

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.

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PLR-104037-19

Date:

August 12, 2019

Legend

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

X =

Y =

Business 1 =

Business 2 =

Business 3 =

Other Assets =

Retained Assets =

A =

B =

C =

D =

E =

F =

G =

H =

State A =

a =

b =

c =

d =

e =

f =

g =

h =

i =

i =

Dear :

This letter responds to your letter dated March 1, 2019, as supplemented by subsequent submissions, requesting Transactional Rulings with respect to a Covered Transaction (described below) pursuant to Rev. Proc. 2017-52, 2017-41 I.R.B. 283. The information submitted in that letter 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. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This office has made no determination regarding whether the Distribution (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 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 any successor of the controlled corporation, within the meaning of Treas. Reg. § 1.355-8T (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

Summary of the Facts

Distributing is a subchapter S corporation. Individuals A, B, C and D collectively own 50% of the stock of Distributing. B, C and D are the children of A (hereinafter, A, B, C and D will be collectively referred to as the “Split-Off Shareholders”). Individuals E, F, G and H collectively own the remaining 50% of the stock of Distributing. F, G and H are the children of E (hereinafter, E, F, G and H will be collectively referred to as the “Remaining Shareholders”).

Distributing owns all of the stock of Controlled and Sub 1, each of which is a qualified subchapter S subsidiary ("QSub"). Controlled owns all of the stock of Sub 2, also a QSub. Sub 1 owns approximately a% [at least 33⅓%] of the capital and profits in Sub 3, a State A limited liability company treated as a partnership for Federal income tax purposes. X, a holding company, owns approximately b% of Sub 3. The balance of the capital and profits of Sub 3, c%, is owned by other parties.

The Split-Off Shareholders have an economic interest in X of approximately d%, which includes a voting interest of approximately e%. The Remaining Shareholders have an economic interest in X of approximately f%, which includes a voting interest of approximately g%. The remaining interest in X (approximately h% of economic interest and approximately i% of voting interest) is owned by other parties.

The Split-Off Shareholders will have no ability to influence or control X, Sub 3, or the other shareholders of X or Sub 3.

Controlled operates Business 1. Sub 3 operates Business 2. Finally, Sub 1, as an investment, owns approximately j% of Y, which operates Business 3.

The Proposed Transaction

- 1) Distributing will transfer to Controlled the assets described in Steps 1a through 1c (collectively, the "Transferred Assets"):
 - a. The assets comprising Business 1;
 - b. 50% of Sub 1's interest in Y; and
 - c. The Other Assets.
 - d. Distributing will retain the Retained Assets. The transfer of the Transferred Assets and retention of the Retained Assets are intended to equalize the value of Controlled and Distributing immediately after the distribution of Controlled stock (as described in Step 3 below).
- 2) Controlled will assume the liabilities associated with the Transferred Assets (the transfer of the Transferred Assets described in Step 1 and the assumption of liabilities described in this Step 2 are collectively described as the "Contribution"). None of these liabilities is evidenced by a debt instrument. Controlled therefore will not assume liability for any Distributing Debt within the meaning of Rev. Proc. 2018-53, § 3.01, 2018-43 I.R.B. 667 ; and
- 3) Distributing will distribute all of the Controlled stock proportionately to each of the Split-Off Shareholders in exchange for all of their Distributing stock (this Step 3 is described as the "Distribution" – the Contribution and the Distribution collectively are described as a "Covered Transaction" within the meaning of § 2.03(1)(a) of Rev. Proc. 2017-52).

Representations

Except as otherwise set forth in the next sentence, Distributing makes all the representations in Section 3 of the Appendix to Rev. Proc. 2017-52. Representations 6, 36, 37, 38, 39, 40, 42, 43, 44, 45 and 46 in Section 3 of the Appendix to Rev. Proc. 2017-52 do not apply.

With respect to representations 3, 8, 11, 15, 22, 31, and 41 in Section 3 of the Appendix to Rev. Proc. 2017-52, Distributing makes the following alternative representations: 3(a); 8(b); 11(a); 15(a); 22(a); 31(a); and 41(b).

Transactional Rulings

- 1) The Distribution will cause a termination of Controlled's QSub election because Controlled will cease to be a wholly owned subsidiary of an S corporation. For Federal tax purposes, Controlled will be treated as a new corporation acquiring all of its assets and assuming all of its liabilities from Distributing immediately before the termination of Controlled's QSub election in exchange for the stock of Controlled, pursuant to Treas. Reg. § 1.1361-5(b)(1)(i) (§ 1361(b)(3)(B) and (C)).
- 2) The Contribution followed by the Distribution will qualify as a reorganization under section 368(a)(1)(D). Distributing and Controlled will each be "a party to a reorganization" within the meaning of section 368(b).
- 3) No gain or loss will be recognized by Distributing on the Contribution (sections 361(a) and 357(a)).
- 4) No gain or loss will be recognized by Controlled on the Contribution (section 1032(a)).
- 5) Controlled's basis in each asset received from Distributing in the Contribution will be the same as the basis of such asset in the hands of Distributing immediately before the Contribution (section 362(b)).
- 6) Controlled's holding period for each asset received from Distributing in the Contribution will include the period during which Distributing held that asset (section 1223(2)).
- 7) No gain or loss will be recognized by Distributing on the Distribution of Controlled (section 361(c)(1)).
- 8) No gain or loss will be recognized by (and no amount will be included in the income of) each of the Split-Off Shareholders upon the receipt of Controlled

stock (in exchange for all of that Shareholder's Distributing stock) in the Distribution (section 355(a)(1)).

- 9) The basis of the shares of Controlled in the hands of each of the Split-Off Shareholders immediately after the Distribution will be the same as the basis of the Distributing shares surrendered in exchange therefor (section 358(a)(1)).
- 10) The holding period of the Controlled shares received by each of the Split-Off Shareholders in the Distribution will include the holding period of the Distributing shares surrendered in exchange therefor, provided that the Distributing shares were held as a capital asset in that Shareholder's hands on the date of the Distribution (section 1223(1)).
- 11) 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).
- 12) Distributing's accumulated adjustments account will be allocated between Distributing and Controlled in a manner similar to the manner in which earnings and profits of Distributing will be allocated under section 312(h) in accordance with Treas. Reg. § 1.1368-2(d)(3).
- 13) Distributing's momentary ownership of the stock of Controlled, as part of the reorganization under section 368(a)(1)(D), will not cause Controlled to have an ineligible shareholder for any portion of its first taxable year under section 1361(b)(1)(B), and will not, in itself, render Controlled ineligible to elect to be an S corporation for its first taxable year. If Controlled otherwise meets the requirements of a small business corporation under section 1361, Controlled will be permitted to make a subchapter S election under section 1362(a) for its first taxable year, provided that such election is made effective immediately following the termination of the original QSub election.

Caveat

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 is not specifically addressed by this letter.

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.

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

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.

Sincerely,

Susan E. Massey
Branch Chief, Branch 3
(Corporate)

cc: