

INTERNAL REVENUE SERVICE
Index Numbers: 332.00-00, 351.00-00
355.01-00, 355.04-00
368.04-00

Number: **199923027**
Release Date: 6/11/1999

CC:DOM:CORP:1 PLR-108906-98

March 11, 1999

Re:

Distributing =

Corporation W =

Corporation X =

Corporation Z =

Controlled =

ESOP =

State A =

PLR-108906-98

Chairman =

x =

Institutional shareholder A =

y =

z =

r =

Business A =

Business B =

m =

q =

Date A =

Date C =

Country V =

Former Corporation X CEO =

s =

t =

u =

Dear :

This is in response to a letter dated April 8, 1998, requesting a ruling as to the federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated October 19, 1998, December 16, 1998, January 7, 1999, January 20, 1999, February 12, 1999, February 24, 1999, and March 3, 1999.

Distributing is the common parent of a consolidated group, and its stock is publicly traded on a national exchange. It has one class of common stock, of which b shares are outstanding. The largest shareholder of Distributing owning in excess of 5 percent of the Distributing stock is ESOP, which holds w percent of the stock outstanding. The Chief Executive Officer of Distributing is Chairman, who holds x percent of the stock of Distributing (more than 5 percent). Additionally, certain shares of Distributing's common stock are held by Distributing employees subject to a substantial risk of forfeiture under section 83(c)(1) of the Internal Revenue Code.

Distributing has also two institutional shareholders that own more than 5 percent of its outstanding stock. Institutional Shareholder A, which owns y percent of the stock, holds this stock partially on its own behalf, partially on behalf of its employee pension and incentive savings plans, and partially through five different mutual funds marketed by the company. No one of these entities owns greater than 5 percent of the Distributing stock.

Institutional Investor B holds its Distributing stock through two private investment partnerships. It also holds Distributing stock in a capacity as an investment advisor. Each of the private investment partnerships, which are operated independently, hold less than 5 percent of the Distributing stock. In its capacity as an investment advisor, Institutional Investor B has the power to vote and dispose of more than 5 percent of the stock on behalf of r clients. Nevertheless, Institutional Investor B has a fiduciary duty to determine whether to buy, sell, or hold Distributing stock on an individual, client-by-client basis, based solely on what is in the best interests of each particular client. No one client of Institutional Investor B holds more than 5 percent of the Distributing stock.

Distributing is a holding company. Its principal first tier subsidiaries include Corporation W (a Country V corporation), Corporation X, and Corporation Z. Corporation X is a holding company, which owns all of the stock of Corporation Y. Distributing holds q percent (more than 80 percent) of the Corporation X stock, while the remainder of the Corporation X stock is publicly held.

Corporation Y, the wholly-owned subsidiary of Corporation X, is directly engaged in Business A. Corporations W and Z are each directly engaged in Business B. Corporation Z has an outstanding intercompany loan from Distributing in the amount of \$p, due to mature on Date A.

Controlled is a holding corporation that has been created in connection with this transaction. Controlled has been created to hold the stock of Corporations W and Z, which conduct Business B.

Employees of Corporations X and Y hold options to acquire u shares of stock in Corporation X (the holding company parent of Corporation Y) that expire on Date B. Corporation X intends to enter into a Lock-up, Registration Rights, and Secured Loan Agreement with the holders of the expiring options. The Agreement will provide that the option holders will not exercise their options until Date B, which is subsequent to the date of the proposed spinoff. In return, Corporation X agrees, among other things, to pay all of the sales expenses (other than underwriting discounts) in connection with the exercise of the options.

Chairman does not hold any of the options in Corporation X which expire on Date B, and accordingly will not participate in the offering. Former Corporation X CEO died on Date D. The estate of Former Corporation X CEO currently holds options to acquire s shares of stock in Corporation X, of which, t shares expire on Date B and are included in the u shares described above.

