

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:01
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Date:
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LEGEND

Distributing =

State X =

Date 1 =

Controlled 1 =

Controlled 2 =

Controlled 3 =

Group A Shareholders =

Group B Shareholders =

Group C Shareholders =

Group D Shareholders =

W% =

X% =

Y% =

Z% =

Business 1 =

Dear :

This letter responds to your representative's letter dated April 22, 2009, requesting rulings as to the Federal income tax consequences of the Proposed Transaction set forth below. Additional information was submitted by letters dated July 7, 2009, July 23, 2009, September 9, 2009, and October 16, 2009. The material information submitted for consideration 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 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) and § 1.355-7).

SUMMARY OF FACTS

Distributing is a closely-held State X Corporation that was organized as a subchapter C corporation on Date 1. Distributing is owned by four family shareholder groups. Group A Shareholders together own W%, Group B Shareholders together own X%, Group C Shareholders together own Y%, and Group D Shareholders together own Z% of the stock of Distributing.

Distributing is engaged in Business 1. Distributing has submitted financial information which indicates that Business 1 has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

PROPOSED TRANSACTION

For what are represented as valid business reasons, Distributing proposes the following transactions (the "Proposed Transaction"):

- (i) Each of Controlled 1, Controlled 2, and Controlled 3 will be incorporated in State X. Each of Controlled 1, Controlled 2, and Controlled 3 will have one class of common stock outstanding, all of which will be owned directly by Distributing.
- (ii) Distributing will transfer various assets related to the conduct of Business 1 to each of Controlled 1, Controlled 2, and Controlled 3 in exchange for all of the stock of each of Controlled 1, Controlled 2, and Controlled 3 (the "Contributions"). Controlled 1 and Controlled 2 will not assume any liabilities of Distributing. Controlled 3 will assume liabilities of Distributing.
- (iii) Immediately after the Contributions, Distributing will distribute: (1) all of the Controlled 1 stock to the Group B Shareholders in exchange for all of their Distributing stock, (2) all of the Controlled 2 stock to the Group C Shareholders in exchange for all of their Distributing stock, and (3) all of the Controlled 3 stock to the Group D Shareholders in exchange for all of their Distributing stock (together the "Distributions"). Thereafter, the Group A Shareholders will own all of the remaining Distributing stock, the Group B Shareholders will own all of the Controlled 1 stock, the Group C Shareholders will own all of the Controlled 2 stock, and the Group D Shareholders will own all of the Controlled 3 stock.

REPRESENTATIONS

- (a) The fair market value of the Controlled 1 stock to be received by the Group B Shareholders, the Controlled 2 stock to be received by the Group C Shareholders, and the Controlled 3 stock to be received by the Group D Shareholders, respectively, will be approximately equal to the fair market value of the Distributing stock surrendered by each of the Group B Shareholders, Group C Shareholders, and Group D Shareholders, respectively, in the exchange.
- (b) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee or in any capacity other than that of a Distributing shareholder.
- (c) The five years of financial information submitted on behalf of Distributing, concerning Business 1, represents its present operations, and there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) Following the transaction, Distributing and each of Controlled 1, Controlled 2, and Controlled 3 will continue the active conduct of its business, independently and with its separate employees.

- (e) Neither Business 1 nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
- (f) The Distribution is carried out for the following corporate business purpose: in order to resolve managerial deadlock that is hindering the business operations of Distributing. The distribution of the stock, or stock and securities, of Controlled 1, Controlled 2, and Controlled 3 is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (g) The Proposed Transaction is not used principally as a device for the distribution of the earnings and profits of Distributing or any Controlled, or any combination of Distributing and any of the Controlled corporations.
- (h) The total adjusted bases of the assets to be transferred to each of Controlled 1, Controlled 2, and Controlled 3, respectively, by Distributing in the transaction will equal or exceed the sum of the total liabilities assumed (within the meaning of section 357(d)), if any, by each of Controlled 1, Controlled 2, and Controlled 3, respectively.
- (i) The liabilities assumed (within the meaning of § 357(d)), if any, by each of Controlled 1, Controlled 2, and Controlled 3, respectively, in the contribution were incurred in the ordinary course of business and are associated with the assets being transferred to each of Controlled 1, Controlled 2, and Controlled 3, respectively.
- (j) The total fair market value of the assets transferred to each of Controlled 1, Controlled 2, and Controlled 3, respectively, by Distributing in the transaction will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of section 357(d)) by each of Controlled 1, Controlled 2, and Controlled 3, respectively, in the exchange, and (ii) the amount of any liabilities owed to each of Controlled 1, Controlled 2, and Controlled 3, respectively, by Distributing that are discharged or extinguished in connection with the exchange. The total fair market value of the assets of each of Controlled 1, Controlled 2, and Controlled 3, respectively, will exceed the amount of the liabilities of Controlled 1, Controlled 2, and Controlled 3, respectively, immediately after the exchange.
- (k) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.
- (l) No income items, including accounts receivable or any item resulting from a sale, exchange or disposition of property, that would have resulted in income to the Distributing, and no items of expense will be transferred any of the Controlled

corporations if Distributing has earned the right to receive the income or could claim a deduction for the expense under the accrual or similar method of accounting.

