

Internal Revenue Service

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Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:2
PLR-109404-18

Date:
May 25, 2018

Legend

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

PLR-109404-18

2

Sub 6 =

Sub 7 =

Corp 1 =

Corp 2 =

Corp 3 =

Activity 1 =

Activity 2 =

Business A =

Business Evolution =

Overlapping Individuals =

Objective =

Payments =

Shareholder A =

Shareholder B =

a =

b =

c =

d =

e =

f =

g =

h =

i =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

State A =

Dear :

This letter responds to your letter dated March 16, 2018, as supplemented on March 30, 2018, April 6, 2018, April 19, 2018, and May 25, 2018, requesting rulings under § 355 and related provisions of the Internal Revenue Code and related regulations with respect to the proposed transaction described below (the “Proposed Transaction”). The material information submitted is summarized below.

The rulings contained in this letter are based upon information submitted by the taxpayer and accompanied by a penalties 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 letter is issued pursuant to Rev. Proc. 2017-52, 2017-41 I.R.B. 283, regarding a Transactional Ruling for a Covered Transaction. This Office expresses no opinion as to the overall tax consequences of the transactions described in this letter or as to any issue not specifically addressed by the rulings below.

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 § 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 publicly traded State A corporation that is the common parent of an affiliated group of corporations filing a consolidated U.S. Federal income tax return (the “Distributing Group”). The authorized and outstanding capital stock of Distributing consists of one class of common stock that is publicly traded. Based upon publicly available securities information, only Shareholder A and Shareholder B were five percent shareholders of Distributing as of Date 2.

Distributing formed Controlled on Date 3 and contributed certain assets to Controlled solely in exchange for Controlled shares on Date 4. Distributing owns all of the only class of outstanding stock of Sub 2 and Sub 3. In addition, Distributing owns a percent of the sole class of outstanding stock of Controlled, b percent of the sole class of outstanding stock of Sub 1, c percent of the sole class of outstanding stock of Sub 4, d percent of the sole class of outstanding stock of Corp 1, and e percent of the sole class of outstanding stock of Corp 2. Controlled owns f percent of the sole class of outstanding stock of Sub 7 and g percent of the sole class of outstanding stock of Sub 5. Sub 5 owns all of the sole class of outstanding stock of Sub 6. Prior to Date 1, Controlled owned h percent of the sole class of outstanding stock of Corp 3.

Distributing and the members of its “separate affiliated group” as defined in § 355(b)(3)(B) (the “Distributing SAG”) engage in the Distributing portion of Business A (the “Distributing Segment”). Controlled and the members of its “separate affiliated group” as defined in § 355(b)(3)(B) (the “Controlled SAG”) engage in the Controlled portion of Business A (the “Controlled Segment”). Financial information has been submitted with respect to the Distributing Segment and the Controlled Segment in accordance with Revenue Procedure 2017-52. Business A has been, and may continue to be, the subject of the Business Evolution. As part of their efforts to achieve Objective, each of the Distributing Segment and Controlled Segment generated, and expects to continue to generate, Payments.

The Distribution (defined below) is motivated, in whole or substantial part, by the following corporate business purposes: (i) to enable Controlled to undertake the Controlled Equity Offering (defined below) to fund the Controlled Segment on significantly more favorable terms as compared to an issuance of stock of either (A) Distributing while continuing to own all of the stock of Controlled or (B) Controlled as a subsidiary of Distributing through an issuance of minority equity; (ii) to position each of Distributing and Controlled to make equity offerings following the Controlled Equity Offering on a less costly (*i.e.*, more efficient) basis; (iii) to otherwise better position Controlled to focus on maximizing opportunities for its business; (iv) to provide management and employees incentives tied to Distributing’s and Controlled’s growth and financial performance in order to facilitate hiring and retention of high-quality managers, research scientists, and other employees; and (v) to enable each of Distributing and Controlled to establish an expense structure appropriate for its business size (the “Corporate Business Purposes”). Following the Distribution, Distributing anticipates that there may be i overlapping directors between Distributing and Controlled and certain other Overlapping Individuals. Any such overlap will not be inconsistent with any of the Corporate Business Purposes motivating the Distribution.

Proposed Transaction

Distributing proposes to carry out the Proposed Transaction, which will be comprised of the following steps:

- (i) Distributing may distribute all or a portion of its Controlled stock in exchange for stock of Distributing and, to the extent Controlled stock is not so distributed, Distributing will distribute all or any remaining portion of its stock of Controlled pro rata to its shareholders (the “Distribution”).
- (ii) Controlled intends to undertake an offering of its stock immediately after the Distribution (the “Controlled Equity Offering”).

Representations

With respect to the Distribution, except as set forth below, Distributing has made all of the representations in section 3 of the Appendix to Rev. Proc. 2017-52, 2017-41 I.R.B. 283.

Distributing has made the following alternative representations set forth in section 3 of the Appendix to Rev. Proc. 2017-52:

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

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

Representations 6, 17, 18, 22, 24, 25, 39, 40, and 46.

Distributing has modified the following representations:

- (a) Representation 8(b): In the event Distributing has securities outstanding, Distributing will not distribute Controlled stock, Controlled securities or other Property to any holder of such securities in the Distribution, in satisfaction thereof.
- (b) Representation 10: Other than with respect to the Business Evolution, with respect to the business relied on by each of Distributing or the Distributing SAG and Controlled or the Controlled SAG to meet the active trade or business requirement of Section 355(b), there have been no substantial operational changes since the end of the taxpayer’s most recent taxable year.
- (c) Representation 12: Treating the Business A activities of the Distributing SAG and Controlled SAG immediately before the Distribution, comprised of Activity 1 and Activity 2, throughout the Five-Year Period ending on such date, as a single business actively conducted and carried on for the purpose of earning income or profit for purposes of Section 355(b), immediately after the Distribution, the fair market value of the gross assets of the trade(s) or business(es) in which each of Distributing or the

Distributing SAG and Controlled or the Controlled SAG will rely on to satisfy the active trade or business requirement of Section 355(b) will be, in each case, at least 5 percent of the total fair market value of the gross assets of that corporation or separate affiliated group. See Rev. Proc. 2018-3, 2018-1 I.R.B. 130, section 4.01(30).

- (d) Representation 32: Other than debt arising in the ordinary course of business, including potentially debt incurred in the ordinary course of business following the Distribution, no intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution of Controlled stock.

Rulings

Based solely on the information submitted, we rule as follows regarding the Proposed Transaction:

- (1) No gain or loss will be recognized by Distributing on the Distribution. § 355(c).
- (2) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the Distributing shareholders upon their receipt of the Controlled Stock in the Distribution. § 355(a).
- (3) Each Distributing shareholder's basis in a share of Distributing common stock (as adjusted under Treas. Reg. § 1.358-1) will be allocated between the share of Distributing common stock with respect to which the Distribution is made and the Controlled Stock (or allocable portions thereof) received in the Distribution with respect to the share of Distributing common stock in proportion to their fair market values. § 358(a).
- (4) Each Distributing shareholder's holding period in the Controlled Stock received will include the holding period of the Distributing common stock with respect to which the distribution of the Controlled Stock is made, provided that the Distributing common stock is held as a capital asset on the date of the Distribution. § 1223(1).

Caveats

No opinion is expressed or implied concerning the tax consequences of any other aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is given regarding any other issues related to the Proposed Transaction, or the tax consequences or characterization of the Proposed Transaction.

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 ruling letter must be attached to the Federal income tax return of each taxpayer involved for the taxable year in which the transactions described herein are completed. Alternatively, a taxpayer filing its return electronically may satisfy this requirement by attaching a statement to its Federal income tax return that sets forth the date and control number of this ruling letter.

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,

Gerald B. Fleming
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel (Corporate)