Financial information has been received which indicates that Business A conducted by Corporation Y and Business B conducted by Corporations Z and W have each had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

Both Business A and Business B rely heavily on their separate highly skilled professional workforces. Management of Distributing believes that equity-based compensation provides key employees with a proprietary interest in the growth of Distributing. Further, management believes that the current compensation plans are inadequate because they are tied to the performance of the consolidated group rather than each business. Specifically, Distributing wants to create an Employee Stock Ownership Plan for Controlled which holds stock whose performance is directly linked to the performance of the Business B business.

In order to accomplish this objective, the following transaction is proposed:

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|------------|--|
| STEP ONE | Corporation Y will pay a dividend of between \$m and \$n to Corporation X (the Corporation Y dividend funds). Corporation X will, in turn, distribute the Corporation Y dividend funds to Distributing and to the Corporation X minority shareholders. |
| STEP TWO | Distributing will accelerate distributions for substantially all of its employee participants in its nonqualified deferred compensation plan and accelerate vesting in its profit sharing plan. In addition, it will accelerate vesting in matching contributions in its Employee Stock Purchase Plan and distribute all of the shares to participants. All options which are not exercisable will be accelerated. |
| STEP THREE | Corporation Z will repay its loan from Distributing through a cash payment. |

STEP FOUR

Distributing will transfer certain assets (the “Transferred Assets”) to Corporation Z, consisting of cash (including the Corporation Y dividend funds in STEP ONE above, as well as the cash payment from Corporation Z in STEP THREE above), operating assets, and investments to Corporation Z, in constructive exchange for Corporation Z stock. The purpose for the transfer of cash and investments will be to meet certain regulatory capitalization requirements of Business B; thus these funds will be used in the Business B business on a continuing basis.

STEP FIVE

Distributing will then transfer certain of its Business B operating assets, together with the Corporation W and Z stock, to Controlled, in constructive exchange for stock of Controlled, and the assumption of certain related liabilities by Controlled. Controlled will not be indebted to Distributing after this STEP, except to the extent of any liability arising out of the provision of certain services to Controlled and with respect to tax allocation and indemnity agreements to be entered into by the parties.

STEP SIX

Distributing, thereafter, will distribute all of the stock of Controlled pro rata to the Distributing shareholders. Fractional shares, if any, will not be issued but will be paid in cash.

STEP SEVEN

The Distributing ESOP will be split into two ESOPs, one for Distributing and one for Controlled. The Distributing stock held by participants to be employed by Controlled will be exchanged to the extent possible for Controlled stock held in accounts of participants to be employed by Distributing. Any amounts of Distributing stock remaining in the Controlled ESOP will be sold either in the market or to Distributing, or in the secondary public offering described below.

STEP EIGHT

Controlled will adopt several of the employee stock incentive plans currently operated by Distributing.

STEP NINE Corporation X will liquidate and transfer its assets to Distributing in a transaction which is intended to qualify as a merger under State A law. The minority shareholders of Corporation X will receive shares of stock of Distributing in the transaction. Fractional shares will be paid in cash by Distributing to the minority shareholders.

STEP TEN Distributing will undertake a secondary public offering of its stock. The purpose is to facilitate an orderly distribution of the shares subject to the options which expire on Date B. Additionally, the estate of Former Corporation X CEO may exercise the additional non-expiring options to acquire the shares of stock and sell the stock in the secondary public offering. Finally, any remaining Distributing shares held by the Controlled ESOP may be sold in the public offering.

The following representations have been made in connection with STEP FOUR (the transfer of assets from Distributing to Corporation Z):

- (a) No stock or securities will be issued for services rendered to or for the benefit of the transferee in connection with the proposed transaction.
- (b) No stock or securities will be issued for indebtedness of the transferee that is not evidenced by a security or for an interest on indebtedness of the transferee which accrued on or after the beginning of the holding period of the transferor for the debt.
- (c) The transfer is not the result of the solicitation by a promoter, broker, or investment house.
- (d) The transferor will not retain any rights in the property transferred to the transferee.
- (e) The value of the stock received in exchange for accounts receivable will be equal to the net value of the accounts transferred, i.e., the face amount of the accounts receivable previously included in income less the amount of the reserve for bad debts.

