

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

December 9, 1998

Re:

Distributing =

Controlled =

Shareholder A =

Shareholder B =

State X =

Business R =

Location 1 =

Location 2 =

Date M =

Date N =

\$o =

Dear

This is in reply to a letter dated June 19, 1998, in which a ruling was requested as to the federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated August 18, and October 9, 1998. The facts submitted for consideration are substantially as set forth below.

Distributing is a State X corporation which is engaged in Business R in Location 1 and Location 2. Distributing has outstanding 1,000 shares of common stock which is held by A (600 shares) and B (400 shares).

Shareholders A and B are husband and wife.

Financial information has been submitted which indicates that Distributing's business had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the last five years.

Shareholders A and B were divorced on Date M. They desire to go their separate ways in connection with the operation of Business R. Accordingly, the following transaction is proposed:

- (i) Distributing will transfer to Controlled, a newly created State X corporation, all of the assets and liabilities of Business R at Location 2 plus cash of \$0 in exchange for common stock of Controlled (which will be the only stock of Controlled outstanding).
- (ii) Distributing will distribute the Controlled stock to Shareholder B in exchange for all of her stock in Distributing.

Distributing acquired its Business R on or about Date N in a transaction which, it is represented, qualified under § 351 of the Code and in which no gain or loss was recognized in whole or in part to any party to the transaction. Shareholders A and B were the transferors in the transaction.

In connection with transaction, it has been represented that:

- (a) Distributing and Controlled and their respective shareholders will each pay their own expenses, if any, incurred in connection with the transaction.
- (b) The fair market value of the Controlled stock to be received by Shareholder B will be approximately equal to the fair market value of the Distributing stock surrendered by the shareholder in the exchange.
- (c) No part of the consideration distributed by Distributing is being received by a shareholder as a creditor, employee or in any capacity other than that of

a shareholder of the corporation.

- (d) Following the transaction, Distributing and Controlled will each continue, independently and with its separate employees, the active conduct of its share of all the integrated activities of the business conducted by Distributing prior to the consummation of the transaction.
- (e) The distribution of the stock of Controlled is carried out for the following corporate business purposes: to resolve serious disputes between the shareholders. The distribution of the stock of Controlled is motivated, in whole or in substantial part, by this corporate business purpose.
- (f) Neither Distributing nor Controlled will elect to be treated as an S corporation under §1361 of the Code for federal income tax purposes.
- (g) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing each equal or exceed the sum of the liabilities assumed by Controlled plus any liabilities to which the transferred assets are subject.
- (h) 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.
- (i) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the distribution of the Controlled stock.
- (j) No two parties to the transaction are investment companies as defined in § 368 (a)(2)(F)(iii) and (iv) of the Code.
- (k) The five years of financial information submitted on behalf of Distributing's business is representative of its present operations and, with regard to such corporation, there have been no substantial operational changes since the date of the last financial statement submitted.
- (l) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.
- (m) 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 subsequent to the transaction, except in the ordinary course of business.
- (n) There is no plan or intention by the shareholders of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in,

either Distributing or Controlled subsequent to the transaction.

- (o) No continuing transactions between Distributing and Controlled are contemplated; however, 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.
- (p) 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 § 4.05 (1)(b) of Rev. Proc. 96-30.

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

- (1) The transfer by Distributing to Controlled of assets, subject to liabilities, in exchange for all the stock of Controlled, as described above, followed by the distribution of the Controlled stock to Shareholder B in exchange for all of her stock of Distributing, will be a reorganization within the meaning of § 368 (a)(1)(D) of the Code. Distributing and Controlled will each be "a party to a reorganization" within the meaning of § 368 (b).
- (2) No gain or loss will be recognized to Distributing upon the transfer of assets, subject to liabilities, to Controlled in exchange for Controlled stock, as described above (§ 361 (a) and § 357 (a)).
- (3) The basis of the assets received by Controlled will be the same as the basis of such assets in the hands of Distributing immediately prior to the transaction (§ 362 (b)).
- (4) The holding period of Distributing's assets received by Controlled will include the period during which such assets were held by Distributing (§ 1223 (2)).
- (5) No gain or loss will be recognized to Controlled on receipt of the assets from Distributing solely in exchange for all of the Controlled stock (§ 1032 (a)).
- (6) No gain or loss will be recognized to (and no amount will be included in the income of) Shareholder B upon receipt of the Controlled stock in exchange for all of her stock of Distributing, as described above (§ 355 (a)(1)).
- (7) No gain or loss will be recognized to Distributing upon the distribution of

all of the Controlled stock (§ 361 (c)(1)).

- (8) The basis of the Controlled stock in the hands of Shareholder B will be the same as the basis of the Distributing stock surrendered in exchange therefor (§ 358 (a)(1)).
- (9) The holding period of the Controlled stock will include the holding period of the Distributing stock surrendered in exchange therefor, provided that the Distributing stock is held as a capital asset on the date of the exchange (§ 1223 (1)).
- (10) As provided in § 312 (h) of the Code, proper allocation of earnings and profits between Distributing and Controlled will be made in accordance with § 1.312-10 (a) of the regulations.

No opinion is expressed about the tax treatment of the 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 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) 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 letter is consummated.

In accordance with the power of attorney on file in this office, we have sent a copy of this letter to the taxpayer's authorized representative.

Sincerely yours,

Assistant Chief Counsel (Corporate)

By: _____
Filiz A. Serbes
Assistant to the Chief, Branch 5