

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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PLR-111555-22

Date:

August 22, 2022

Legend

Distributing =

Controlled =

Business =

Product X =

Product Y =

Government Regulatory
Agency =

Stage A =

Development =

Continuing Agreements =

Dear :

This letter responds to your authorized representatives' letter dated June 9, 2022, as supplemented by subsequent information and documentation, requesting rulings on certain federal tax consequences of a series of transactions (the "Proposed Transaction," as defined below). The material information submitted in that letter and subsequent correspondence is summarized below.

This letter is issued pursuant to Rev. Proc. 2017-52, 2017-41 I.R.B. 283, regarding one or more "Covered Transactions" under sections 355 and 368 of the Internal Revenue Code (the "Code") and Rev. Proc. 2022-10, 2022-6 I.R.B.473. This Office expresses no opinion as to any issue not specifically addressed by the rulings below.

The rulings contained in this letter are based upon 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 material 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 the Distribution (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 section 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. § 1.355-8 (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

Facts

Distributing is a privately held corporation engaged in Business, which includes conducting research and development activities for the production of Product X and Product Y. Before these products may be marketed or sold to the public, they must go

through a series of steps in order to receive approval from the Government Regulatory Agency. Product X is further along in this process than Product Y, which is at an earlier stage of development.

For more than five years, Distributing employees have engaged in regular, continuing operational and managerial activities with respect to each of Product X and Product Y. Distributing has not yet collected income associated with either Product X or Product Y but submitted information in accordance with Rev. Proc. 2017-52 indicating that it had incurred substantial, continuing operating expenses representing the active conduct of a trade or business with respect to researching and developing Product X and Product Y for each of the past five years. While Distributing has received grants from governmental and non-governmental agencies and organizations in the past, it has not received grants with respect to either Product X or Product Y in the past five years.

Based on favorable results that Product X achieved in Stage A of the regulatory process, Distributing anticipates a need for capital to enter the next phase of Development to transition Product X to the commercialization stage. In order to raise capital for Product X, Distributing intends to separate the activities of Product X from Product Y.

Proposed Transaction

For what are represented to be valid business reasons, Distributing proposes to engage in the following steps (collectively, the "Proposed Transaction"):

- (i) Distributing will form a new corporation ("Controlled") and contribute the assets of Business associated with Product Y and the assumption of liabilities associated with the transferred assets to Controlled in exchange for all of the issued and outstanding stock of Controlled (the "Contribution").
- (ii) After the Contribution, Distributing will distribute the stock of Controlled to its shareholders on a pro rata basis (the "Distribution").

In connection with the Proposed Transaction, Distributing and Controlled will enter into certain Continuing Agreements.

Representations

With respect to the Distribution, except as otherwise set forth below, Distributing has made all the representations in section 3 of the Appendix to Rev. Proc. 2017-52.

Distributing has made the following alternative representations:

Representations 3(a), 8(a), 11(b), 15(a), 22(a), 31(a), and 41(a).

Distributing has not made the following representations, which do not apply to the Distribution:

Representations 7, 19, 20, 24, 25, 35, 36, 37, 38, 39, and 40.

Distributing has made the following modified representations:

Representation 32: No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution of Controlled stock, other than payables that arise from the Continuing Agreements.

Rulings

1. The Contribution and Distribution, together, will constitute a reorganization within the meaning of section 368(a)(1)(D). Distributing and Controlled will each be a "party to a reorganization" within the meaning of section 368(b).
2. Distributing will not recognize gain or loss on the Contribution. Sections 357(a) and 361(a).
3. Controlled will not recognize gain or loss on the Contribution. Section 1032(a).
4. Controlled's basis in each asset received in the Contribution will be the same as the basis of the asset in the hands of the Distributing immediately before the Contribution. Section 362(b).
5. Controlled's holding period in each asset received in the Contribution will include the period during which Distribution held the asset. Section 1223(2).
6. Distributing will not recognize gain or loss on the Distribution. Section 361(c).
7. The shareholders of Distributing will not recognize gain or loss (and no amount otherwise will be includable in their income) upon receipt of Controlled stock in the Distribution. Section 355(a).
8. The aggregate basis of the Distributing stock and the Controlled stock in the hands of each shareholder immediately after the Distribution will equal the aggregate basis of the Distributing stock held by such shareholder immediately before the Distribution, allocated between the Distributing stock and the Controlled stock in proportion to the fair market value of each immediately following the Distribution in accordance with Treas. Reg. § 1.358-2(a). Section 358(a)(1) and (b).
9. Each shareholder's holding period in the Controlled stock received will include the holding period of the Distributing stock with respect to which the Distribution is

made, provided that such Distributing stock is held by the shareholder 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

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the proposed transaction 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 transaction that is not specifically covered by the above rulings.

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,

Mark J. Weiss
Branch Chief, Branch 2
Office of Associate Chief Counsel (Corporate)

cc: