

S% =

T% =

Dear :

This letter responds to your Date 1 request for rulings on certain federal income tax consequences of a proposed transaction. The relevant information provided in your request and in correspondence of Date 2 and Date 3 is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by penalties of perjury statements executed by an appropriate party. This office has not verified any of the material 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.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the transaction described below satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, whether the distribution described below is used principally as a device for the distribution of earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) of the I.R.C. and § 1.355-2(d)), or whether any distribution described below 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 Distributing or Controlled (see § 355(e) and § 1.355-7).

SUMMARY OF FACTS

Distributing is a State X corporation that uses the cash receipts and disbursements method of accounting. A, B, C and D own all of Distributing's single class of voting common stock, which is the only stock of Distributing that is issued and outstanding, in the following proportions: A: Q%, B: R%, C: Q% and D: R%.

Distributing has been engaged in Business L for more than five years. The financial information submitted by Distributing indicates that Business L has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past 5 years.

A and C differ on how to manage and conduct Business L and desire to resolve their differences.

PROPOSED TRANSACTION

In order to achieve that goal, the following transaction has been proposed to separate the ownership and conduct of a part of Business L from Distributing:

- (i) Distributing will contribute to Controlled a part of the assets and liabilities of Business L in exchange for all of Controlled's issued and outstanding common stock (the "Contribution").
- (ii) Distributing will distribute S% of the Controlled stock to C and T% of the Controlled stock to D in exchange for all of their stock of Distributing (the "Distribution" or "Split-off").

REPRESENTATIONS

The parties have made the following representations concerning the proposed transaction.

- (a) No part of the consideration to be distributed by Distributing will be received by C and D as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (b) 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 Business L conducted by Distributing prior to consummation of the transaction.
- (c) The Split-off is being carried out for the following business purpose: to resolve management and operational disputes regarding the business. The distribution of the Controlled stock in the Split-off is motivated, in whole or substantial part, by this business purpose.
- (d) The Split-off is not being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (e) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing each equal or exceed the sum of any liabilities assumed (as determined under § 357(d)) by Controlled and (2) any liabilities assumed (as determined under § 357(d)) in the transaction were incurred in the ordinary course of business and are associated with the assets being transferred.
- (f) No intercorporate debt will exist between Distributing and Controlled at the time of, or after, the Distribution.
- (g) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

- (h) The five years of financial information submitted on behalf of Business L represents its present operation, and there have been no substantial operational changes since the date of the last financial statements submitted.
- (i) 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 transaction, except in the ordinary course of business.
- (j) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.
- (k) Payments made in all continuing transactions 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.
- (l) There is no acquisition of stock of Distributing or Controlled (including any predecessor or successor of any such corporation) that is part of a plan or series of related transactions (within the meaning of Reg. § 1.355-7) that includes the distribution of the stock of Controlled.
- (m) The Distribution will not be a disqualified distribution (as defined in § 355(d)(2)) because immediately after the Distribution: (i) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Distributing that will constitute a 50 percent or greater interest (defined in § 355(d)(4)) in Distributing, and (ii) no person (determined after applying § 355(d)(7)) will hold disqualified stock (defined in § 355(d)(3)) in Controlled that will constitute a 50 percent or greater interest (defined in § 355(d)(4)) in Controlled.
- (n) The fair market value of the Controlled stock and other consideration to be received by each shareholder of Distributing will be approximately equal to the fair market value of Distributing stock surrendered by each shareholder in the exchange.
- (o) The income tax liability for the taxable year in which investment credit property (including any building to which § 47(d) applies) is transferred will be adjusted pursuant to § 50(a)(1) or (a)(2) or (§ 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect an early disposition of the property.

RULINGS

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the proposed Contribution and Distribution:

- (1) The Contribution followed by the Distribution will be a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled will each be “a party to the reorganization” within the meaning of § 368(b).
- (2) No gain or loss will be recognized by Distributing upon the Contribution. Sections 357(a) and 361(a).
- (3) No gain or loss will be recognized by Controlled upon the Contribution in exchange for Controlled stock. Section 1032(a).
- (4) The basis of each asset received by Controlled will equal the basis of such asset in the hands of Distributing immediately prior to the Contribution. Section 362(b).
- (5) Controlled’s holding period for each asset received in the Contribution will include the period during which such asset was held by Distributing. Section 1223(2).
- (6) Distributing will recognize no gain or loss on the Distribution. Sections 355(c)(1) and 361(c)(1).
- (7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) shareholders C and D upon receipt of Controlled stock from Distributing in the Split-off. Section 355(a)(1).
- (8) The basis of Controlled stock in the hands of shareholders C and D, respectively, will be the same as the adjusted basis of the Distributing stock that each held immediately before the Split-off. Section 358(a).
- (9) The holding period of Controlled stock received by C and D will include the holding period of the Distributing stock on which the Distribution is made, provided that C and D each held their Distributing stock as a capital asset on the date of the Split-off. Section 1223(1).
- (10) Pursuant to § 312(h), proper allocation of earnings and profits between Distributing and Controlled immediately before the transaction will be made in accordance with Section 1.312-10(a).

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Moreover, no opinion is expressed about the tax treatment of the proposed transaction under any 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 (as provided above), no opinion is expressed regarding: (i) whether the Distribution satisfies the business purpose requirement of §1.355-2(b); (ii) whether the proposed transaction is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) and § 1.355-2(d); and (iii) whether the Distribution and acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Each taxpayer involved in this transaction must attach a copy of this letter to any Federal income tax return to which it is relevant.

Sincerely,

Alison G. Burns
Chief, Branch 2
Office of the Associate Chief Counsel
(Corporate)

cc :