- (f) The adjusted basis and the fair market value of the assets to be transferred by the transferor to the transferee will, in each instance, be equal to or exceed the sum of the liabilities to be assumed by the transferee plus any liabilities to which the transferred assets are subject.
- (g) The liabilities of the transferor to be assumed by the transferee were incurred in the ordinary course of business and are associated with the assets to be transferred.
- (h) There is no indebtedness between the transferee and the transferor and there will be no indebtedness created in favor of the transferor as a result of the transaction.
- (i) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
- (j) All exchanges will occur on approximately the same date.
- (k) There is no plan or intention on the part of the transferee to redeem or otherwise reacquire any stock or indebtedness to be issued in the proposed transaction.
- (l) Taking into account any issuance of additional shares of transferee stock; any issuance of stock for services; the exercise of any transferee stock rights, warrants, or subscriptions; a public offering of transferee stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of the transferee to be received in the exchange, the transferor will be in control of the transferee within the meaning of section 368(c).
- (m) The transferor will constructively receive stock, securities, or other property approximately equal to the fair market value of the property transferred to the transferee or for services rendered or to be rendered for the benefit of the transferee.
- (n) The transferee will remain in existence and retain and use the property transferred to it in a trade or business.

- (o) There is no plan or intention by the transferee to dispose of the transferred property other than in the normal course of business operations.
- (p) Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the proposed transaction.
- (q) The transferee will not be an investment company within the meaning of section 351(e)(1) and section 1.351-1(c)(1)(ii) of the Income Tax Regulations.
- (r) The transferor is not under the jurisdiction of a court in a Title 11 or similar case (within the meaning of section 368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy the indebtedness of any such debtor.
- (s) The transferee will not be a “personal services corporation” within the meaning of section 269A.

The following additional representations are made in connection with STEPS FIVE and SIX (the transfer of assets by Distributing to Controlled followed by the distribution of all of the stock of Controlled by Distributing):

- (a1) The indebtedness owed by Controlled to Distributing after the distribution of Controlled will not constitute stock or securities.
- (a2) Except to the extent that the receipt of shares of Controlled stock by holders of shares of Distributing restricted stock with respect to such Distributing stock may constitute compensatory income for federal income tax purposes, no part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any other capacity other than that of a shareholder of the corporation. The total number of shares of Controlled stock to be distributed in respect of the holders of Distributing restricted stock will constitute less than 20% of the Controlled stock outstanding immediately after the distribution.
- (a3) The five (5) years of financial information submitted on behalf of Corporation Y’s active business is representative of that Corporation’s present operations, and with regard to such

corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

- (a4) The five (5) years of financial information submitted on behalf of Corporation W's and Corporation Z's active businesses is representative of each corporation's present operation, and with regard to each such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- (a5) Immediately after the transaction, at least 90 percent of the fair market value of the gross assets of Distributing will indirectly consist of the stock and securities of Corporation Y, a controlled corporation that is engaged in the active conduct of a trade or business as defined in section 355(b)(2).
- (a6) Immediately after the distribution, at least 90 percent of the fair market value of the gross assets of Controlled will consist of the stock and securities of Corporation W and Corporation Z, controlled corporations that are engaged in the active conduct of a trade or business as defined in section 355(b)(2).
- (a7) Following the transaction, Corporation Y, Corporation W, and Corporation Z will each continue the active conduct of its business, independently and with its separate employees.
- (a8) The distribution of the stock of Controlled is carried out for the following corporate business purposes:
 - 1. To provide a direct equity interest in a business of Distributing to employees operating that business, through the formation of an ESOP and other stock option and purchase plans sponsored by Controlled.
 - 2. To improve the fit and focus of Distributing's business operations.

The distribution of the stock, or stock and securities, of Controlled is motivated, in whole or substantial part, by one or more of the business purposes.

- (a9) 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, except for the:
- (1) Disposition by the Controlled ESOP of some or all of its shares of stock in Distributing;
 - (2) Possible dispositions by Chairman consisting of:
 - (a) Gifts of stock of Distributing or Controlled to charitable organizations;
 - (b) Gifts of stock of Distributing or Controlled to relatives;
 - (c) Transfers of stock of Distributing or Controlled for estate planning purposes to entities beneficially owned by such relatives or the donor; or
 - (d) Cash sales of stock of Distributing or Controlled to satisfy personal cash needs or for portfolio risk management.With any such dispositions or sales described in 2 (b) and (c) (other than to entities the assets and income of which would be treated as owned by Chairman for federal income tax purposes) and (d) consisting of simultaneous dispositions or sales of an equivalent number of shares of stock in each of Distributing and Controlled.
 - (3) Dispositions in a secondary public offering by (i) Distributing employees of shares of Distributing acquired following the transaction through the exercise of the expiring Date B stock options; (ii) the Estate of Former Corporation X CEO of shares of Distributing acquired following the transaction through the exercise of the expiring Date B stock options and additional non-expiring options to acquire stock of Corporation X and (iii) the Controlled ESOP of any remaining Distributing shares held therein.
- (a10) 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 Rev. Proc. 96-30.
- (a11) Other than as described in STEP NINE above, 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.

- (a12) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing each equals or exceeds the sum of the liabilities assumed by Controlled plus any liabilities to which the transferred assets are subject.
- (a13) The liabilities assumed in the transaction 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.
- (a14) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the distribution of Controlled's stock, except payables incurred by Distributing's active business, liabilities pursuant to tax allocation and indemnification agreements and in the ordinary course of its business in connection with services provided by Controlled's active business.
- (a15) 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 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). Further, Distributing's excess loss account with respect to the Controlled stock, if any, will be included in income immediately before the distribution (see section 1.1502-19).
- (a16) 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.
- (a17) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and(iv).
- (a18) For purposes of section 355(d), immediately after the distribution, no person will hold disqualified stock (under section 355(d)(3)) in Distributing or Controlled possessing 50 percent or more of the total combined voting power of all classes of Distributing or

Controlled stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing or Controlled stock.

- (a19) The distribution is not (within the meaning of section 355(e)) part of a plan or series of related transactions 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.
- (a20) The gross assets of the trade or business of Corporation W relied upon to satisfy the active trade or business requirement of section 355(b) will have a fair market value equal to or greater than five percent of the total fair market value of the gross assets of Corporation W, the corporation conducting such trade or business.
- (a21) The gross assets of the trade or business of Corporation Y relied upon to satisfy the active trade or business requirement of section 355(b) will have a fair market value equal to or greater than five percent of the total fair market value of the gross assets of Corporation Y, the corporation conducting such trade or business.
- (a22) The gross assets of the trade or business of Corporation Z relied upon to satisfy the active trade or business requirement of section 355(b) will have a fair market value equal to or greater than five percent of the total fair market value of the gross assets of Corporation Z, the corporation conducting such trade or business.
- (a23) The Controlled ESOP will be an entity exempt from federal income tax pursuant to section 501(a).

- (a24) The payment of cash in lieu of fractional shares of Controlled will be solely for the purpose of avoiding the expense and inconvenience to Controlled of issuing fractional shares and does not represent separately bargained-for consideration. The total cash consideration to be paid in lieu of fractional shares of Controlled stock will not exceed one percent of the total consideration that will be issued in the transaction to Distributing shareholders. The fractional share interests of each Distributing shareholder will be aggregated and no Distributing shareholder will receive cash in an amount equal to or greater than the value of one full share of Controlled stock.

The following additional representations are made in connection with STEP NINE above (the liquidation of Corporation X into Distributing):

- (b1) Distributing, on the date of adoption of the plan of liquidation, and at all times until the final liquidating distribution is completed, will be the owner of a least 80 percent of the single outstanding class of Corporation X stock.
- (b2) All distributions from Corporation X to Distributing pursuant to the plan of complete liquidation will be made within a single taxable year of Corporation X.
- (b3) As soon as the first liquidating distribution has been made, Corporation X will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and distributing its remaining assets to its shareholders.
- (b4) Corporation X will retain no assets following the final liquidating distribution.
- (b5) Corporation X will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than 3 years prior to the date of adoption of the plan of liquidation.
- (b6) Other than as described above in STEP ONE, no assets of Corporation X have been, or will be, disposed of either by Corporation X or Distributing except for dispositions in the ordinary course of business and dispositions occurring more than three years prior to adoption of the plan of liquidation.
- (b7) Other than the cash dividend that will be paid prior to the liquidation as described in STEP ONE above, the liquidation of Corporation X will not be

preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation (recipient) of any of the businesses or assets of Corporation X, if persons holding, directly or indirectly, more than 20 percent in value of the Corporation X stock also hold, directly or indirectly, more than 20 percent in value of the stock in recipient. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of section 318(a) of the Code as modified by section 304(a)(3).

- (b8) Other than the cash dividend that will be paid prior to the liquidation as described in STEP ONE above, prior to adoption of the liquidation plan, no assets of Corporation X will have been distributed in kind, transferred, or sold to Distributing, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than 3 years prior to the adoption of the liquidation plan.
- (b9) Corporation X will report all earned income represented by assets that will be distributed to its shareholders such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
- (b10) The fair market value of the assets of Corporation X will exceed its liabilities both at the date of the adoption of the plan of complete liquidation and immediately prior to the time the first liquidating distribution is made.
- (b11) No intercorporate debt existing between Distributing and Corporation X has been canceled, forgiven, or discounted, except for transactions that occurred more than 3 years prior to the date of adoption of the liquidation plan.
- (b12) Distributing is not an organization that is exempt from federal income tax under section 501 or any other provision of the Code.
- (b13) The fair market value of the consideration received by Distributing and by the minority shareholders for each share of Corporation X stock will approximately equal the fair market value of that stock.
- (b14) The fair market value of the parent stock and other consideration received by each Corporation X shareholder will be approximately equal to the fair market value of the Corporation X stock surrendered in the exchange.
- (b15) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the proposed liquidation of Corporation X have been fully disclosed.

- (b16) There is no plan or intention for Distributing (the issuing corporation as defined in section 1.368-1(b)), or to the best of the knowledge and belief of Distributing's management, any person related (as defined in section 1.368-1(e)(3)) to Distributing (except to the extent those persons who were the direct or indirect owners of Corporation X prior to the proposed transaction maintain a direct or indirect proprietary interest in Distributing), to acquire during the five year period beginning on the date of the proposed transaction, with consideration other than Distributing stock, Distributing stock furnished in exchange for a proprietary interest in Corporation X in the proposed transaction, either directly or through any transaction, agreement, or arrangement with any other person, except for (i) the cash paid in lieu of fractional shares, and (ii) purchases pursuant to Corporation X's existing repurchase program anticipated to be continued by Distributing following the proposed transaction.
- (b17) During the five year period ending on the date of the proposed transaction:
- (a) Neither Distributing, nor any person related (as defined in section 1.368-1(e)(3)) to Distributing, will have acquired Corporation X stock with consideration other than Distributing stock (excluding exchanges by Distributing of Corporation X stock for a direct interest in the Corporation X enterprise), except for purchases pursuant to Corporation X's existing stock repurchase program.
 - (b) Neither Corporation X, nor any person related (as defined in section 1.368-1(e)(3), determined without regard to section 1.368-1(e)(3)(i)(A)) to Corporation X, will have acquired Corporation X stock with consideration other than Distributing stock or Corporation X stock, except for purchases pursuant to Corporation X's existing stock repurchase program.

(c) No distributions will have been made with respect to Corporation X stock, except for (i) a cash dividend paid by Corporation X to Distributing on Date C at the time of the initial public offering of Corporation X stock and (ii) the cash dividend to be paid by Corporation X to Distributing and Corporation X's minority shareholders on or before the spinoff; either directly or through any transaction, agreement, or arrangement with any other person.

- (b18) The aggregate value of any acquisitions, redemptions, or distributions described in paragraphs (b16) and (b17) will not exceed 50 percent of the value (without giving effect to the acquisitions, redemptions, or distributions) of the proprietary interest in Corporation X on the effective date of the proposed transaction.

Based solely on the information submitted and on the representations set forth above, it is held as follows as to STEP FOUR:

- (1) No gain or loss will be recognized by Distributing on the transfer to Corporation Z of the Transferred Assets and the assumption by Corporation Z of associated liabilities, if any, in constructive exchange for additional stock of Corporation Z (sections 351(a) and 357(a)).
- (2) No gain or loss will be recognized by Corporation Z on the receipt of the Transferred Assets and the assumption by Corporation Z of associated liabilities, if any, in constructive exchange for additional Corporation Z stock (section 1032(a)).
- (3) The basis of the Transferred Assets to Corporation Z will be equal to the basis of such property in the hands of Distributing immediately prior to the transfer (section 362(a)).
- (4) The holding period of Corporation Z in the Transferred Assets will include the period during which such property was held by Distributing (section 1223(2)).
- (5) The basis of the stock of Corporation Z held by Distributing after the exchange will include the basis of the Transferred Assets in the hands of Distributing at the time of the exchange (section 358(a)(1)).
- (6) The holding period of the stock of Corporation Z held by Distributing after the exchange will include the holding period of the Transferred Assets in

the hands of Distributing at the time of the exchange , provided that such property was held by Distributing as a capital asset (section 1223(1)).

- (7) For purposes of Subchapter C of the Code, the circular flow of cash between Corporation Z and Distributing, as described in STEPS THREE and FOUR above, will be disregarded and Distributing will be considered as capitalizing the debt of Corporation Z.

Based solely on the information submitted and on the representations set forth above, it is held as follows as to STEPS FIVE and SIX:

- (1) The transfer by Distributing of certain of its assets, including the Corporation W and Corporation Z stock to Controlled in constructive exchange for Controlled stock and the assumption by Controlled of associated liabilities, followed by the distribution of all of Distributing's stock in Controlled pro rata to Distributing's shareholders, will qualify as a reorganization under section 368(a)(1)(D). Distributing and Controlled will each be "a party to a reorganization" within the meaning of section 368(b).
- (2) No gain or loss will be recognized by Distributing on its transfer of the assets to Controlled in exchange for Controlled stock and the assumption by Controlled of associated liabilities (sections 361(a) and 357(a)).
- (3) No gain or loss will be recognized by Controlled on its receipt of the assets from Distributing in constructive exchange for stock of Controlled (section 1032(a)).
- (4) The basis of the assets received by Controlled will equal the basis of the assets in the hands of Distributing immediately before the transfer (section 362(b)).
- (5) The holding period of the assets received by Controlled will include the period during which these assets were held by Distributing (section 1223(2)).
- (6) No gain or loss will be recognized by Distributing on the distribution of Controlled stock to Distributing's shareholders (section 361(c)).
- (7) No gain or loss will be recognized to (and no amount will be included in the income of) the shareholders of Distributing upon the receipt of Controlled stock (including fractional share interests) (section 355(a)(1)).

- (8) The basis of the Controlled stock in the hands of the Distributing shareholders (including fractional share interests) will be allocated between the Distributing stock and the Controlled stock held by such shareholder after the transaction in proportion to their relative fair market values, as provided by § 1.358-2 (§ 358(a)(1) and (b)).
- (9) The holding period of the Controlled stock received by each Distributing shareholder (including fractional share interests) will include the holding period of the Distributing stock on which the distribution is made, provided the Distributing stock is held as a capital asset on the date of the Distribution (section 1223(1)).
- (10) As provided by section 312(h), proper allocation of earnings and profits between Distributing and Controlled will be made under Treas. Reg sections 1.312-10(a) and 1.1502-33(e).
- (11) A shareholder entitled to a fractional share interest in Controlled will recognize gain or loss on the receipt of cash in lieu of the fractional share interest equal to the difference between the cash received and the holder's basis in such interest (section 1001). Provided the fractional share interest is a capital asset in the hand of the exchanging holder, such gain or loss will be capital gain or loss to such holder subject to the provisions and limitations of Subchapter P and chapter 1 of the Code.

Based solely on the information submitted and on the representations set forth above, it is held as follows as to STEP NINE:

- (1) For federal income tax purposes, the merger of Corporation X into Distributing pursuant to applicable state law will be a distribution by Corporation X in complete liquidation of Corporation X within the meaning of section 332.
- (2) No gain or loss will be recognized to Corporation X on the distribution of its assets to Distributing and the assumption of its liabilities by Distributing in complete liquidation (sections 336(d)(3) and 337(a)).
- (3) No gain or loss will be recognized to Distributing on receipt of the assets of Corporation X and its assumption of liabilities of Corporation X pursuant to the plan of merger and liquidation (section 332(a)).
- (4) Distributing's basis in the assets received from Corporation X in complete liquidation will be the same as the basis of those assets in the hands of Corporation X immediately prior to the liquidation (section 334(b)(1)).

- (5) Distributing's holding period for the assets received in the complete liquidation will include the period during which those assets were held by Corporation X (section 1223(1)).
- (6) Pursuant to section 381(a) and Treas. Reg. section 1.381-1, Distributing will succeed to and take into account the items of Corporation X described in section 381(c), subject to the conditions and limitations of sections 381(b) and (c) and the regulations thereunder.
- (7) The receipt of cash in lieu of a fractional share interest, as described above, will be treated under section 302 as having been paid to the shareholder in redemption of the fractional share interest.

With respect to STEP NINE, the federal income tax treatment of the proposed transaction will be determined separately for the minority shareholders, and for Distributing and the liquidating subsidiary. See sections 1.332-1, -5.

Rev. Proc. 99-3, 1999-1 I.R.B. sec. 3.01(23), 106, provides that the Internal Revenue Service will not rule on the qualification of a transaction under section 368(a)(1)(A). The Service does have, however, the discretion to rule on significant subissues that must be resolved to determine whether a transaction qualifies under this section. The Service will only rule on such subissues if they are significant and not clearly and adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice or other authority published in the Internal Revenue Bulletin.

You have represented that, to the best of the knowledge and belief of Distributing's management, provided the continuity of interest requirement is met, the merger of Corporation X with and into Distributing will constitute a reorganization within the meaning of section 368(a)(1)(A) with respect to the minority shareholders of Corporation X.

Based solely on the information submitted and on the representation set forth above, it is held as follows with respect to the minority shareholders as to STEP NINE:

The requirement of section 1.368-1(b) that there be a continuity of interest on the part of those who were the owners of the enterprise prior to the reorganization is satisfied.

Under Rev. Rul. 98-27, 1998-22 I.R.B. 4, the principles of *Commissioner v. Court Holding*, 324 U.S. 331 (1945) (or any formulation of the step transaction doctrine), will not apply to any postdistribution restructuring described herein in any manner which would disqualify the distribution of Controlled stock.

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No opinion is expressed about the tax treatment of the proposed 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 proposed transaction that are not specifically covered by the above rulings.

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 is consummated.

Sincerely yours,

Assistant Chief Counsel (Corporate)

By: _____
Howard W. Staiman
Assistant to the Chief, Branch 1