

## 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:

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Refer Reply To:

CC:CORP:BO2

PLR-120541-21

Date:

March 30, 2022

### Legend

Distributing =

Controlled Co 1 =

Controlled Co 2 =

Business A =

Business A Assets =

Sibling A =

Sibling A Group =

Sibling B =

Sibling B Group =

Daughter E =

Daughter F =

Trust A =

Trust B =

Trust C =

Trust D =

State A =

Year 1 =

Date 1 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

i =

k =

Dear :

This letter responds to your letter dated September 20, 2021, 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 material information 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 the revenue procedure) under section 355 and/or section 368 of the Internal Revenue Code (the “Code”).

The rulings contained in this letter are based upon facts and representations submitted by 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 expresses no opinion as to any issue not specifically addressed by the rulings below.

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 (“Treas. Reg.”); (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporations 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 corporations (see section 355(e) and Treas. Reg. § 1.355-7).

### Summary of Facts

Distributing (also, the “Taxpayer”) is an accrual method taxpayer that was formed in Year 1 as a State A corporation and elected to be treated as a subchapter S corporation as of Date 1.

Distributing manages and operates Business A using the Business A Assets.

Distributing has one class of common voting stock and has a shares of common voting stock outstanding.

Sibling A is a trustee in Trust A and Trust B, which own b and c shares of common voting stock representing d percent and e percent of Distributing stock outstanding, respectively. Trust A and Trust B are known as the “Sibling A Group.”

Sibling B is a trustee in Trust C and Trust D, which own f and g shares of common voting stock representing h and i percent of Distributing stock outstanding, respectively. Daughter E and Daughter F, daughters of Sibling B, own j shares of common voting stock in the aggregate which collectively represents k percent of Distributing stock outstanding. Trust C, Trust D, Daughter E, and Daughter F are known as the “Sibling B Group.”

Financial information has been submitted indicating that Business A has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Sibling A and Sibling B disagree with each other, and intense conflict exists among them. Due to the personal conflicts, serious disputes have arisen regarding the operation of Distributing’s Business A that have made it impossible to continue operating the entire business under a single entity. Therefore, Distributing proposes the Proposed Transaction.

### Proposed Transaction

To achieve the business purpose described above, Distributing proposes the following Proposed Transaction:

Step 1: Distributing has formed two new entities, Controlled 1 and Controlled 2 (each, a “Controlled Co” and together, “Controlled Cos”), as State A corporations. Distributing has elected to treat each Controlled Co as a qualified subchapter S subsidiary (“QSub”) as of the date of its organization.

Step 2: Distributing will transfer 50% of all the Business A assets to Controlled 1 and the remaining 50% to Controlled 2 (together, the “Contributions”).

Step 3: Distributing will make the following distributions in the process of dissolving and terminating Distributing (together, the “Distributions”).

1. All of the stock of Controlled 1 will be distributed to the Sibling A Group; and
2. All of the stock of Controlled 2 will be distributed to the Sibling B Group.

Step 4: Each of Controlled 1 and Controlled 2 will file a Form 2553, Election by a Small Business Corporation, electing to be treated as a subchapter S corporation as of the day of the Distributions.

Step 5: As soon as practically possible under State A corporate law, Distributing will be terminated and dissolved.

### **Representations**

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

1. Distributing has made the following alternative representations:

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

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

Representations 6, 19, 25, 35, 36, 37, 38, 39, and 40.

3. Distributing has not made Representation 42 but has provided the required explanation.

Additionally with respect the Proposed Transaction, except as set forth below, Distributing has made the representations under section 3.04 of Rev. Proc. 2018-53.

1. Distributing has not made Representation 6, which does not apply to the Proposed Transaction.

### **Rulings**

1. The Distributions will cause a termination of the Controlled Cos' QSub elections because the Controlled Cos will cease to be wholly-owned subsidiaries of a subchapter S corporation. For federal income tax purposes, the Controlled Cos will be treated as new corporations acquiring all of their assets and assuming all of their liabilities from Distributing immediately before the termination of the

Controlled Cos' QSub elections in exchange for the stock of the Controlled Cos pursuant to Treas. Reg. § 1.1361-5(b)(1)(i) (sections 1361(b)(3)(B) and (C)).

2. The Contributions followed by the Distributions will qualify as a reorganization under section 368(a)(1)(D). Distributing and each Controlled Co will 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 Contributions to each Controlled Co (sections 361(a) and 357(a)).
4. No gain or loss will be recognized by each Controlled Co on the Contributions (section 1032(a)).
5. Each Controlled Co's basis in each asset received from Distributing in the Contributions will be the same as the basis of such asset in the hands of Distributing immediately before the Contributions (section 362(b)).
6. Each Controlled Co's holding period for each asset received from Distributing in the Contributions 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 Distributions of each Controlled Co (section 361(c)(1)).
8. No gain or loss will be recognized by (and no amount will be included in income of) any of Distributing's shareholders upon the receipt of the stock of the Controlled Cos in the Distributions (section 355(a)(1)).
9. The basis of the shares of the Controlled Cos in the hands of the Sibling A Group and Sibling B Group, respectively, immediately after the Distributions will be the same as the basis of their Distributing shares deemed surrendered in exchange therefor (section 358(a)(1)).
10. The holding period of the shares of the Controlled Cos received by each of the Sibling A Group and Sibling B Group, respectively, in the Distributions will include the holding period of the Distributing shares deemed surrendered in exchange therefor, provided that the Distributing shares were held as a capital asset in the hands of the Sibling A Group and Sibling B Group on the date of the Distributions (section 1223(1)).
11. Earnings and profits of Distributing will be allocated among the Controlled Cos in accordance with section 312(h) and Treas. Reg. § 1.312-10(a).
12. Distributing's accumulated adjustments account will be allocated among the Controlled Cos 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 the Controlled Cos, as part of the reorganization under section 368(a)(1)(D), will not cause either Controlled Co 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 either Controlled Co ineligible to elect to be a subchapter S corporation for their first taxable year. If the Controlled Cos otherwise meet the requirements of a small business corporation under section 1361, the Controlled Cos will be eligible to make a subchapter S election under section 1362(a) for their first taxable year, provided that such election is made effective immediately following the termination of the original QSub elections.

### **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 whether: i) Distributing is a valid subchapter S corporation; and ii) the Controlled Cos are otherwise eligible to be treated as subchapter S corporations.

### **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 representatives.

Sincerely,

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Robert M. Rhyne  
Assistant to the Branch Chief, Branch 2  
Office of Associate Chief Counsel  
(Corporate)

cc: