

Internal Revenue Service

Number: **201940007**

Release Date: 10/4/2019

Index Number: 355.00-00, 355.01-02,
355.03-00

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:3

PLR-135178-18

Date:

July 9, 2019

Legend

Distributing =

Controlled 1 =

Controlled 2 =

Member A =

Member B =

Member C =

Member D =

Person 1 =

Person 2 =

State =

Business X =

Business Y =

Asset 1 =

a =

b =

c =

d =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year 1 =

Year 2 =

Dear :

This letter responds to your letter dated October 31, 2018, as supplemented by subsequent information and documentation, requesting rulings on certain federal income tax consequences of the proposed transaction steps described below (such steps comprise the “Proposed Transaction”). The information submitted in that letter and in subsequent correspondence is summarized below.

This letter is issued pursuant to Rev. Proc. 2017-52, 2017-41 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” (as defined in section 2.03(1)(a) of Rev. Proc. 2017-52) under section 355 and/or section 368 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 § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or of either of the controlled corporations or of more than one of the three corporations (see section 355(a)(1)(B) 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, the controlled corporations, or any predecessor or successor of the distributing corporation or the controlled corporations, 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 corporation that was incorporated on Date 1 and converted to a limited liability company under State law on Date 2. Distributing is treated as a corporation for U.S. federal income tax purposes. In connection with the Proposed Transaction, Distributing formed Controlled 1 and Controlled 2 on Date 3. Distributing wholly owns Controlled 1 and Controlled 2, both State limited liability companies which are disregarded as separate from their owner for U.S. federal income tax purposes. Since Date 3, Distributing has transferred all of the assets and liabilities associated with Business X to Controlled 1 and all of the assets and liabilities associated with Business Y to Controlled 2. Controlled 1 and Controlled 2 each have one class of membership units outstanding.

Distributing manages and operates Business X and Business Y through Controlled 1 and Controlled 2, respectively. Distributing's single class of membership units are owned as follows: Member A owns a units, Member B owns b units, Member C owns c units, and Member D owns d units (Member A, Member B, Member C, and Member D are referred to collectively as the "Members"). Member A and Member B manage Business X. Member C and Member D manage Business Y.

Additionally, Distributing has certain outstanding obligations, including the liabilities discussed herein, which constitute "Distributing Debt," as defined in section 3.02 of Rev. Proc. 2018-53. Between Date 1 and Date 2, in Year 1, Distributing redeemed certain Distributing stock held by Person 1 and Person 2 in exchange for promissory notes secured by certain property. Further, as of Year 2, Distributing has outstanding liabilities in the form of a line of credit to Controlled 1 from its respective lender and

secured by Controlled 1's assets and a line of credit to Controlled 2 from its respective lender and secured by Controlled 2's assets (such notes comprise Distributing's "Operating Notes"). All proceeds of the Operating Notes are or will be used in Controlled 1 and Controlled 2's respective businesses going forward.

For what are represented to be valid business purposes, Distributing proposes to engage in the following transaction to separate Business X from Business Y:

Proposed Transaction

1. Controlled 1 and Controlled 2 will each file an election under § 301.7701-3 of the Procedure and Administration Regulations to be classified as an association taxable as a corporation. Distributing has represented that, as a result of the elections, Distributing is deemed to contribute the assets and liabilities of each Controlled 1 and Controlled 2 to Controlled 1 and Controlled 2, respectively, in exchange for their respective membership units ("Contribution 1" and "Contribution 2," respectively).
2. Immediately after Contribution 1 and Contribution 2 (each a "Contribution"), Distributing will liquidate by making the following distributions in exchange for all of the Distributing membership units held by the Members.
 - a. Distributing will distribute all of the membership units in Controlled 1 to Member A and to Member B in exchange for all of their Distributing membership units ("Distribution 1").
 - b. Distributing will distribute all of the membership units in Controlled 2 to Member C and to Member D in exchange for all of their Distributing membership units ("Distribution 2").

Immediately after Distribution 1 and Distribution 2 (each a "Distribution"), Distributing will dissolve.

Following the Proposed Transaction, Controlled 1 and Controlled 2 will jointly own Asset 1 in accordance with a joint agreement between Controlled 1 and Controlled 2. Distributing represents that this agreement will reflect arm's length terms and conditions and will not be inconsistent with the overall business purposes for the separation of Business X and Business Y.

Representations

With respect to the Proposed Transaction, except as set forth below, Distributing makes all of the representations in section 3 of the Appendix to Rev. Proc. 2017-52.

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

Representations 5; 6; 36; 37; 39; 40.

- (2) Distributing makes the following alternative representations:

Representations 3(a); 8(a); 11(a); 15(a); 22(a); 31(a); 41(a).

Additionally, except as discussed below, with respect to each Contribution 1 and Contribution 2 and Distribution 1 and Distribution 2, Distributing has made each applicable representation under section 3.04 of Rev. Proc. 2018-53.

Distributing has not made 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).

Distributing was unable to make the standard representations in (2) and (4); however, Distributing makes the following modified representations.

- (2) Except for Person 1 and Person 2, no holder of Distributing Debt that will be assumed or satisfied is a person related to Distributing, Controlled 1 or Controlled 2, within the meaning of section 267(b) or section 707(b)(1).
- (4) Except for the obligations evidenced by the Operating Notes, Distributing incurred the Distributing Debt that will be assumed or satisfied, (a) before the submission of the October 31, 2018 letter requesting rulings on certain federal tax consequences of the Proposed Transaction, and (b) no later than 60 days before the earliest of the following dates: (i) the date the first public announcement (as defined in § 1.355-7(h)(10)) of the Divisive Reorganization or a similar transaction, (ii) the date of the entry by Distributing into a binding agreement to engage in the Divisive Reorganization or a similar transaction, and (iii) the date of approval of the Divisive Reorganization or a similar transaction by the board of directors of Distributing.

Rulings

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

1. Each Contribution, followed by its respective Distribution, will qualify as a reorganization within the meaning of section 368(a)(1)(D). Distributing, Controlled 1, and Controlled 2, each will be a “party to a reorganization” within the meaning of section 368(b).

2. No gain or loss will be recognized by Distributing on Contribution 1 or Contribution 2. Sections 357(a) and 361(a).
3. No gain or loss will be recognized by Controlled 1 on Contribution 1 or by Controlled 2 on Contribution 2. Section 1032(a).
4. Controlled 1's basis in each asset received from Distributing in Contribution 1 and Controlled 2's basis in each asset received from Distributing in Contribution 2 will equal the basis of such asset in the hands of Distributing immediately before its contribution. Section 362(b).
5. The holding period for each asset received by Controlled 1 in Contribution 1 and by Controlled 2 in Contribution 2 will include the period during which such asset was held by Distributing. Section 1223(2).
6. No gain or loss will be recognized by Distributing on Distribution 1 or Distribution 2. Section 361(c)(1).
7. No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Member A or Member B upon receipt of Controlled 1 membership units in Distribution 1 or by Member C or Member D upon receipt of Controlled 2 membership units in Distribution 2. Section 355(a)(1).
8. The aggregate basis of the Controlled 1 and Controlled 2 membership units received by each Member immediately after Distribution 1 and Distribution 2 will equal the Member's aggregate basis in the Distributing membership units surrendered in Distribution 1 and Distribution 2, allocated in the manner described in § 1.358-2. Section 358(a) and (b).
9. The holding period of the Controlled 1 membership units received by Member A and Member B in Distribution 1 and the holding period of the Controlled 2 membership units received by Member C and Member D in Distribution 2 will include the holding period of the Distributing membership units with respect to which each Distribution will be made, provided that such Distributing membership unit is held as a capital asset on the date of each Distribution. Section 1223(1).
10. Distributing's earnings and profits will be allocated between Distributing, Controlled 1, and Controlled 2 in accordance with section 312(h) and § 1.312-10(a).

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of any condition existing at the time of, or effects resulting from, the Proposed Transaction that are 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.

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,

Justin O. Kellar
Assistant to the Branch Chief, Branch 3
Office of Associate Chief Counsel (Corporate)