

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:  
CC:DOM:CORP:5 - PLR-116947-99  
Date:  
March 8, 2000

Re:

Distributing =

Controlled =

Subsidiary =

A =

B =

C =

D =

State N =

Dear :

This is in reply to your letter dated October 19, 1999, requesting rulings as to the federal income tax consequences of a proposed transaction. Additional information was submitted in a letter dated February 28, 2000. The information submitted for consideration is substantially as set forth below.

Distributing is a State N corporation engaged in the actuarial and benefit consulting business as well as providing investment consulting services through its wholly owned subsidiaries, Subsidiary and Controlled. Distributing has outstanding 2,500 shares of \$100 per value preferred stock that are owned in equal parts by A and D and 3,626 shares of \$.01 par value common stock that are owned by A (1,3996.6 shares), B (838.7 shares), C (280.2 shares) and D (1,107.5 shares). The four shareholders of Distributing have each owned their stock of Distributing for more than

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five years.

Financial information has been received which indicates that Distributing's business (through Subsidiary) and Controlled's business have each had gross receipts and operating expenses representative of the active conduct of each business for each of the past five years.

D is the general manager of Controlled. A, B, and C are key employees of Distributing. Because of management disagreements, Group A (A, B, and C) and D have decided to go their separate ways. Accordingly, they propose that Distributing will distribute all of the outstanding stock of Controlled to D in exchange for all of the preferred stock and common stock of Distributing owned by D. Group A will not participate in the proposed exchange.

The following representations have been made with respect to the proposed transaction described above:

- (a) The fair market value of the Controlled stock of Distributing to be received by D will be approximately equal to the fair market value of the Distributing stock surrendered by D 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 any capacity other than that of a shareholder in the corporation.
- (c) The five years of financial information submitted on behalf of Distributing and Controlled are representative of each corporation's present operations and there have been no substantial operational changes since the date of the last financial statement submitted.
- (d) Following the transaction, Controlled and Distributing (through its subsidiary) will each continue the active conduct of its business, independently and with its separate employees.
- (e) The distribution of the stock of Controlled is carried out for the following corporate business purpose: management disagreements between and among shareholders which have an unfavorable effect on the operations of Distributing. The distribution of the stock of Controlled is motivated in whole and substantial part by this corporate business purpose.
- (f) 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 of either Distributing or Controlled after the transaction.

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- (g) There is no plan or intention by either Distributing or Controlled, directly or through a subsidiary corporation, to purchase any of its outstanding stock after the transaction other than through purchases meeting the requirements of Section 4.05(1) (b) of Rev. Proc. 96-30.
- (h) There is no plan or intention to liquidate either Distributing or Controlled, to merge either corporation with another corporation or to sell or otherwise dispose of the assets of either corporation after the transaction, except in the ordinary course of business.
- (i) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the proposed transaction.
- (j) No intercorporate debt will exist between Distributing and Controlled at the time of or subsequent to the distribution of the Controlled stock.
- (k) There will be no continuing transactions between Distributing and Controlled after the proposed transaction, other than minimal sharing of certain employees and equipment that will be paid for at fair market value.
- (l) No two parties to the transaction are "investment companies" as defined in § 368 (a) (2) (F) (iii) and (iv).
- (m) Distributing is not an S corporation (within the meaning of §1361(a) of the Internal Revenue Code) and there is no plan or intention by Distributing or Controlled to make an S corporation election pursuant to §1362(a).
- (n) Immediately after the distribution, at least 90 percent of the fair market value of the gross assets of Distributing will consist of the stock and securities of controlled corporations that are engaged in the active conduct of a trade or business as defined in §355(b)(2).

Based solely on the information submitted and on the representations set forth above, it is held as follows with respect to the proposed transaction above:

- (1) No gain or loss will be recognized by (and no amount will be included in the gross income of) D on his receipt of Controlled stock in exchange for shares of Distributing as described above (§355(a)(1)).
- (2) No gain or loss will be recognized by Distributing on its distribution of Controlled stock as described above (§355(c)).
- (3) The basis of the Controlled stock in the hands of D will be the same as the basis in the Distributing stock surrendered in the exchange (§358 (a) (1)).

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- (4) The holding period of the Controlled stock to be received by D 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 (§1233 (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 federal income 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.

The ruling is directed only to the taxpayers 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.

Sincerely yours,  
Assistant Chief Counsel (Corporate)  
By: Charles Whedbee  
Senior Technical Reviewer, Branch

cc: