

Business G =
a =
b =
State H =

Dear :

This letter responds to your letter dated July 1, 2005, requesting rulings as to the federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated September 23, September 26, October 14, October 27, and November 11, 2005. The information submitted is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty 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 information, representations, and other data may be required as part of the audit process. Moreover, no information provided by the taxpayer has been reviewed and no determination has been made regarding whether the proposed transaction: (i) satisfies the business purpose requirement of section 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) of the Internal Revenue Code and section 1.355-2(d)) or (iii) 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 corporation or the controlled corporation (see section 355(e)(2)(A)(ii) and section 1.355-7).

Distributing is a State H corporation. Distributing currently has outstanding common stock and preferred stock. Shareholder A owns all of Distributing's preferred stock and approximately a% of the common stock. The remaining Distributing common stock is held equally by Shareholder B, Shareholder C, and Shareholder D (each owning approximately b% of the total outstanding common stock). Distributing conducts Business F and Business G through company divisions.

Distributing has submitted financial information which indicates that each of Business F and Business G has 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 separating Business F and Business G in order to address disharmony among the shareholders, officers, and directors of Distributing that adversely affects the operations of the businesses and to enable these parties to devote their time and attention to separate corporations with the expectation of enhancing profitability. The following transactions have been proposed and partially consummated:

(i) Distributing contributed certain Business G assets to a newly formed corporation (“Controlled”), a State H corporation, in exchange for all of the shares of Controlled’s single class of outstanding common stock and the assumption by Controlled of certain liabilities associated with Business G (the “Contribution”).

(ii) Distributing will distribute 50% of the common stock of Controlled to each of Shareholder B and Shareholder C in exchange for all of Shareholder B and Shareholder C’s stock in Distributing (the “Distribution”).

The following representations have been made with respect to the Contribution and Distribution:

(a) The fair market value of the stock of Controlled received by Shareholder B and Shareholder C, respectively, will be approximately equal to the fair market value of the Distributing stock surrendered by them in exchange therefor.

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

(c) The five years of financial information submitted on behalf of Business F and Business G is representative of the present operations of Business F and Business G, and, with regard to such businesses, there have been no substantial operational changes since the date of the last financial statements submitted.

(d) Following the Distribution, Distributing and Controlled will each continue the active conduct of its business, independently and with its separate employees.

(e) The Distribution is carried out for the corporate business purpose of addressing disharmony among the shareholders, officers, and directors of Distributing that adversely affects the operations of the businesses and to enable these parties to devote their time and attention to separate corporations with the expectation of enhancing profitability. The Distribution is motivated, in whole or substantial part, by this corporate business purpose.

(f) The Distribution will not be used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(g) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing each equaled or exceeded the sum of the liabilities assumed (within the meaning of section 357(d)) by Controlled in the Contribution. The liabilities assumed (within the meaning of section 357(d)) by Controlled in the Contribution were incurred in the ordinary course of business.

(h) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.

(i) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.

(j) 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.

(k) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).

(l) The Distribution is not part of a plan or series of related transactions (within the meaning of section 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 Distributing or Controlled (including any predecessor or successor of any such corporation).

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

(1) The transfer by Distributing to Controlled of the assets of Business G in exchange for all of the stock of Controlled and the assumption by Controlled of certain liabilities of Distributing, followed by the distribution of the Controlled common stock to Shareholder B and Shareholder C in exchange for their Distributing stock will constitute a reorganization within the meaning of section 368(a)(1)(D). Distributing and Controlled will each be "a party to a reorganization" within the meaning of section 368(b).

(2) Distributing will recognize no gain or loss upon the transfer of the assets of Business G to Controlled in exchange for Controlled stock and the assumption of liabilities (sections 357 and 361(a)).

- (3) Controlled will recognize no gain or loss upon the receipt of the assets of Business G in exchange for Controlled stock and the assumption of liabilities (section 1032(a)).
- (4) Controlled's basis in each asset received from Distributing equaled the basis of that asset in the hands of Distributing immediately prior to the transfer of assets to Controlled (section 362(b)).
- (5) Controlled's holding period for each asset received from Distributing included the period during which Distributing held that asset (section 1223(2)).
- (6) Distributing will recognize no gain or loss upon the distribution of the Controlled stock to Shareholder B and Shareholder C in exchange for their Distributing stock (sections 355(c) and 361(c)).
- (7) Shareholder B and Shareholder C will recognize no gain or loss (and no amount will otherwise be included in the income of Shareholder B or Shareholder C) upon the receipt of the Controlled stock in exchange for their Distributing stock (section 355(a)).
- (8) The basis of the Distributing stock and the Controlled stock in the hands of Shareholder B and Shareholder C, respectively, will be the same as the basis of the Distributing stock surrendered by such shareholders in exchange therefor (section 358(a)(1)).
- (9) The holding period of the Controlled stock received by Shareholder B and Shareholder C, respectively, will include the holding period of the Distributing stock surrendered in exchange therefor, provided that the Distributing stock was held as a capital asset on the date of the distribution (section 1223(1)).
- (10) Earnings and profits will be allocated between Distributing and Controlled in accordance with section 312(h) and section 1.312-10(a).

No opinion is expressed about the tax treatment of the proposed transaction under other provisions 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 by the above rulings. In particular, no opinion is expressed regarding whether the proposed transaction: (i) satisfies the business purpose requirement of section 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) and section 1.355-2(d)) or (iii) 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 corporation or the controlled corporation under section 355(e)(2)(A)(ii).

This ruling is directed only to the taxpayer requesting 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 any income tax return to which it is relevant.

In accordance with the power of attorney on file in this office, a copy of this ruling letter will be forwarded to your authorized representative.

Sincerely,
Associate Chief Counsel (Corporate)
By: _____
Michael J. Wilder
Senior Technician Reviewer, Branch 1

cc: