

Internal Revenue Service

Department of the Treasury

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Distributing =

S1 =

SS1 =

SS2 =

Controlled =

business x =

business y =

business z =

State X =

Date 1 =

Asset A =

This letter is in response to your letter dated June 19, 2000, for rulings concerning the federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated September 6, 2000 and October 12, 2000. The material information submitted for consideration is summarized below.

Distributing, a publicly traded domestic company, is the common parent of an affiliated group of corporations filing a consolidated return. Distributing has a single class of common stock and a single class of preferred stock outstanding. Distributing is engaged directly, and indirectly through various subsidiary corporations, partnerships

and other entities, in business x, business y and business z. Distributing wholly owns S1, which is a holding company formed on Date 1 in anticipation of the transaction described below.

We have received financial information indicating that Distributing's businesses x, y, and z each have had gross receipts and operating expenses representative of an active conduct of a trade or business for each of the past five years.

Regulatory constraints have affected the efficiency of the Distributing group and its ability to resolve its managerial, financial and other intra-group conflicts. In response to the overall restructuring of the State X industry that Distributing is in, and in furtherance of legislation intended to promote restructuring and competition within this industry, the following transaction is proposed.

(1) The shareholders of Distributing holding common stock will exchange all of their shares of Distributing for all of the shares of S1 stock. After this exchange, S1 will own an amount of Distributing stock meeting the requirements of § 1504(a)(2) of the Internal Revenue Code.

(2) Distributing will form Controlled and contribute the assets of business y and business z to Controlled. Such assets include (i) operating assets, (ii) the stock of various subsidiaries, and ownership interests in various partnerships, limited liability companies and other entities engaged in business y and business z, and (iii) Distributing's rights in Asset A. Controlled will assume certain liabilities associated with business y and business z from Distributing. Controlled will have a single class of voting common stock outstanding.

(3) Distributing will distribute the stock of Controlled to S1.

(4) Controlled will form SS1 and SS2, which will be single member LLCs that are disregarded as separate entities for federal tax purposes, and contribute the assets of business y and business z, respectively, to SS1 and SS2, respectively.

The following representations have been made in connection with the proposed transaction:

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

(b) The 5 years of financial information submitted on behalf of Distributing's business x, business y, and business z are representative of Distributing's present operations, and there have been no substantial changes since the date of the last financial statements submitted.

(c) Following the transaction, Distributing and Controlled will each continue the active conduct of their respective businesses, independently and with their separate employees.

(d) The distribution of the stock of Controlled is carried out to effect a separation of business y and business z from business x, which will resolve managerial, systematic and other problems resulting from operating in the current regulated entity structure, and improve the competitive position of business y and business z by moving them out from the regulated business x umbrella. The transaction is motivated, in whole or substantial part, by the above corporate business purpose.

(e) There is no plan or intention by S1 to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, either Distributing or Controlled after the transaction.

(f) 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.

(g) 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 after the transaction, except in the ordinary course of business, and as described in step (4) above.

(h) The total adjusted basis and the fair market value of the property to be transferred to Controlled by Distributing will equal or exceed the sum of liabilities assumed (as determined under § 357(d)) by Controlled. The liabilities assumed (as determined under § 357(d)) were incurred in the ordinary course of business and are associated with the assets being transferred.

(i) To the extent applicable, 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 § 50(a)(2) (or § 47, as in effect before amendment) to reflect an early disposition of the property.

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

(k) Neither Distributing nor Controlled is an investment company as defined in §§ 368(a)(2)(F)(iii) and (iv).

(l) 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 or as provided by applicable regulatory authorities governing such transactions.

(m) Immediately before the Distribution, items of income, gain, loss, deduction and credit will be taken into account as required by the applicable intercompany regulations. Furthermore, Distributing's excess loss account, if any, with respect to the Controlled common stock will be included in income immediately before the distribution to the extent required by § 1.1502-19 of the Income Tax Regulations.

(n) The distribution is not part of a plan or series of related transactions (within the meaning of § 355(e)) 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 stock of either Distributing or Controlled, or stock possessing 50 percent or more of the total value of all classes of stock of Distributing or Controlled.

Based solely on the information submitted and the representations as set forth above it is held as follows:

(1) The transfer by Distributing of certain assets and liabilities to Controlled solely 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 stock to S1 will constitute a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled will each be a "party to a reorganization" within the meaning of § 368(b).

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

(3) Controlled will recognize no gain or loss on the receipt of the Distributing assets received in exchange for Controlled stock (§ 1032(a)).

(4) Controlled's basis in each asset received from Distributing will equal the basis of such asset in the hands of Distributing immediately prior to the transaction (§ 362(b)).

(5) Controlled's holding period for each asset received from Distributing will include the period during which Distributing held such asset (§ 1223(2)).

(6) Distributing will recognize no gain or loss on the distribution of the Controlled stock to S1 (§ 361(c)).

(7) S1 will recognize no gain or loss (and no amount will be included in the

income of) S1 upon receipt of the Controlled stock (§ 355(a)(1)).

(8) The aggregate basis of the Distributing stock and the Controlled stock (including any fractional share interests) held by S1 immediately after the distribution of the Controlled stock will equal the basis of the Distributing stock held immediately before the distribution, allocated in proportion to the fair market value of the Distributing and Controlled stock in accordance with § 1.358-2(a)(2) (§ 358(b)(2)).

(9) The holding period of the Controlled stock (including any fractional share interests) held by S1 will include the holding period of the Distributing stock on which the distribution is made, provided that the Distributing stock is held as a capital asset on the date of the distribution (§ 1223(1)).

(10) As provided in § 312(h), proper allocation of earnings and profits between Distributing and Controlled will be made under §§ 1.312-10(a) and 1.1502-33(e).

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the proposed transaction under any other provision of the Code and Regulations, or about the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction.

A copy of this letter should be attached to the federal income tax returns of the taxpayer(s) involved for the taxable year in which the transaction covered by this ruling letter is consummated.

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

Sincerely yours,
Associate Chief Counsel (Corporate)

By Michael J. Wilder

Assistant to the Chief, Branch 3