- (m) For purposes of § 355(d), immediately after the Distributions, 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 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 each of the Distributions.
- (n) For purposes of § 355(d), immediately after the Distributions, 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 each of Controlled 1, Controlled 2, and Controlled 3, respectively, stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 1, Controlled 2, and Controlled 3, respectively, 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 each of the Distributions, 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 each of the Distributions.
- (o) Payments made in connection with all continuing transactions, if any, between Distributing and each of Controlled 1, Controlled 2, and Controlled 3, respectively, 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 transaction are investment companies as defined in §§ 368(a)(2)(F)(iii) and (iv).
- (q) The Distributions are 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 fifty percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or each of Controlled 1, Controlled 2, or Controlled 3, (or also including any predecessor or successor of any such corporation).
- (r) Immediately after the transaction (as defined in § 355(g)(4)), none of Distributing, Controlled 1, Controlled 2, or Controlled 3 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

RULINGS

Based solely on information submitted and the representations set forth above, this office rules as follows:

- (1) The transfer by Distributing to Controlled 1 of part of its assets in exchange for all of the Controlled 1 stock followed by the distribution of all of the Controlled 1 stock to Group B Shareholders will constitute a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled 1 each will be “a party to a reorganization” within the meaning of § 368(b). The transfer by Distributing to Controlled 2 of part of its assets in exchange for all of the Controlled 2 stock followed by the distribution of all of the Controlled 2 stock to Group C Shareholders will constitute a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled 2 each will be “a party to a reorganization” within the meaning of § 368(b). The transfer by Distributing to Controlled 3 of part of its assets in exchange for all of the Controlled 3 stock and assumption of liabilities followed by the distribution of all of the Controlled 3 stock to Group D Shareholders will constitute a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled 3 each will be “a party to a reorganization” within the meaning of § 368(b).
- (2) No gain or loss will be recognized by Distributing upon the transfer of assets to Controlled 1 in exchange for Controlled 1 stock, the transfer of assets to Controlled 2 in exchange for Controlled 2 stock, or the transfer of assets to Controlled 3 in exchange for Controlled 3 stock and the assumption of liabilities. Sections 361(a) and 357(a).
- (3) No gain or loss will be recognized by each of Controlled 1, Controlled 2, and Controlled 3 on receipt of assets in exchange for respective Controlled stock and the assumption of any lease obligations. Section 1032(a).
- (4) Each of Controlled 1’s, Controlled 2’s, and Controlled 3’s basis for each of its assets received from Distributing will equal the basis of that asset in the hands of Distributing immediately prior to the Proposed Transaction. Section 362(b).
- (5) Each of Controlled 1’s, Controlled 2’s, and Controlled 3’s holding period for each of its assets received from Distributing will include the period during which Distributing held the asset. Section 1223(2).
- (6) No gain or loss will be recognized by Distributing on each of the Distributions of the stock of Controlled 1, Controlled 2, and Controlled 3. Section 361(c).
- (7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the Group B Shareholders, the Group C Shareholders, and the

Group D Shareholders, respectively, upon their receipt of Controlled 1, Controlled 2, and Controlled 3 stock, respectively, in exchange for each shareholder's Distributing stock. Section 355(a).

- (8) The basis of (a) the Controlled 1 stock in the hands of the Group B Shareholders, (b) the Controlled 2 stock in the hands of the Group C Shareholders, and (c) the Controlled 3 stock in the hands of the Group D Shareholders after the Distribution will, in each instance, equal the basis of the respective Distributing stock surrendered by each shareholder, in each shareholder group, in exchange therefor. Section 358(a)(1).
- (9) The holding period of the Controlled 1 stock received by each of the Group B Shareholders, the Controlled 2 stock received by each of the Group C Shareholders, and the Controlled 3 stock received by each of the Group D Shareholders will, in each instance, include the holding period of the Distributing stock held by each respective shareholder, provided that each respective shareholder held the Distributing stock as a capital asset on the date of each of the Distributions. Section 1223(1).
- (10) Proper allocations of Distributing's earnings and profits will be made, in accordance with the provisions of Sections 312(h) and 1.312-10(a), between Distributing and each of the three controlled corporations: Controlled 1, Controlled 2, and Controlled 3.

CAVEATS

No opinion is expressed about the tax treatment of the Proposed Transaction, described above, under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the Proposed Transaction that is not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the Proposed Transaction satisfies the business purpose requirement of § 1.355-2(b); (ii) whether the Proposed Transaction is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) and § 1.355-2(d)); and (iii) whether the Proposed Transaction is part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

PROCEDURAL STATEMENTS

This ruling letter 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 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.

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

Sincerely,

Lisa A. Fuller
Senior Counsel
Office of Associate Chief Counsel (Corporate)