

Internal Revenue Service

Number: **201851004**
Release Date: 12/21/2018

Index Number: 355.00-00, 368.04-00,
355.01-01

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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Refer Reply To:
CC:CORP:BO4
PLR-111839-18

Date:
September 21, 2018

Legend

Distributing =

Controlled =

Sub1 =

Sub2 =

Sub3 =

Sub4 =

Sub5 =

Sub6 =

Sub7 =

ShareholderA =

ShareholderB =

ShareholderC =

ShareholderD =

ShareholderE =

ShareholderF =

ShareholderG =

ShareholderH =

ShareholderI =

ShareholderJ =

ShareholderK =

ShareholderL =

ShareholderM =

ShareholderN =

ShareholderO =

ShareholderP =

ShareholderQ =

ShareholderR =

ShareholderS =

ShareholderT =

ShareholderU =

ShareholderV =

ShareholderW =

ShareholderX =

BusinessA =

BusinessB =

StateA =

Date1 =

Date2 =

Date3 =

Dear :

This letter responds to your letter dated March 27, 2018, requesting rulings on certain federal income tax consequences of the proposed transaction steps described below (the "Proposed Transaction"). The information provided 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 regarding one or more "Covered Transactions" 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 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 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 Facts

Distributing was formed on Date1 as a StateA corporation. It is engaged in BusinessB. Controlled was contributed to Distributing on Date2 as a tax-free contribution to capital. Controlled is engaged in BusinessA. On Date3, Distributing elected under § 1362(a) of the Internal Revenue Code (the "Code") to be treated as a subchapter S corporation (an "S Corporation") for Federal income tax purposes.

Distributing has both voting and non-voting shares of stock outstanding, the shares of which are held by ShareholderA, ShareholderB, ShareholderC, ShareholderD, ShareholderE, ShareholderF, ShareholderG, ShareholderH, ShareholderI, ShareholderJ, ShareholderK, ShareholderL, ShareholderM, ShareholderN, ShareholderO, ShareholderP, ShareholderQ, ShareholderR, ShareholderS, ShareholderT, ShareholderU, ShareholderV, ShareholderW, and ShareholderX. All shareholders are U.S. citizens or U.S. entities. Shareholders A, M, and R are siblings, and together with their respective spouses, ShareholdersB, N and S, are the majority

stock holders in Distributing in terms of voting shares. ShareholderA's main focus is on BusinessA and ShareholderM's main focus is on BusinessB. ShareholderM also oversees the day-to-day operations of Distributing. ShareholderR is retired but continues to be actively involved as a member of the board of Directors of Distributing. Shareholders A, M and R are all members of both Distributing's and Controlled's Board of Directors.

Distributing wholly owns Controlled, a qualified subchapter S subsidiary disregarded as separate from its owner for Federal income tax purposes under Treasury Regulations §1.1361-4(a)(i) (a "Q-Sub"). In addition, Distributing owns Sub1, Sub2, Sub3, Sub4, Sub5, Sub6, and Sub7. All of Sub1 through Sub 7 are Q-Subs for Federal income tax purposes.

The Distributing group has two lines of business: BusinessA, which is conducted by Controlled, and BusinessB, which is conducted by Distributing. The financial information submitted by Distributing indicates that BusinessA and BusinessB each have had gross receipts and operating expenses representing an active trade or business for each of the past five years.

Distributing has historically performed certain administrative functions for Controlled, including payroll, accounting, insurance and workman's compensation. Following the Proposed Transaction, Controlled is expected to perform all of its own administrative functions and there is not expected to be any ongoing relationship between Distributing and Controlled. Further, following the Proposed Transaction, no individual will be a member of both Distributing's and Controlled's Board of Directors.

Distributing's management has determined that the Proposed Transaction will serve the following corporate business purposes: (i) resolve certain disputes and disagreements that have arisen among the shareholders of Distributing, (ii) remove regulatory restrictions that may prevent BusinessA from receiving subsidies related to BusinessA, (iii) permit Distributing and Subs 1 through 5 to focus on BusinessB and improve corporate fit and focus.

