

**Internal Revenue Service**

**Department of the Treasury**

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**November 8, 1999**

Distributing =

Controlled 1 =

Controlled 2 =

Controlled 3 =

A =

B =

C =

D =

State E =

Business X =

Business Y =

a =

b =

c =

Dear :

This letter responds to your July 9, 1999 request for rulings on certain federal income tax consequences of a proposed transaction. The information submitted in that request and in later correspondence is summarized below.

Distributing engages in Business X and is owned a percent by A, b percent by B, and c percent by each of C and D. Distributing wholly owns Controlled 1, Controlled 2, and Controlled 3 (the "Controlled Corporations"), each of which engages in Business Y. We have received financial documentation indicating that each of the businesses conducted by Distributing and the Controlled Corporations has had gross receipts and operating expenses in each of the past five years.

Differences of opinion have arisen between the shareholders of Distributing concerning the operation and future direction of Distributing and the Controlled Corporations. To eliminate these differences, it is proposed that Distributing distribute its Controlled 1 stock to B, its Controlled 2 stock to C, and its Controlled 3 stock to D in exchange for the Distributing stock held by each distributee (collectively, the "Distributions").

The taxpayer has made the following representations regarding the proposed transaction. "Controlled" as used in these representations, and in the rulings that follow, refers to each of the Controlled Corporations, as appropriate.

(a) The fair market value of the Controlled stock received by B, C, or D will approximately equal the fair market value of the Distributing stock surrendered in the exchange.

(b) No part of the consideration distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of the corporation.

(c) The five years of financial information submitted on behalf of Distributing and Controlled represents each corporation's present operations, and there have been no substantial operational changes since the date of the last submitted financial statements.

(d) Following the proposed transaction, Distributing and Controlled each will continue its business, independently and with its own employees.

(e) The Distributions are being carried out to alleviate differences of opinion that have arisen between the shareholders of Distributing concerning the future direction and management of Distributing and each of the Controlled Corporations. The Distribution is motivated, in whole or substantial part, by this and other corporate business purposes.

(f) There is no plan or intention by the shareholders of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any stock in Distributing or Controlled after the Distributions.

(g) There is no plan or intention by Distributing or Controlled, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the proposed transaction, other than through stock purchases meeting the requirements of § 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696, 705.

(h) There is no plan or intention to liquidate 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 proposed transaction, except in the ordinary course of business.

(i) No property has been or will be transferred by Distributing to Controlled in connection with the proposed transaction. No property has been or will be transferred by Controlled to Distributing in connection with the proposed transaction.

(j) No debt will exist between Distributing and Controlled at the time of, or after, the proposed transaction. No debt between Distributing and Controlled has been or will be canceled in connection with the proposed transaction.

(k) Immediately before the Distributions, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, any excess loss account Distributing may have in

Controlled stock will be included in income immediately before the Distributions to the extent required by applicable regulations (see § 1.1502-19).

(l) There will be no continuing transactions between Distributing and Controlled after the Distributions.

(m) The proposed transaction is not 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 Distributing or Controlled stock entitled to vote, or 50 percent or more of the total value of all shares of all classes of Distributing or Controlled stock, within the meaning of § 355(e) of the Internal Revenue Code.

(n) Distributing is not an S corporation (under § 1361(a)), and there is no plan or intention for Distributing or Controlled to make an S election under § 1362(a) following the proposed transaction.

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

(1) No gain or loss will be recognized by Distributing on the Distributions (§ 355(c)).

(2) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) B, C, or D on receipt of Controlled stock in exchange for Distributing stock (§ 355(a)(1)).

(3) The basis of the Controlled stock received by B, C, or D will equal the basis of the Distributing stock surrendered in exchange therefor (§ 358(a)(1)).

(4) The holding period of the Controlled stock received by B, C, or D will include the holding period of the Distributing stock surrendered in exchange therefor, provided the Distributing stock is held as a capital asset on the date of the exchange (§ 1223(1)).

(5) As provided in § 312(h), proper allocation of earnings and profits between Distributing and Controlled will be made under § 1.312-10(b) of the Income Tax Regulations.

We express no opinion about the tax treatment of the proposed transaction under any other provision of the Code or regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction that are not specifically covered in the above rulings.

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 the federal income tax return of each taxpayer involved for the taxable year in which the proposed transaction is completed.

Under a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Assistant Chief Counsel (Corporate)

By: \_\_\_\_\_  
Wayne T. Murray  
Senior Technician/Reviewer  
Branch 4