

f =

Dear :

This letter responds to your representative's March 27, 2013 letter requesting rulings as to the federal income tax consequences of the proposed transaction. The information submitted in that letter and subsequent correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties 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 facts, representations, and other information 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 (as defined below): (i) satisfies the business purpose requirement of Treas. Reg. §1.355-2(b); (ii) is used principally as a device for the distribution of earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) of the Internal Revenue Code ("Code") and Treas. Reg. §1.355-2(d)); or (iii) is part of a plan (or a series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing 50 percent or greater interest in the distributing corporation or the controlled corporation (see section 355(e) and Treas. Reg. §1.355-7).

FACTS

Distributing is a privately-held corporation with a single class of stock outstanding (voting common stock). Currently, Distributing has a shares of stock outstanding, which is owned equally by Shareholder 1, Shareholder 2, and Shareholder 3. Shareholder 1 and Shareholder 2 are brothers and are unrelated to Shareholder 3. Distributing uses the cash method of accounting.

Distributing is engaged in Business A. In addition to conducting Business A on its own property, for many years Distributing conducted Business A on property it leased ("Property L") from Family L. Family L is not related to Distributing or Distributing's shareholders. On Date 1, following the deaths of certain members of Family L, Distributing acquired Property L from the heirs of Family L for approximately \$b. None of the Family L heirs are related to Distributing or Distributing's shareholders. Distributing financed the acquisition with approximately \$c of its own funds and borrowed \$d (Loan 1) and \$e (Loan 2) from a lending institution. Loan 1 is secured by

Property L. Distributing has continued to conduct Business A on Property L since the time of the acquisition.

Subsequent to the acquisition of Property L, Distributing formed a wholly-owned subsidiary corporation ("Controlled"). Controlled has a single class of stock issued and outstanding (voting common stock). Currently, Controlled is only a shell corporation and has f shares of stock outstanding.

Distributing has submitted financial information indicating that Business A operations conducted by Distributing have had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing has proposed the following transaction to split off part of Business A because of shareholder disagreements on how the business should be conducted.

PROPOSED TRANSACTION

For what are represented to be valid business reasons, Distributing has proposed the following transaction ("Proposed Transaction"):

1. Distributing will transfer all of its interest in Property L, including certain related liabilities, to Controlled, with Controlled assuming such liabilities ("Contribution"). Controlled will assume responsibility for Loan 1. Loan 2 will remain with Distributing.
2. Distributing will distribute all of the Controlled stock to Shareholder 3 in exchange for all of Shareholder 3's Distributing stock ("Distribution"). Controlled will use the cash method of accounting.

REPRESENTATIONS

Distributing has made the following representations in connection with the Proposed Transaction:

- (a) Any indebtedness owed by Controlled (or any entity controlled directly or indirectly by Controlled) to Distributing (or any entity controlled directly or indirectly by Distributing) after the Distribution will not constitute stock or securities.
- (b) The fair market value of the Controlled stock received by Shareholder 3 will be approximately equal to the fair market value of the Distributing stock surrendered by Shareholder 3 in the Distribution.

- (c) 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 shareholder of Distributing.
- (d) The five years of financial information submitted on behalf of Distributing is representative of its present operations and with regard to such business, there has been no substantial operational changes since the date of the last financial statements submitted.
- (e) Distributing neither acquired Business A nor acquired control of an entity conducting Business A 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) Following the Distribution, Distributing and Controlled will each continue the active conduct of its respective business independently and with its separate employees.
- (g) The Distribution is being carried out for the following business purpose: to resolve ongoing shareholder disagreements relating to the management of the business that have hindered operation and growth. The Distribution is motivated, in whole or substantial part, by this corporate business purpose.
- (h) The Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (i) The total adjusted bases and the fair market value of the assets to be transferred to Controlled by Distributing in the Contribution each will equal or exceed the sum of the liabilities to be assumed (within the meaning of section 357(d)), if any, by Controlled plus any liabilities to which the transferred assets are subject.
- (j) The liabilities, if any, to be assumed (within the meaning of section 357(d)) by Controlled in the Contribution and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.
- (k) The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.
- (l) The fair market value of the assets transferred to Controlled in the Contribution will equal or exceed Controlled's aggregate basis in those assets immediately after the Contribution.

- (m) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Proposed Transaction.
- (n) No intercorporate debt will exist between Controlled (or any entity controlled directly or indirectly by Controlled) and Distributing (or any entity controlled directly or indirectly by Distributing) at the time of, or after, the Distribution, other than intercompany loans or obligations that have arisen, or will arise, between the parties in the ordinary course of business.
- (o) Payments made in connection with all continuing transactions between Controlled (or any entity controlled directly or indirectly by Controlled) and Distributing (or any entity controlled directly or indirectly by Distributing) will be for fair market value based on the 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 section 368(a)(2)(F)(iii) and (iv).
- (q) 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 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 sections 355(d)(5) and (8)) during the five year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (r) 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 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 sections 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 stock that was acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five year period (determined after applying section 355(d)(6)) ending on the date of Distribution.
- (s) The Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 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 section 355(d)(4)) in either Distributing or Controlled, including any predecessor or successor of any such corporation.

- (t) Immediately after the Proposed Transaction (within the meaning of section 355(g)(4)), either (i) any person that holds a 50 percent or greater interest (within the meaning of section 355(g)(3)) in any disqualified investment corporation (within the meaning of section 355(g)(2)) will have held such an interest in such corporation immediately before the transaction, or (ii) neither Distributing or Controlled is or will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (u) Distributing, Controlled, and Shareholder 3 will each pay their own expenses, if any, incurred in connection with the Proposed Transaction.
- (v) Distributing's acquisition of Property L on Date 1 was an expansion of Business A, Distributing's existing business, as contemplated by Treas. Reg. section 1.355-3(b)(3)(ii).

RULINGS

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

- (1) The Contribution followed by the Distribution will qualify as a reorganization within the meaning of section 368(a)(1)(D). Distributing and Controlled will each be a party to the reorganization within the meaning of section 368(b).
- (2) No gain or loss will be recognized by Distributing on the Contribution. Sections 361(a) and 357(a).
- (3) No gain or loss will be recognized by Controlled on the Contribution. Section 1032(a).
- (4) The basis of each asset received by Controlled in the Contribution will equal the basis of that asset in the hands of Distributing immediately before the Contribution. Section 362(b).
- (5) The holding period of each asset received by Controlled in the Contribution will include the period during which Distributing held that asset. Section 1223(2).
- (6) No gain or loss will be recognized by Distributing on the Distribution. Section 361(c)(1).
- (7) No gain or loss will be recognized by (and no amount will be included in the income of) Shareholder 3 on the Distribution. Section 355(a)(1).

- (8) The basis of the Controlled stock in the hands of Shareholder 3 immediately after the Distribution will equal Shareholder 3's basis in the Distributing stock surrendered. Section 358(a)(1).
- (9) The holding period of the Controlled stock received by Shareholder 3 will include the holding period of the Distributing stock surrendered by the shareholder in the exchange therefore, provided such stock is held as a capital asset on the date of the Distribution. Section 1223(1).
- (10) Proper allocation of earnings and profits between Distributing and Controlled will be made in accordance with section 312(h) and Treas. Reg. §1.312-10(a).

CAVEATS

Except as specifically provided herein, we express no opinion concerning the tax consequences of any aspect of any matter or item discussed or referenced in this letter. Moreover, we express no opinion about the tax treatment of the transactions or of any other matter under provisions of the Code or the Treasury regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction not specifically covered by the above rulings. In particular, no opinion is expressed or implied regarding:

- (i) Whether the Distribution satisfies the business purpose requirement of Treas. Reg. §1.355-2(b);
- (ii) Whether the Distribution is used principally as a device for the distribution of earnings and profits of Distributing, Controlled, or both (see section 355(a)(1)(B) and Treas. Reg. §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 percent or greater interest in the Distributing or the Controlled (see section 355(e) and Treas. Reg. § 1.355-7).

PROCEDURAL STATEMENTS

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that this letter 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 this letter ruling.

Pursuant to the power of attorney on file in this matter, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Marlene P. Oppenheim
Senior Counsel, Branch 5
Office of Associate Chief Counsel (Corporate)