

Internal Revenue Service

Department of the Treasury

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Distributing =

A =

B =

C =

Partnership =

Business X =

Location 1 =

Location 2 =

Location 3 =

Location 4 =

Location 5 =

a =

b =

c =

d =

This letter responds to your June 17, 1999 request for rulings on the federal income tax consequences of a proposed transaction. The facts submitted in this request and later correspondence are summarized below.

The rulings in this letter are based on the facts and representations submitted under penalties of perjury in support of the request. Verification of that information may be required as part of the audit process.

Distributing is owned a percent by A, b percent by B, c percent by C, and d percent by Partnership. A, B, and C are siblings and Partnership is owned by relatives of A, B, and C, and trusts for the grandchildren of A and B. Distributing conducts Business X in Location 1, Location 2, Location 3, Location 4, and Location 5.

Distributing has submitted financial information indicating that Business X has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Because A, B, C, and Partnership each wishes to pursue unhindered its, his, or her own view of how best to operate Business X, the shareholders propose to divide Distributing among themselves as follows:

(i) Distributing will transfer the Location 1 assets and certain other assets to newly formed Controlled 1 in exchange solely for Controlled 1 stock and the assumption by Controlled 1 of related liabilities ("Contribution 1").

(ii) Distributing will transfer the Location 2 and Location 3 assets and certain other assets to newly formed Controlled 2 in exchange solely for Controlled 2 stock and the assumption by Controlled 2 of related liabilities ("Contribution 2").

(iii) Distributing will transfer the Location 4 assets and certain other assets to newly formed Controlled 3 in exchange solely for Controlled 3 stock and the assumption by Controlled 3 of related liabilities ("Contribution 3") (together with Contribution 1 and Contribution 2, the "Contributions" or, separately, a "Contribution").

(iv) Distributing will distribute the Controlled 1 stock to A in exchange for all of

A's Distributing stock ("Distribution 1").

(v) Distributing will distribute the Controlled 2 stock to Partnership in exchange for all of Partnership's Distributing stock ("Distribution 2").

(vi) Distributing will distribute the Controlled 3 stock to C in exchange for all of C's Distributing stock ("Distribution 3") (together with Distribution 1 and Distribution 2, the "Distributions" or, separately, a "Distribution").

The taxpayer has submitted the following representations concerning the proposed transaction:

(a) The fair market value of the Controlled 1, Controlled 2, and Controlled 3 stock received by A, Partnership, and C, respectively, will, in each case, approximately equal the fair market value of the Distributing stock surrendered by A, Partnership, or C in the exchange.

(b) No part of the consideration distributed by Distributing in the Distributions 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 represents its present operations, and with regard to these operations, there have been no substantial changes since the date of the last financial statements submitted.

(d) Distributing, Controlled 1, Controlled 2, and Controlled 3 each will continue, independently and with its separate employees, the active conduct of Business X.

(e) The Distributions will be carried out so that A, B, C, and Partnership each may operate Business X in accordance with its, his, or her own business philosophy. The Distributions are motivated, in whole or 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 stock in Distributing, Controlled 1, Controlled 2, or Controlled 3 after the proposed transaction.

(g) There is no plan or intention by Distributing, Controlled 1, Controlled 2, or Controlled 3, 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 section 4.05(1)(b) of Revenue Procedure 96-30, 1996-1 C.B. 696, 705.

(h) There is no plan or intention to liquidate Distributing, Controlled 1, Controlled

2, or Controlled 3, to merge any of these corporations with any other corporation, or to sell or otherwise dispose of the assets of any of these corporations after the proposed transaction, except in the ordinary course of business.

(i) The total adjusted basis and the fair market value of the assets transferred in Contribution 1, Contribution 2, and Contribution 3 will, in each case, each equal or exceed the liabilities assumed (as determined under § 357(d)) by Controlled 1, Controlled 2, or Controlled 3.

(j) The liabilities assumed (as determined under § 357(d)) in the proposed transaction were incurred in the ordinary course of business and are associated with the assets being transferred.

(k) No intercorporate debt will exist between Distributing and Controlled 1, Controlled 2, or Controlled 3 at the time of, or after, Distribution 1, Distribution 2, or Distribution 3.

(l) Payments made in any continuing transactions between any combination of Distributing, Controlled 1, Controlled 2, and Controlled 3 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(m) No two parties to the proposed transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv) of the Internal Revenue Code.

(n) Distributing is not an S corporation (within the meaning of § 1361(a)), and there is no plan or intention by Distributing, Controlled 1, Controlled 2, or Controlled 3 to make an S corporation election pursuant to § 1362(a).

(o) No Distribution is 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 Distributing, Controlled 1, Controlled 2, or Controlled 3 entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of Distributing, Controlled 1, Controlled 2, or Controlled 3.

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

(1) Each of the Contributions followed by its respective Distribution will be a reorganization under § 368(a)(1)(D). Distributing, Controlled 1, Controlled 2, and Controlled 3 each will be "a party to a reorganization" under § 368(b).

(2) No gain or loss will be recognized by Distributing on any of the Contributions (§§ 361(a) and 357(a)).

(3) No gain or loss will be recognized by Distributing on the Distributions (§ 361(c)).

(4) No gain or loss will be recognized by Controlled 1, Controlled 2, or Controlled 3 on its respective Contribution (§ 1032(a)).

(5) The basis of each asset received by Controlled 1, Controlled 2, or Controlled 3 will equal the basis of that asset in the hands of Distributing immediately before its transfer (§ 362(b)).

(6) The holding period of each asset received by Controlled 1, Controlled 2, or Controlled 3 will include the period during which Distributing held that asset (§ 1223(2)).

(7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) A, Partnership, or C on receipt of Controlled 1, Controlled 2, or Controlled 3 stock in exchange for its, his, or her Distributing stock (§ 355(a)(1)).

(8) The basis of the Controlled 1, Controlled 2, or Controlled 3 stock in the hands of A, Partnership, or C will equal the basis of the Distributing stock surrendered in exchange therefor (§ 358(a)(1)).

(9) The holding period of the Controlled 1, Controlled 2, or Controlled 3 stock received by A, Partnership, or C 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)).

(10) As provided in § 312(h), proper allocation of earnings and profits among Distributing and Controlled 1, Controlled 2, and Controlled 3 will be made under § 1.312-10(a) 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 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 consummated.

In accordance with the power of attorney on file in this office, a copy of this letter is being sent to the taxpayer.

Sincerely,

Assistant Chief Counsel (Corporate)

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