senior Technician Reviewer, Branch 6
(Corporate)

cc: