

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

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LEGEND

Distributing =

Controlled =

Sub 1 =

Sub 2 =

State A =

Date A =

Shareholder Group A =

Shareholder Group B =

Shareholder Group C =

X% =

Y% =

N =

\$a =

Exchanging Shareholders =

Business X =

Business Y =

Dear :

This letter responds to a letter dated August 22, 2012 requesting rulings as to certain federal income tax consequences to the proposed transaction described below (the "Proposed Transaction"). The information submitted in that request and in subsequent correspondence is summarized below.

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. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Proposed Transaction: (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of earnings and profits of the distributing corporation, or the controlled corporation, or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

SUMMARY OF FACTS

Distributing is a corporation organized under the laws of State A that is engaged in Business X and Business Y through its two wholly owned subsidiaries, Sub 1 and Sub 2, which are national banks. Distributing is owned by approximately N shareholders; however, approximately X% of Distributing is owned by Shareholder Group A and Shareholder Group B. The remaining approximately Y% of Distributing is owned by Shareholder Group C. Shareholder Group A is chiefly involved with the operation of Sub 1 while Shareholder Group B is chiefly involved with the operation of Sub 2. Financial information submitted by Distributing indicates that Sub 1 and 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.

On Date A, Distributing formed Controlled for the purposes of the Proposed Transaction described below. Controlled is currently a shell corporation with no assets, business, or employees.

PROPOSED TRANSACTION

For what are represented to be valid business reasons, Distributing proposes the following Proposed Transaction:

- (i) Distributing will contribute all of the outstanding stock in Sub 2, approximately \$a of cash, and certain other assets to the capital of Controlled in exchange for all of the outstanding stock in Controlled and the assumption by Controlled of certain liabilities (the "Contribution").
- (ii) Distributing will thereafter distribute all of the Controlled stock to the Exchanging Shareholders in complete redemption of their Distributing stock (the "Distribution").

REPRESENTATIONS

The taxpayer makes the following representations with respect to the Proposed Transaction:

- (a) Indebtedness, if any, owed by Controlled to Distributing after the Distribution will not constitute stock or securities.
- (b) No part of the consideration to be distributed in the Distribution will be received by a shareholder as a creditor, employee or in any capacity other than that of a shareholder of Distributing.
- (c) No security holder of Distributing will receive any consideration in the Distribution.
- (d) Distributing and Controlled will treat all members of their respective separate affiliated groups within the meaning of section 355(b)(3)(B) ("SAGs") as one corporation in determining whether the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.
- (e) The five years of financial information submitted on behalf of Business X conducted by the Distributing SAG is representative of the business's present operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

- (f) The five years of financial information submitted on behalf of Business Y conducted by the Distributing SAG prior to the Contribution and Distribution and to be conducted by the Controlled SAG after the Contribution and Distribution is representative of the business's present operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (g) The Distributing SAG neither acquired Business X nor acquired control of an entity conducting Business X during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Distribution, the Distributing SAG has been the principal owner of the goodwill and significant assets of Business X and will continue to be the principal owner following the Distribution.
- (h) The Distributing SAG neither acquired Business Y nor acquired control of an entity conducting Business Y during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Distribution, the Distributing SAG has been the principal owner of the goodwill and significant assets of Business Y and will continue to be the principal owner following the Distribution.
- (i) Following the transaction, the Distributing SAG and the Controlled SAG will each continue the active conduct of Business X (Distributing SAG) and Business Y (Controlled SAG), respectively, independently and with its separate employees.
- (j) The Distribution of the stock of Controlled is carried out for the following corporate business purpose and is motivated, in whole or substantial part, by this business purpose: to resolve divergent shareholder views regarding the short and long-term business plans and strategies of Sub 1 and Sub 2. The Distribution of the stock of Controlled is motivated, in whole or substantial part, by this corporate business purpose.
- (k) The Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (l) Following the Distribution, no person will hold a greater than 50 percent interest in either Distributing or Controlled (within the meaning of § 355(g)) who did not hold such an interest immediately before the Distribution.
- (m) Immediately after the Distribution, neither Distributing nor Controlled will be a "disqualified investment corporation" (within the meaning of section 355(g)(2)).

- (n) For the purposes of § 355(d), immediately after the Distribution, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.
- (o) For the purposes of § 355(d), immediately after the Distribution, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled stock that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five year period (determined after applying § 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing's stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.
- (p) The Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of section 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (q) The fair market value of the Controlled stock and any other consideration to be received by the Exchanging Shareholders in the Distribution will be approximately equal to the fair market value of the Distributing stock surrendered by such shareholders in the Distribution.
- (r) The total fair market value of the assets transferred to Controlled in the Contribution will be equal to or exceed the aggregate adjusted basis of those assets so transferred.
- (s) The total adjusted basis of the assets transferred by Distributing to Controlled in the Contribution will equal or exceed the sum of the total liabilities assumed (within the meaning of section 357(d)), if any, by Controlled, plus any liabilities to which the transferred assets are subject.
- (t) The total fair market value of the assets transferred by Distributing to Controlled in the Contribution will exceed the sum of (i) the total amount of liabilities assumed (within the meaning of section 357(d)), if any, by Controlled, (ii) the amount of any liabilities owed to Controlled by Distributing, if any, that are discharged or extinguished in connection with the Contribution, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under

- section 361(a) without the recognition of gain), if any, received by Distributing from Controlled in connection with the Contribution.
- (u) The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.
 - (v) The fair market value of the assets of Controlled will exceed Controlled's aggregate basis in those assets immediately after the Contribution.
 - (w) The liabilities, if any, assumed (within the meaning of section 357(d)) by Controlled in the Contribution and the liabilities, if any, to which the assets transferred in the Contribution are subject were incurred in the ordinary course of business and are associated with the assets being transferred.
 - (x) Distributing will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the Contribution and Distribution.
 - (y) No property will be transferred by Distributing to Controlled for which an investment credit allowed under section 46 has been or will be claimed.
 - (z) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution, other than intercompany loans or obligations that have arisen, or will arise, between the parties in the ordinary course of business.
 - (aa) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. §§ 1.1502-13 and 1.1502-14 as in effect before publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § Treas. Reg. 1.1502-13 as published by T.D. 8597). Further, Distributing's excess loss account with respect to Controlled stock will be included in income immediately before the Distribution.
 - (bb) Payments made in connection with all continuing transactions, if any, following the Proposed Transaction between Distributing and Controlled will be made for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
 - (cc) No two parties to the transaction are investment companies as defined in sections 368(a)(2)(F)(iii) and (iv).
 - (dd) Distributing and Controlled each will pay its own expenses, if any, incurred in connection with the Contribution and the Distribution.

RULINGS

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

- (1) The Contribution and the Distribution, taken together, will qualify as a reorganization within the meaning of section 368(a)(1)(D). Distributing and Controlled will each be “a party to the reorganization” within the meaning of section 368(b).
- (2) Distributing will not recognize any gain or loss on the Contribution. Sections 361(a) and 357(a).
- (3) Controlled will not recognize any gain or loss on the Contribution. Section 1032(a).
- (4) Controlled’s basis in each asset received from Distributing in the Contribution will equal the basis of such asset in the hands of Distributing immediately before the Contribution. Section 362(b).
- (5) Controlled’s holding period in each asset received from Distributing in the Contribution will include the period during which Distributing held such asset. Section 1223(2).
- (6) Distributing will not recognize any gain or loss upon the distribution of Controlled stock in the Distribution. Section 361(c).
- (7) No gain or loss will be recognized by (and no amount otherwise will be included in the income of) the Exchanging Shareholder’s upon the receipt of Controlled stock in the Distribution. Section 355(a)(1).
- (8) The basis of the Controlled stock in the hands of the Exchanging Shareholders immediately after the Distribution will be the same as the Exchanging Shareholders basis in their Distributing stock held immediately before the Distribution, allocated in the manner described in sections 358(a) through (c) and Treas. Reg. § 1.358-2.
- (9) The holding period of the Controlled stock received by the Exchanging Shareholders will include the holding period of the Distributing stock held by the Exchanging Shareholders, provided the Distributing stock was held by the Exchanging Shareholders as a capital asset on the date of the Distribution. Section 1223(1).
- (10) Earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with section 312(h) and Treas. Reg. § 1.312-10(a).

CAVEATS

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code and 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 by the above rulings. In particular, no opinion is expressed regarding: (i) whether the Proposed Transaction satisfies the business purpose requirement of § 1.355-2(b); (ii) whether the Proposed Transaction is used primarily as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) and § 1.355-2(d)); (iii) whether the Proposed Transaction is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in either Distributing or Controlled (see section 355(e)(2)(A)(ii) and Treas. Reg. §1.355-7); and (iv) any non-arm's length transactions between any of the parties to the Proposed Transaction.

PROCEDURAL STATEMENTS

This ruling 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 must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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

Sincerely,

Leah M. Thompson
Assistant Branch Chief, Branch 1
Office of Associate Chief Counsel (Corporate)

cc: