Internal Revenue Service

Department of the Treasury

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Distributing =

Holding =

Group A Companies =

Group B Companies =

Group C Holding Companies =

Group C Companies =

Group D Companies =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Other Subs =

=

=

Business A =

Business B =

State X =

Financial Consultant =

a =

b =

c =

Dear :

This letter responds to your July 9, 1999 request for rulings on certain federal income tax consequences of a proposed transaction. The rulings in this letter are based on facts and representations submitted under penalties of perjury in support of the request. Verification of this information may be required as part of the audit process.

Summary of Facts

Distributing is the common parent of an affiliated group that conducts Business A and Business B. Distributing wholly owns Holding, the Group A Companies, the Group B Companies, the Group C Holding Companies, the Group D Companies, Subs 1 through 5, and Other Subs, and indirectly owns other entities engaged in either Business A or Business B. Each of the Group C Holding Companies owns stock in one of the Group C Companies. Subs 1 through 5 and Other Subs all are engaged in Business B (the “Business B Subsidiaries”).

We have received financial information indicating that Business A, as conducted

by the Group A Companies and the Group C Companies, and Business B, as conducted by Sub 2, each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

To further certain business goals, Distributing wishes to increase its borrowing capacity. Financial Consultant has advised Distributing in a detailed and reasoned letter that Distributing can do this and retain its investment grade credit rating only if Business B is first separated from Business A.

Proposed Transaction

To accomplish this separation, Distributing has proposed the following transaction:

(i) Sub 1 will distribute a dollars in cash to Distributing.

(ii) One or more of the Group A Companies and Group C Companies each will merge into a State X corporation (the "Group A/C Premergers").

(iii) Holding will form new, wholly owned State X limited liability companies (the "Group A LLCs") and elect to treat each as a disregarded entity for federal tax purposes under § 301.7701-3 of the Income Tax Regulations. Each of the Group A Companies then will merge into a Group A LLC (collectively, the "Group A Mergers").

(iv) Each of the Group C Holding Companies will merge into Holding (collectively, the "Group C Holding Mergers"). Immediately thereafter, Holding will form new, wholly owned State X limited liability companies (collectively, the "Group C LLCs") and elect to treat each as a disregarded entity for federal tax purposes under § 301.7701-3. Each of the Group C Companies then will merge into a Group C LLC (collectively, the "Group C Mergers"). Assets formerly held by one or more of the Group C Holding Companies will be contributed by Holding to one or more of its subsidiaries or LLCs.

(v) Distributing will contribute all the stock of the Group B Companies to Holding.

(vi) Sub 2 will contribute certain property, primarily real estate, to a newly formed State X corporation ("Real Estate Holding") in exchange for all of the Real Estate Holding stock. Real Estate Holding will form a new, wholly owned State X limited liability company ("REH LLC") and elect to treat it as a disregarded entity for federal tax purposes under § 301.7701-3. Distributing then will cause each of the Group D Companies to merge into REH LLC (collectively, the "Group D Mergers"). In the Group D Mergers, Distributing will receive, in the aggregate, less than 20 percent of the outstanding Real Estate Holding stock.

(vii) Sub 2 will distribute its Real Estate Holding stock (more than 80 percent of the stock outstanding) to Distributing (the "Sub 2 Distribution"). Distributing will contribute the Real Estate Holding stock to Holding.

(viii) Distributing will form a new, wholly owned State X corporation ("Controlled"). Controlled will form a new, wholly owned State X limited liability company ("Sub 2 LLC") and elect to treat it as a disregarded entity for federal tax purposes under § 301.7701-3. Distributing will cause Sub 2 to merge into Sub 2 LLC in exchange for Controlled stock.

(ix) Distributing will transfer the Business B Subsidiaries (other than Sub 2) to Controlled in exchange for Controlled stock and the assumption by Controlled of related liabilities (together with the cash distribution in step (x), the "Contribution").

(x) Sub 1 will loan b dollars in cash to Controlled, and Controlled will distribute the cash to Distributing (the "Cash Distribution") for use in retiring outstanding indebtedness.

(xi) Distributing will distribute its Controlled stock pro rata to the Distributing shareholders (the "Distribution"). Cash will be distributed in lieu of fractional shares.

Following the Transaction, Distributing may for a fee continue to guarantee certain indebtedness of Controlled and certain Controlled affiliates for approximately one year (the "Guarantee"). The amount guaranteed will be less than c percent of Controlled's outstanding debt.

Representations

The taxpayer has made the following representations regarding the Contribution and the Distribution:

(a) There will be no indebtedness owed by Controlled to Distributing after the Distribution.

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

(c) No stock will be distributed to security holders of Distributing.

(d) The five years of financial information submitted on behalf of Distributing, Sub 2, and each of the Group A Companies and Group C Companies represents each corporation's present operations, and with regard to each corporation, there have been no substantial operational changes since the date of the last financial statements

submitted.

(e) Immediately after the Distribution, at least 90 percent of the fair market value of the gross assets of Distributing will consist of the stock or securities of a controlled corporation (Holding) that is engaged in the active conduct of a trade or business as defined in § 355(b)(2) of the Internal Revenue Code.

(f) The gross assets of the trades or businesses currently conducted by the Group A Companies and the Group C Companies that will be relied upon by Distributing and Holding to satisfy the active trade or business requirement of § 355(b) will, in the aggregate, have a fair market value that is not less than five percent of the total fair market value of the gross assets of Holding.

(g) The gross assets of the trades or businesses currently conducted by Sub 2 that will be relied upon by Controlled to satisfy the active trade or business requirement of § 355(b) will, in the aggregate, have a fair market value that is not less than five percent of the total fair market value of the gross assets of Controlled.

(h) Following the Distribution, Distributing and Controlled each will continue the active conduct of its business, independently and with its separate employees.

(i) The Distribution is being carried out so that Distributing can increase its borrowing capacity (and thereby pursue certain business goals) while still maintaining an investment grade credit rating. The Distribution is motivated, in whole or substantial part, by this corporate business purpose. The increased borrowing capacity will be used by Distributing within one year after the Distribution.

(j) For purposes of § 355(d), immediately after the Distribution, no person will hold disqualified stock (as defined in § 355(d)(3)) in either Distributing or Controlled possessing 50 percent or more of the total combined voting power or value of the outstanding Distributing or Controlled stock.

(k) 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 entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either Distributing or Controlled.

(l) There is no plan or intention on the part of any five percent shareholder, and, to the best of the knowledge of Distributing’s management, there is no plan or intention on the part of any particular remaining shareholder or security holder of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, either Distributing or Controlled after the Distribution.

(m) 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 Distribution, other than through stock purchases meeting the requirements of section 4.05(1) (b) of Rev. Proc. 96-30, 1996-1 C.B. 696, 705.

(n) 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 Distribution, except in the ordinary course of business.

(o) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing each equals or exceeds the sum of the liabilities assumed (as determined under § 357(d)) by Controlled.

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

(q) Except for intercompany obligations of Controlled to Distributing affiliates that will be paid in full as part of the transaction, no intercorporate debt will exist between Controlled and Distributing or its affiliates at the time of, or after, the Distribution. The Guarantee will not be stock or securities under § 355.

(r) Immediately before the Distribution, items of income, gain, loss, deduction, and credit, if any, will be taken into account as required by the applicable intercompany transaction regulations (see §§1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; §1.1502- 13 as published by T.D. 8597). Further, any excess loss account Distributing may have in stock of Controlled or its subsidiaries will be included in income immediately before the Distribution (see §1.1502-19).

(s) Payments made in any continuing transactions between Distributing or its affiliates and Controlled or its affiliates will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(t) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(u) Neither Distributing nor Controlled is an S corporation (within the meaning of § 1361(a)), nor is there a plan or intention by Distributing or Controlled to make an S corporation election pursuant to § 1362(a).

(v) The payment of cash in lieu of fractional shares of Controlled stock is solely for the purpose of avoiding the expense and inconvenience to Controlled of issuing

fractional shares and does not represent separately bargained-for consideration. The total cash consideration that will be paid to Controlled shareholders instead of using fractional shares will not exceed one percent of the total amount distributed in the proposed transaction. The fractional share interests of each Distributing shareholder will be aggregated, and no shareholder will receive cash in an amount greater than the value of one full share of Controlled stock.

Rulings

Based solely on the information submitted and representations made, we rule as follows on the Contribution and the Distribution:

(1) The Contribution, followed by the Distribution, will qualify as a reorganization under § 368(a)(1)(D). Distributing and Controlled each will be a "party to the reorganization" under § 368(b).

(2) Distributing will recognize no gain or loss on the Contribution, provided all of the Cash Distribution is used by Distributing to retire outstanding debt of Distributing (§§ 361(a), 361(b)(3), and 357(a)).

(3) Controlled will recognize no gain or loss on the Contribution (§ 1032(a)).

(4) The basis of each asset received by Controlled from Distributing will equal the basis of that asset in the hands of Distributing immediately before the transfer (§ 362(b)).

(5) The holding period of each asset received by Controlled will include the period during which that asset was held by Distributing (§ 1223(2)).

(6) Distributing will recognize no gain or loss on the Distribution (§§ 361(c), 355(d), and 355(e)).

(7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) any Distributing shareholder on receipt of the Controlled stock (§ 355(a)(1)).

(8) The aggregate adjusted basis of the Distributing stock and the Controlled stock in the hands of each Distributing shareholder after the Distribution will equal the aggregate adjusted basis of the Distributing stock held immediately before the Distribution, allocated in proportion to the fair market value of each under § 1.358-2(a)(2) (§ 358(b)(2)).

(9) The holding period of the Controlled common stock received by each Distributing shareholder (including any fractional share interests to which they may be

entitled) will include the holding period of the Distributing common stock on which the Distribution is made, provided the stock is held as a capital asset on the date of the Distribution (§ 1223(1)).

(10) Earnings and profits will be allocated between Distributing and Controlled in accordance with §§ 312(h), 1.312-10(a), and 1.1502-33(e)(3).

Caveats

We express no opinion about the tax treatment of the 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 transaction not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

(a) whether the elections under § 301.7701-3 in steps (iii), (iv), (vi), and (viii) above are properly made;

(b) whether any Group A/C Premerger, Group A Merger, Group C Holding Merger, or Group D Merger will qualify as a reorganization under § 368(a)(1);

(c) whether any Group C Merger will qualify as a complete liquidation under § 332 or be treated instead as a direct asset acquisition in conjunction with a Group C Holding Merger; and

(d) whether the Sub 2 Distribution will qualify under § 355(a).

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling letter have not yet been adopted. Therefore, this ruling will be modified or revoked if adopted temporary or final regulations are inconsistent with any conclusions reached herein. See §12.04 of Rev. Proc. 99-1, 1999-1 I.R.B. 6, 47-48. However, when the criteria in §12.05 of Rev. Proc. 99-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

Procedural Matters

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

Each taxpayer involved in this transaction must attach a copy of this letter to the federal income tax return of the taxpayer for the taxable year in which the transaction is completed.

Pursuant to a power of attorney on file in this office, we are forwarding a copy of this letter to the taxpayer.

Sincerely yours,

Assistant Chief Counsel (Corporate)

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