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Person to Contact:

Telephone Number:

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CC:DOM:CORP: 5 - PLR-110699-98
Date:
January 11, 1999

Re:

Distributing =

Controlled =

Bank =

Thrift =

X =

Year Y =

State Z =

FDIC =

OTS =

Dear

This is in reply to your letters received on April 24, 1998, in which rulings were requested as to the federal income tax consequences of a proposed transaction. Additional information was submitted in and with letters dated June 19, November 18, and December 23, 1998. The information submitted for consideration is summarized below.

Distributing is an accrual basis State Z corporation engaged in business as a two-bank holding company. Its wholly owned subsidiaries (that have been wholly owned throughout the preceding five year period) are Bank, a state-chartered bank, and Thrift, a federally-chartered savings bank. Both provide a full range of services and banking products. Thrift was formerly X. During Year Y, X's federal bank charter was converted to a federal savings bank charter and the bank was renamed Bank. Bank's primary federal regulator is FDIC. Thrift's primary federal regulator is OTS. Parent is subject to both the requirements of the Bank Holding Company Act of 1956 ("BHCA") and the Federal Deposit Insurance Corporation Improvement Act of 1991. As of April 24, 1998, Distributing had outstanding 4,100 shares of voting common stock.

Controlled will be formed under the laws of State Z to effectuate the proposed transaction described below. Controlled will be an accrual basis taxpayer.

Financial information has been received which indicates that Distributing's Bank and Thrift each has had gross receipts and operating expenses representative of the active conduct of a banking business for each of the past five years.

During 1997, Thrift was converted from a national bank to a thrift institution. As a national bank, Thrift was prohibited from expanding and establishing branches outside of the county where it is located, putting it at a competitive disadvantage with other depository institution in its market area. As a thrift charter, Thrift, with the approval of the OTS, has begun establishing branches outside of the county where it is located.

Thrift is located in rural State Z where there are several projects currently underway that have created a need for housing. In order to participate in this need for housing, the management of Distributing and Thrift through Thrift want to enter the businesses of real estate development and the sale and brokerage of title insurance.

Thrift is currently the wholly owned subsidiary of Distributing and is part of an organization that includes a commercial bank as a sister corporation, Bank. As a result, Distributing is a bank holding company and subject to the activities restrictions of such entities set forth in BHCA that do not permit a bank holding company to engage, directly or indirectly, in any activities other than those closely related to banking. Taxpayer's legal counsel is of the opinion that the businesses of real estate development and the

sale and brokerage of title insurance will not be considered to be activities closely related to banking by the Federal Reserve Board, the relevant federal regulatory body. Taxpayer's legal counsel has submitted documentation that demonstrates its opinion is warranted. However, a savings and loan holding company is permitted to engage in many activities not related to banking. Thus, an organization without a bank subsidiary, as Controlled will be following the proposed transaction described below, will not be subject to BHCA and, therefore, will be permitted to engage in any business activity not prohibited by the OTS as a savings and loan holding company.

Therefore, in order to allow Thrift to enter the business of real estate development and the sale brokerage of title insurance, the following transaction is proposed:

- (i) Distributing will contribute all of the outstanding stock of Thrift to Controlled, a newly formed corporation, in exchange for 4,100 shares of voting common stock of Controlled.
- (ii) Distributing will distribute on a pro rata basis all of the shares of Controlled stock to the Distributing shareholders.
- (iii) Controlled will then be the parent corporation of Thrift.

The taxpayer has made the following representations with respect to the proposed transaction:

- (a) No part of the consideration to be distributed by Distributing will be received by any shareholder as a creditor, employee, or in any capacity other than that of a shareholder of the corporation.
- (b) The five years of financial information submitted on behalf of Distributing is representative of Distributing's present operation and in regard to such corporation, there have been no substantial operational changes since the date of the last financial statement submitted.
- (c) Immediately after the proposed distributions, at least 90 percent of the fair market value of the gross assets of Distributing and Controlled will consist of the stock and securities of controlled corporations that are engaged in the active conduct of trade or business as defined in § 355(b)(2).
- (d) Following the proposed transaction, Distributing and Controlled will each continue the active conduct of their respective businesses, independently and with their separate employees. Certain management employees of the two active businesses, Bank and Thrift, have and will continue to

perform various management functions for each of Bank and Thrift.

- (e) The distribution of the stock of Controlled is carried out for the following corporate business purpose: To create a savings and loan holding company which is permitted to engage in any activity with the limited exception that the activity may not be undertaken for the purpose or have the effect of evading any law or regulations applicable to the savings and loan holding company savings association subsidiary. The distribution of the Controlled stock is motivated in whole by this stated business purpose.
- (f) Neither Distributing, Controlled, or any other corporation plans to become or will become eligible to be an S corporation.
- (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 either of Distributing or Controlled after the transaction.
- (h) There is no plan or intention by either Distributing or Controlled directly or through any subsidiary corporation, to purchase any of its stock after the transaction.
- (i) 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.
- (j) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.
- (k) 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 arms' length.
- (l) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

Based solely on the information submitted and on the representations set forth above and provided that Thrift does become active in the businesses of branch banking, real estate development, and title insurance, we hold as follows:

- (1) The transfer by Distributing to Controlled of all of the Thrift stock solely in exchange for all of the stock of Controlled followed by the distribution of

the Controlled stock, as described above, will qualify as a reorganization within the meaning of § 368(a)(1)(D) of the Code. Distributing and Controlled will each be “a party to a reorganization” within the meaning of § 368(b).

- (2) No gain or loss will be recognized to Distributing upon the transfer of Thrift stock to Controlled in exchange for Controlled stock (§ 361(a)).
- (3) No gain or loss will be recognized to Controlled upon the receipt of Distributing's Thrift stock in exchange for Controlled stock (§ 1032(a)).
- (4) The basis of the Thrift stock received by Controlled will be the same as the basis of such stock in the hands of Distributing immediately before such transfer (§ 362(b)).
- (5) The holding period of the Thrift stock received by Controlled will include the period during which such stock was held by Distributing (§ 1223(2)).
- (6) No gain or loss will be recognized to Distributing upon the distribution of all of the Controlled stock (§ 361(c)(1)).
- (7) No gain or loss will be recognized to (and no amount will be included in the income of) Distributing's shareholders upon the receipt of Controlled stock (§ 355(a)(1)).
- (8) The aggregate basis of the Controlled and Distributing stock in the hands of each Distributing shareholder immediately after the distribution will be the same as the aggregate basis of the Distributing stock held by each Distributing shareholder immediately before the distribution, allocated between the Distributing stock and Controlled stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) of the Regulations (§ 358(a)(1) and (b)).
- (9) The holding period of the Controlled stock received by each Distributing shareholder will, in each instance, include the holding period of the Distributing stock with respect to which the distribution was made, provided that such Distributing stock is held as a capital asset on the date of the distribution (§ 1223(1)).
- (10) As provided in § 312(h) of the Code, proper allocation of earnings and profits between Distributing and Controlled will be made in accordance with § 1.312-10(a) of the Regulations.

No opinion is expressed concerning the federal income tax treatment of the proposed transaction under other provisions of the Code or Regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions that are not specifically covered by the above rulings.

The ruling is directed only to the taxpayer who requested it. Section 6110(j)(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.

In accordance with the power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely yours,
Assistant Chief Counsel (Corporate)

By _____
Debra L. Carlisle
Chief, Branch 5