

Internal Revenue Service

Number: **200414031**

Release Date: 4/2/04

Index Number: 355.00-00, 355.01-01

Department of the Treasury
Washington, DC 20224

Person To Contact:

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Re:

Refer Reply To:

CC:CORP:1 – PLR-148663-03

Date:

December 19, 2003

LEGEND:

Distributing =

Controlled 1 =

Controlled 2 =

Controlled 3 =

Controlled 4 =

Controlled 5 =

Estate =

Shareholder 2 =

Shareholder 3 =

Shareholder 4 =

Shareholder 5 =

Shareholder 6 =

PLR-148663-03

Shareholder 7 =

Shareholder 8 =

Shareholder 9 =

a =b =c =d =e =f =g =h =i =

Business =

State X =

Property =

Dear

We reply to your letter dated August 7, 2003, requesting rulings as to the federal income tax consequences of a proposed transaction. Additional information was submitted in a letter dated November 20, 2003. The information submitted for consideration is summarized below.

Distributing is a State X corporation that utilizes the cash method of accounting. Distributing currently has one class of voting stock outstanding, which is owned by nine shareholders (collectively the "Shareholders"). The outstanding shares are held as

PLR-148663-03

follows: Estate (a%); Shareholder 2 (b%); Shareholder 3 (c%); Shareholder 4 (d%); Shareholder 5 (e%); Shareholder 6 (f%); Shareholder 7 (g%); Shareholder 8 (h%); Shareholder 9 (i%). Estate is an estate, the beneficiaries of which are Shareholders 2 – 8, as provided by the decedent’s will. Shareholders 2 - 8 have been engaged in disputes concerning the administration of Estate, which have been resolved in a settlement agreement (“Agreement”).

The taxpayer has supplied financial information which indicates that Distributing has been conducting a business that has had gross receipts and operating expenses representative of the active conduct of the business for each of the past five years.

Disputes have arisen among the shareholders concerning the operation of Business that are negatively impacting Business. To eliminate these disputes, the taxpayers propose the following steps (“Proposed Transaction”):

- (i) Distributing has formed Controlled 1, Controlled 2, Controlled 3, Controlled 4, and Controlled 5 (collectively, “the Controlled corporations”) under the laws of State X as cash basis corporations.
- (ii) Pursuant to the terms of the Agreement, Estate will transfer its shares of Distributing to Shareholder 2 – 8.
- (iii) The Shareholders shall contribute their interests in Property to Distributing as a capital contribution.
- (iv) Distributing will transfer 20% of its assets and related liabilities, as described in the submission, to each of the Controlled corporations.
- (v) Distributing will distribute stock of each of the Controlled corporations to the Shareholders in exchange for all their Distributing stock, so that:
 - Shareholder 2 will own 100% of Controlled 1.
 - Shareholder 3 will own 100% of Controlled 2.
 - Shareholder 4 will own 100% of Controlled 3.
 - Shareholder 5 will own 50% of Controlled 4.
 - Shareholder 6 will own 50% of Controlled 4.
 - Shareholder 7 will own 33.33% of Controlled 5.
 - Shareholder 8 will own 33.33% of Controlled 5.
 - Shareholder 9 will own 33.33% of Controlled 5.
- (vi) Distributing will liquidate and files articles of dissolution with State X.

PLR-148663-03

The following representations have been made in connection with the Proposed Transaction:

- (a) There will be no debt outstanding between Distributing and the Controlled corporations after the Proposed Transaction.
- (b) The fair market value of the stock of the Controlled corporations to be received by the Shareholders will be approximately equal to the fair market value of the Distributing corporation stock surrendered by such Shareholders in the exchange.
- (c) 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 as a shareholder of Distributing.
- (d) The five years of financial information submitted on behalf of Distributing is representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) Following the transaction, each of the Controlled corporations will continue, independently and with its separate employees, the active conduct of all of the integrated activities of Business conducted by Distributing prior to the consummation of the transaction.
- (f) The distribution of stock of the Controlled corporations is being carried out for the following corporate business purposes: to resolve shareholder disputes. The distribution of the stock of the Controlled corporations is motivated in whole or in substantial part by this corporate business purpose.
- (g) 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 in Distributing or the Controlled corporations after the transaction.
- (h) There is no plan or intention by Distributing or the Controlled corporations, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction other than through stock purchases meeting the requirements of section 4.05(1)(b) of Rev. Proc. 96-30.
- (i) There is no plan or intention to liquidate the Controlled corporations, to merge the Controlled corporations with any corporation, or to sell or otherwise dispose of

PLR-148663-03

the Controlled corporations' assets after the transaction except in the ordinary course of business.

- (j) The total adjusted basis and fair market value of the assets transferred to each Controlled corporation by Distributing equals or exceeds the sum of the liabilities assumed by such Controlled corporation plus any liabilities to which the transferred assets are subject. The liabilities assumed in the transaction and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.
- (k) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.
- (l) No intercorporate debt will exist between Distributing and the Controlled corporations at the time of, or subsequent to, the distribution of the Controlled corporations' stock.
- (m) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(ii) and (iv) of the Internal Revenue Code.
- (n) The proposed distributions are not part of a plan or series of related transactions (within the meaning of section 355(e)) pursuant to which one or more persons will acquire directly or indirectly stock possessing 50% or more of the total value or total combined voting power of all classes of stock of Distributing or the Controlled corporations.
- (o) None of the distributions of the stock of Controlled corporation will be a disqualified distribution within the meaning of section 355(d)(2).

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

- (1) The Shareholders will recognize no gain or loss upon the contribution of their interests in Property to the capital of Distributing. Sections 118(a).
- (2) Distributing will recognize no gain or loss upon the contribution of interests in Property to the capital of Distributing. Section 118(a).
- (3) Distributing will have a basis in the contributed interests in Property equal to the aggregate bases of such interests in the hands of the Shareholders immediately before the contribution of such property. Section 362(a)(2).

PLR-148663-03

- (4) Distributing's holding period for the contributed interests in Property will include the respective periods during which such interests were held by the Shareholders. Section 1223(2).
- (5) The transfer by Distributing of all of its assets to the five Controlled corporations in exchange for all of their stock, followed by the distribution by Distributing of the stock of each of the Controlled corporations to the Shareholders (as described above) in exchange for their shareholdings in Distributing, constitutes a reorganization within the meaning of section 368(a)(1)(D). Distributing and each of the Controlled corporations will be "a party to the reorganization" within the meaning of section 368(b).
- (6) Distributing will recognize no gain or loss upon the transfer of assets and related liabilities to the Controlled corporations in exchange for 100% of the stock of Controlled (sections 361(a) and 357(a)).
- (7) The Controlled corporations will recognize no gain or loss upon the receipt of assets and related liabilities of Distributing in exchange for shares of stock of such Controlled corporations (section 1032(a)).
- (8) The basis of the assets received by each of the Controlled corporations will be the same as the basis of such assets in the hands of Distributing immediately prior to its transfer to the Controlled corporations (section 362(b)).
- (9) The holding period of the Distributing assets received by each of the Controlled corporations will include the period during which such assets were held by Distributing (section 1223(2)).
- (10) The Shareholders will recognize no gain or loss upon the receipt of the shares of the Controlled corporations in exchange for all of their Distributing shares (section 355(a)(1)).
- (11) Distributing will recognize no gain or loss upon the distribution of stock of the Controlled corporations to the Shareholders (section 361(c)).
- (12) The basis of the stock of the Controlled corporations in the hands of the Shareholders will be the same as the basis of the Distributing stock surrendered by such shareholder in exchange therefore (section 358(a)(1)).
- (13) The holding period of the stock of the Controlled received by each Shareholder will include the holding period of the Distributing stock surrendered in the

PLR-148663-03

exchange therefor, provided that the Distributing stock is held as a capital asset on the date of the distribution (section 1223(1)).

- (14) As provided in section 312(h), proper allocation of earnings and profits between Distributing and the Controlled corporations 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 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 Proposed Transaction that are not directly covered by the above rulings.

This ruling letter 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. 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.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer and the second representative.

Sincerely,

Mark S. Jennings

Mark S. Jennings

Chief, Branch 1

Office of Associate Chief Counsel

(Corporate)