Proposed Transaction

To achieve the business purposes described above, the following series of steps are proposed:

1. Investment securities held by Sub7 will be allocated to both Distributing and Controlled so that the fair market value of the shares of Controlled stock, when distributed in the Proposed Transaction, will approximately equal the fair market value of the corresponding Distributing stock exchanged. In addition, certain land owned by Distributing that is used in BusinessA will be transferred to Controlled.

2. In the split-off transaction, each of Shareholders A, B, C, D, E, F, G, H, I, J, K, L, and W (the “Distributees”) will surrender all of their Distributing stock in exchange for Controlled stock of equal fair market value (the “Distribution”), and no Distributee will continue to hold any shares in Distributing after the Distribution.

3. After the Distribution, Controlled will be owned only by Distributees and Distributing will be owned by the remaining of the original shareholders of Distributing. Distributing will continue to wholly-own Subs 1 through 7.

Representations

With respect to the Distribution, except as otherwise set forth in the submission for a ruling request, Distributing makes all of the relevant representations in Section 3 of the Appendix to Rev. Proc. 2017-52, 2017-41 I.R.B. 283 in the form set forth therein.

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

Section 3, representations 5, 6, 36, 37, 38, 39, and 40.

With respect to representations 3, 8, 11, 15, 22, 31, and 41 of 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).

Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows:

1. The Distribution will cause a termination of Controlled’s Q-Sub election because Controlled will cease to be a wholly-owned subsidiary of an S corporation. For federal income 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 Q-Sub election in exchange for the stock of Controlled (the “Contribution”), 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 § 368(a)(1)(D) and Distributing and Controlled will each be “a party to a reorganization” within the meaning of § 368(b).

3. No gain or loss will be recognized by Distributing on the Contribution (§§ 361(a) and 357(a)).

4. No gain or loss will be recognized by Controlled on the Contribution (§ 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 (§ 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 (§ 1223(2)).
7. No gain or loss will be recognized by Distributing on the Distribution (§ 361(c)(1)).
8. No gain or loss will be recognized by (and no amount will otherwise be included in the income of) any shareholder of Distributing upon receipt of Controlled stock in the Distribution (§ 355(a)(1)).
9. The basis of the shares of Controlled in the hands of each Distributee immediately after the Distribution will be the same as the basis of the Distributing shares surrendered in exchange thereof (§358(a)(1)).
10. The holding period of the Controlled shares received by each Distributee 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 the Distributee's hands on the date of the Distribution (§ 1223(1)).
11. Earnings and Profits, if any, will be allocated between Distributing and Controlled in accordance with § 312(h) and § 1.312-10(a).
12. Distributing's accumulated adjustment account immediately before the transaction will be allocated between Distributing and Controlled in a manner similar to the manner in which Distributing's earnings and profits will be allocated under § 312(h) in accordance with Treas. Reg. §1.1368-2(d)(3) (§§ 1.312-10(a) and 1.1368-2(d)(3)).
13. The momentary ownership by Distributing of the stock of Controlled, as part of the reorganization under § 368(a)(1)(D), will not cause Controlled to have an ineligible shareholder for any portion of its first taxable year under § 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 §1361, Controlled will be eligible to make a subchapter S election under § 1362(a) for its first taxable year, provided that such election is made effective immediately following the termination of the original Q-Sub election.

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:

- i. Whether the Distribution satisfies the business purpose requirement of Section 1.355-2(b);
- ii. Whether the Distribution is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both;
- iii. Whether the Distribution and an acquisition or acquisitions are part of a plan (or a series of related transactions) under § 355(e)(2)(A)(ii);
- iv. Whether Distributing is a valid S Corporation; and
- v. Whether Controlled is otherwise eligible to be an S Corporation.

Procedural Matters

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) 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 party involved in the Proposed Transaction for the taxable year in which the Proposed Transaction is completed. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their returns that provides the date and control number of this 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,

Douglas C. Bates
Chief, Branch 4
Office of the Associate Chief Counsel
(Corporate)

cc: