

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B02
PLR-131889-18

Date:
May 07, 2019

Legend

Distributing =

Shareholder A =

Shareholder B =

Shareholder C =

Shareholder D =

a =

b =

c =

d =

State A =

Date 1 =

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2

Business A =

Controlled 1
Assets =

Controlled 2
Assets =

Controlled 3
Assets =

Controlled 4 =
Assets

Segment 1 of =
Business A

Segment 2 of =
Business A

Segment 3 of =
Business A

Segment 4 of =
Business A

Dear :

This letter responds to your letter dated October 5, 2018, submitted by your authorized representative, requesting rulings on certain U.S. federal income tax consequences of a proposed transaction (described below) (the “Proposed Transaction”). The information provided in that request and in later correspondence is summarized below.

This letter is issued pursuant to Rev. Proc. 2017-52, 2017-42 I.R.B. 283, as amplified and modified by Rev. Proc. 2018-53, 2018-43 I.R.B. 667, regarding one or more “Covered Transactions” under § 355 of the Internal Revenue Code (the “Code”). This Office expresses no opinion as to any issue not specifically addressed by the rulings below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties 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.

This office has made no determination regarding whether any of the Distributions (as defined below): (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) and Treas. Reg. § 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, or any predecessor or successor of the distributing corporation or the controlled corporation, within the meaning of Treas. Reg. § 1.355-8T (see § 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

Summary of Facts

Distributing is a State A corporation that was formed on Date 1 and made an election under § 1362(a) to be an S corporation effective as of Date 1. Distributing has a single class of common stock that is owned as follows: Shareholder A owns a%; Shareholder B owns b%; Shareholder C owns c%; and Shareholder D owns d%. Collectively, Shareholder A, Shareholder B, Shareholder C, and Shareholder D are referred to as the “Shareholders.”

Shareholder A, Shareholder B, Shareholder C, and Shareholder D are siblings. Shareholder A is the President of Distributing. Shareholder B is the Treasurer and a Director of Distributing. The Shareholders manage Distributing.

Distributing is a calendar year taxpayer and uses the cash method of accounting. Distributing is directly engaged in Business A. The financial information submitted by

Distributing indicates that Distributing has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Proposed Transaction

The Shareholders have serious disagreements about how to best manage Business A and desire to split the assets and operate separate portions of Business A independently. Therefore, Distributing has proposed the following transactions:

- (i) Distributing will form Controlled 1, Controlled 2, Controlled 3, and Controlled 4 (each, a “Controlled”) as State A corporations. Each Controlled will have one class of stock outstanding, voting common stock.
- (ii) Distributing will transfer the Controlled 1 Assets, which include assets used to conduct Segment 1 of Business A, to Controlled 1 in exchange for all of the Controlled 1 stock and the assumption by Controlled 1 of the liabilities associated with the transferred assets (“Contribution 1”).
- (iii) Distributing will transfer the Controlled 2 Assets, which include assets used to conduct Segment 2 of Business A, to Controlled 2 in exchange for all of the Controlled 2 stock and the assumption by Controlled 2 of the liabilities associated with the transferred assets (“Contribution 2”).
- (iv) Distributing will transfer the Controlled 3 Assets, which include assets used to conduct Segment 3 of Business A, to Controlled 3 in exchange for all of the Controlled 3 stock and the assumption by Controlled 3 of the liabilities associated with the transferred assets (“Contribution 3”).
- (v) Distributing will transfer the Controlled 4 Assets, the remaining portion of its Business A assets, which include assets used to conduct Segment 4 of Business A, to Controlled 4 in exchange for all of the Controlled 4 stock and the assumption by Controlled 4 of the liabilities associated with the transferred assets (“Contribution 4”) (Contribution 1, Contribution 2, Contribution 3, and Contribution 4 are collectively described as the “Contributions.”)
- (vi) Immediately after the Contributions, Distributing will liquidate by making the following distributions in redemption of all of the Distributing stock held by the Shareholders (the “Distributions”):
 - (A) Distributing will distribute all of the stock of Controlled 1 to Shareholder A in exchange for all of Shareholder A’s stock in Distributing (“Distribution 1”).

- (B) Distributing will distribute all of the stock of Controlled 2 to Shareholder B in exchange for all of Shareholder B's stock in Distributing stock ("Distribution 2").
- (C) Distributing will distribute all of the stock of Controlled 3 to Shareholder C in exchange for all of Shareholder C's stock in Distributing ("Distribution 3").
- (D) Distributing will distribute all of the stock of Controlled 4 to Shareholder D in exchange for all of Shareholder D's stock in Distributing ("Distribution 4"). (Distribution 1, Distribution 2, Distribution 3, and Distribution 4 are collectively described as the "Distributions.")

Immediately after the Distributions, Distributing will dissolve.

- (vii) Immediately after the Distributions, Controlled 1, Controlled 2, Controlled 3, and Controlled 4 will each make an election under § 1362(a) to be treated as a subchapter S corporation and will have one class of stock outstanding, voting common stock. Each Controlled will use the cash method of accounting.

Representations

With respect to each of the Contributions and Distributions, Distributing has made all of the representations in section 3 of the Appendix to Rev. Proc. 2017-52, except as set forth below:

- (1) Distributing has made the following alternative representations set forth in section 3 of the Appendix to Rev. Proc. 2015-52:

Representations 3(a); 8(a); 11(a); 15(b); 31(a); 41(b).

- (2) Distributing has not made the following representations, which do not apply to the Proposed Transaction:

Representations 4; 5; 6; 19; 20; 25; 35; 36; 37; 38; 39; 40.

- (3) Distributing makes no modified representations, other than to the extent necessary to take into account the definitions in sections 2.02 and 2.11 of the Appendix to Rev. Proc. 2017-52.

Additionally, with respect to each of the Contributions and Distributions, Distributing has made each of the representations under section 3.04 of Rev. Proc. 2018-53, except for the following representations, which do not apply to the Proposed Transaction: the standard representations in (6) and in (7), and the additional representation in (3).

Rulings

Based solely on the information and representations submitted, we rule as follows on each of the Contributions and Distributions:

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

- (11) Distributing's accumulated adjustment account immediately before the transaction will be allocated between Distributing and each Controlled in a manner similar to the manner in which earnings and profits are allocated under § 312(h) in accordance with Treas. Reg. § 1.1368-2(d)(3) (§§ 1.312-10(a) and 1.1368-2(d)(3)).
- (12) Distributing's momentary ownership of the stock of each Controlled, as part of a reorganization under § 368(a)(1)(D), will not cause such Controlled to have an ineligible shareholder for any portion of its first taxable year under § 1361(b)(1)(B). If a Controlled meets the requirements of § 1361(b)(1), it will be eligible to make an election under § 1362(a) to be treated as an S corporation for its first taxable year, provided such election is made effective immediately after the distribution of the stock of the Controlled.

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the proposed transactions under any provision of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the proposed transactions that are not specifically addressed by this letter. In particular, no opinion is expressed regarding:

- (i) Whether the Distribution satisfies the business purpose requirement of § 1.355-2(b);
- (ii) Whether the Distribution is used principally as a device for the distribution of earnings and profits of Distributing or Controlled or both;
- (iii) Whether the Distribution and an acquisition or acquisitions are part of a plan (or a series of related transactions) under § 355(e)(2)(A)(ii);
- (iv) Whether Distributing is a valid S Corporation; and
- (v) Whether any of the Controlled is otherwise eligible to be an S Corporation.

Procedural Matters

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

A copy of this ruling letter must be attached to the federal income tax return of each party involved in the Proposed Transaction for the taxable year in which the Proposed Transaction is completed. Alternatively, taxpayers filing their returns electronically may

satisfy this requirement by attaching a statement to their returns that provides the date and control number (PLR-131889-18) of this 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 representatives.

Sincerely,

J.P. Stemwedel
Assistant to the Branch Chief (Branch 4)
Office of Associate Chief Counsel (Corporate)

cc: