

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

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PLR-129122-08

Date:

September 08, 2008

Legend

Distributing =

Sub 1 =

Controlled =

Holdco =

Sector A =

Sector B =

State X =

City 1 =

City 2 =

Location Q =

Location P =

Year 1 =

Year 2 =

Date 1 =

Date 2 =

Day Y =

b =

m =

n =

Dear :

This letter responds to your letter received in the National Office on June 27, 2008. The information submitted in that letter and in later correspondence is summarized below.

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. Moreover, no information provided by the taxpayer has been reviewed and no determination has been made regarding whether the proposed transaction: (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 (the "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 fifty percent or greater interest in the distributing corporation or the controlled corporation (see §§ 355(e)(2)(A)(ii) and 1.355-7).

Summary of the Facts

Distributing is a State X holding company and the common parent of an affiliated group of banking corporations that files a consolidated federal income tax return. Distributing has two subsidiary banks: Sub 1, which is headquartered in City 1, State X, and Controlled, which is located in City 2, State X. Both are State X chartered commercial

banks. Distributing has a single class of voting common stock outstanding, which is owned by over n shareholders.

The consolidated return group's tax year ends on Day Y. Distributing and its subsidiaries use the accrual method of accounting for both financial reporting and income tax reporting purposes.

Each of Sub 1 and Controlled is a State X corporation and has a single class of voting common stock outstanding, all of which is owned by Distributing.

Financial information has been received indicating that each of Sub 1 and Controlled has had gross receipts and operating expenses representative of an active trade or business for each of the past five years.

Distributing first registered as a bank holding company effective Date 1. Since the time of its incorporation, Distributing has acquired and owned several banks. Distributing has indirectly owned all of the stock of Controlled since Year 1 and directly since Year 2. Distributing has directly owned all of the stock of Sub 1 since Year 1.

On Date 2, Sub 1, which had formerly done business under another name, changed its charter from a national to a state charter and changed its name to Sub 1. Sub 1 is a state bank operating from b locations, all located in State X. Sub 1 has opened several branches in various large cities in State X, thereby starting the process of changing from doing banking Sector A business to doing banking Sector B business.

When Controlled was acquired, it fit well in Distributing's Sector A banking business. Both of Distributing's subsidiaries initially served principally the Sector A business in the Location Q part of State X.

The location of Sub 1's market populations, and the distribution of Sub 1's deposits among its branches, has shifted materially away from its banking Sector A business base in the Location Q part of the State. The officers, directors, and shareholders of Distributing and of Sub 1 believe that the future strategy of Sub 1 should focus on growing its presence in the populous areas in the Location P part of State X.

Controlled operates from a single location in City 2, State X. Since Year 1 when Distributing acquired Controlled, the two banks have grown substantially apart. Sub 1's target market has become primarily Sector B while Controlled's has remained Sector A.

The two banks no longer fit well together in the same organization. The growing disparity between the two banks, both with respect to their existing business and risk, and with respect to their strategic business plan for the future, has created a situation in which it is the judgment of the officers and directors of both banks that each will operate more

successfully as an independent bank controlled by its own bank holding company and focused on its own operations.

Furthermore, a few of the Distributing shareholders are more interested in Sector A banking and are less interested in their company incurring the financial risks of Sector B banking in the more metropolitan areas of State X. Most of the shareholders, however, are supportive of Sub 1's aggressive expansion into more metropolitan areas. It is the judgment of the officers and directors that the operations of both Sub 1 and Controlled will benefit from the greater shareholder consensus that will result from being independent banks.

Proposed Transaction

Distribution

In order to separate the ownership and management of the Sub 1 and Controlled, Distributing plans to exchange all of the issued and outstanding Controlled common stock owned by Distributing for all of the Distributing common stock owned by certain Distributing shareholders (the "Exchanging Shareholders"). This step is referred to as the "Distribution".

Prior to the Distribution, some prospective shareholders of Holdco will purchase approximately m Distributing shares from existing Distributing shareholders. Distributing itself will sell no shares.

Contribution

Immediately after, and essentially simultaneously with, the Distribution, the transferors (the "Exchanging Shareholders") will exchange all of their Controlled shares to Holdco, a newly-formed State X bank holding company, in exchange for the same number of Holdco common shares. As a consequence, Controlled will become a wholly owned subsidiary of Holdco. This step is referred to as the "Contribution".

Representations

The following representations have been made with respect to the proposed Distribution:

- a) The fair market value of the Controlled common shares to be received by the Exchanging Shareholders of Distributing will be approximately equal to the fair market value of the Distributing corporation stock surrendered by the Exchanging Shareholders in the exchange.

- b) No part of the consideration to be distributed by Distributing will be received by an Exchanging Shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- c) Distributing will treat all members of its separate affiliated group (as defined in Section 355(b)(3)(B) ("SAG") as one corporation in determining whether it meets the requirements of Section 355(b)(2)(A) regarding the active conduct of a trade or business.
- d) The five years of financial information submitted on behalf of Sub 1 (a member of the Distributing SAG) is representative of the present business operations of Sub 1, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- e) The five years of financial information submitted on behalf of Controlled is representative of the present business operations of Controlled, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- f) Following the proposed transaction, the Distributing SAG and Controlled will each continue the active conduct of its business, independently and with its separate employees.
- g) The distribution of Controlled common shares is being carried out for the corporate business purpose of permitting Sub 1 and Controlled to operate more successfully as independent banks controlled by their separate bank holding companies, focused on their own operations and on implementing their separate strategic business plans. Because of the growing disparity between the two banks, they no longer fit well together in the same organization. Furthermore, it is the judgment of the officers and directors that the operations of both Sub 1 and Controlled will benefit from the greater shareholder consensus that will result from being independent banks. The distribution of the stock of Controlled is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- h) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the distribution of the Controlled common shares, except for possible immaterial payables and receivables that arise in the ordinary course of business, and will be paid in the ordinary course of business.
- i) Immediately before the transaction, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable inter-company transaction regulations. (See section 1.1502-13 and section 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; section 1.1502-13 as published by T.D. 8597). Furthermore, should Distributing

determine that it has an excess loss account with respect to the Controlled common stock, such account will be included in income immediately before the Distribution. Regulation Section 1.1502-19.

- j) Neither Distributing nor Controlled will accumulate its receivables or make extraordinary payment of its payables in anticipation of the proposed transaction.
- k) Payments made in connection with any continuing transactions, if any, between Distributing and Controlled will be made for fair market value based on the terms and conditions arrived at by the parties bargaining at arm's length.
- l) The Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both. Section 355(a)(1)(B).
- m) Neither Distributing nor Controlled is an investment company as defined in Section 368(a)(2)(F)(iii) or a disqualified investment corporation within the meaning of Section 355(g)(2).
- n) For purposes of Section 355(d), immediately after the transaction, no person (determined after applying Section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing common shares entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing common shares, that was acquired by purchase (as defined in Section 355(d)(5) and (8)) during the five-year period (determined after applying Section 355(d)(6)) ending on the date of the Distribution.
- o) For purposes of Section 355(d), immediately after the Distribution, no person (determined after applying Section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled common shares entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled common shares, that was either (i) acquired by purchase (as defined in Section 355(d)(5) and (8)) during the five-year period (determined after applying Section 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing common shares that were acquired by purchase (as defined in Section 355(d)(5) and (8)) during the five-year period (determined after applying Section 355(d)(6)) ending on the date of the transaction.
- p) 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 either such corporation).

The following representations have been made with respect to the proposed Contribution:

- q) No stock or securities will be issued for services rendered to or for the benefit of Holdco in connection with the Contribution.
- r) No stock or securities will be issued for indebtedness of Holdco that is not evidenced by a security or for interest on indebtedness of Holdco which accrued on or after the beginning of the holding period of the transferor(s) for the debt.
- s) Shares of Controlled are the only asset being transferred to Holdco. Only common shares of Controlled will be contributed.
- t) The Contribution is not the result of a solicitation by a promoter, broker, or investment house.
- u) The transferor(s) will not retain any rights in the property transferred to the transferee.
- v) No debt is being assumed by Holdco.
- w) The transferee will be a bank holding company within the meaning of section 2(a) of the Bank Holding Company Act of 1956.
- x) An application to form a bank holding company was not filed with the Federal Reserve Board before August 16, 1982.
- y) No transferor(s) will have "acquisition indebtedness" assumed by the bank holding company or will receive "securities" or other property described in section 304(a) in exchange for the bank stock.
- z) No Exchanging Shareholder will receive securities of Holdco and none of the Exchanging Shareholders will be "Qualified Minority Shareholders" as defined in section 304(b)(3)(D)(i) of the Code.
- aa) Controlled has been an operating company since before Year 2, and no acquisition indebtedness is being assumed by Holdco.
- bb) No securities are being issued by the bank holding company (Holdco).
- cc) No liabilities will be transferred.

- dd) The shares of Controlled will be transferred subject to no liabilities, and no liabilities of any transferor, whether Distributing or an Exchanging Shareholder, will be assumed by Holdco.
- ee) The fair market value of the assets transferred to Holdco will exceed the aggregate tax basis in those assets immediately before the transfer.
- ff) There will be no indebtedness between Holdco and an Exchanging Shareholder, and no indebtedness will be created in favor of an Exchanging Shareholder as a result of the Contribution.
- gg) The Contribution will occur pursuant to a plan agreed upon before the transaction in which the rights of the parties are defined.
- hh) There will be no plan or intention on the part of a Holdco to redeem or otherwise reacquire any of its stock that may be issued in the Contribution.
- ii) Taking into account any deemed or actual issuance of shares of Holdco stock; any issuance of stock for services; the exercise of any Holdco stock rights, warrants, or subscriptions; a public offering of Holdco stock; and the sale, exchange, transfer by gift, or other dispositions of any of the stock of the Holdco to be received in the exchange, the Exchanging Shareholders will be in control of Holdco within the meaning of § 368(c).
- jj) The Exchanging Shareholders will receive (or be deemed to receive) stock in Holdco approximately equal to the fair market value of the property transferred to Holdco.
- kk) Holdco will remain in existence and retain the Controlled stock.
- ll) The Exchanging Shareholders and Holdco will pay their own expenses, if any, incurred in connection with the Contribution.
- mm) The transferee will not be an "investment company" within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii).
- nn) To Distributing's knowledge, no Exchanging Shareholder is under the jurisdiction of a court in a Title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy the indebtedness of such debtor.
- oo) Holdco will not be a "personal service corporation" within the meaning of § 269A.

- pp) Immediately following the exchange of the Controlled shares to Holdco, the fair market value of the assets of Holdco will exceed the sum of Holdco's liabilities.
- qq) Immediately prior to the Contribution, the fair market value of the assets contributed to Holdco will exceed the sum of the liabilities assumed by Holdco.
- rr) All exchanges in connection with the Contribution will occur on approximately the same date.

Rulings

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

The Distribution:

- (1) Distributing will recognize no gain or loss on the distribution of the shares of Controlled. (Sections 355(a) and (c)(1)).
- (2) The Exchanging Shareholders will recognize no gain or loss (and no amount will be included in their income) upon the receipt of Controlled common shares pursuant to the Distribution. (Sections 355(a)(1) and (2))
- (3) The Exchanging Shareholders' income tax basis in the Controlled common shares received pursuant to the Distribution will be equal to such holder's adjusted basis in the shares of Distributing surrendered. (Sections 358(a)(1) and (b)(2)).
- (4) The Exchanging Shareholders' holding period of the Controlled common shares received pursuant to the Distribution will include the holding period of the Distributing common shares surrendered in exchange therefore, provided that such Distributing common shares are held as capital assets on the date of the Distribution. (Section 1223(1)).
- (5) Earnings and profits will be allocated between Distributing and Controlled in accordance with Section 312(h), and Regulation Sections 1.312-10(a) and 1.1502-33(e)(3).

The Contribution:

- (6) The Exchanging Shareholders will recognize no gain or loss on the exchange of Controlled shares for Holdco shares. (Sections 351(a) and 357(a)).
- (7) Holdco will recognize no gain or loss on the receipt of Controlled shares in exchange for Holdco shares. (Section 1032(a)).

(8) The Exchanging Shareholders' income tax basis in the Holdco shares received in exchange for Controlled shares will be their respective bases in the Controlled shares exchanged, which under Ruling 3 above, will equal the Exchanging Shareholders' income tax basis in the Distributing shares surrendered. (Section 358(a)(1)).

(9) Holdco's income tax basis in the Controlled shares will equal the basis in the hands of the Exchanging Shareholders immediately prior to the exchange with Holdco. (Section 362(a)).

(10) The Exchanging Shareholders' holding period for the Holdco shares received in exchange for Controlled shares will include the holding period of the Controlled common shares surrendered in exchange therefore, which under Ruling 4 above will in turn include the holding period of the Distributing shares surrendered. (Section 1221(1)).

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.

In particular, we express no opinion regarding: (i) Whether the Distribution will satisfy the business purpose requirement of § 1.355-2(b); (ii) Whether the Distribution is being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled (see § 355(a)(1)(B) and § 1.355-2(d)); or (iii) Whether the Distribution 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% or greater interest in Distributing or Controlled (see § 355(e) and § 1.355-7).

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.

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

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,

Richard M. Heinecke
Assistant to the Branch Chief, Branch 6
Office of Associate Chief Counsel (Corporate)