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Department of the Treasury

Washington, DC 20224

[Third Party Communication:

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CC:CORP:2

PLR-126380-18

Date:

February 25, 2019

LEGEND

Distributing =

Controlled 1 =

Controlled 2 =

Shareholder A =

Shareholder B =

Shareholder C =

Shareholder D =

a =

b =

State A =

Business A =

Property 1 =

Year 1 =

Date 1 =

Dear :

This letter responds to your letter, submitted by your authorized representatives dated August 30, 2018, requesting rulings on certain U.S. federal income tax consequences of proposed transactions (the “Proposed Transaction”) described below. The material information submitted in that request and subsequent correspondences 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 on the information, representations, and other data may be required as part of the audit process.

This Office has made no determination regarding whether either Distribution 1 or Distribution 2 (as defined below): (i) satisfy 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 any of the controlled corporations, or any successor of a controlled corporation, within the meaning of Treas. Reg. § 1.355-8T (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

FACTS

Distributing, a State A corporation, elected to be treated as a subchapter S corporation for Federal income tax purposes effective Date 1. Distributing’s shareholders: Shareholder A, Shareholder B, Shareholder C, and Shareholder D, own a percent of the common stock of Distributing. Distributing owns Property 1, where it engages in Business A. Property 1 consists of three parcels of land, each roughly equivalent in all relevant characteristics as it impacts Business A.

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

PROPOSED TRANSACTION

The following transactions will occur to divide Business A between the shareholders (the "Proposed Transaction"):

- (i) Shareholder D will sell its a percent interest in Distributing to Shareholder A, Shareholder B, and Shareholder C. After this sale, Shareholder A, Shareholder B, and Shareholder C will each own b percent of the common stock of Distributing.
- (ii) Distributing will form Controlled 1 and Controlled 2. Controlled 1 and Controlled 2 will each make an election under section 1362(a) to be treated as a subchapter S corporation, effective after the proposed division described in paragraphs (iii) and (iv).
- (iii) Distributing will transfer approximately one-third of Property 1, and approximately one-third of certain equipment, and other assets used in connection with Business A (collectively the "Controlled 1 Assets") to Controlled 1 in exchange for all of the stock of Controlled 1, and the assumption by Controlled 1 of any liabilities associated with the Controlled 1 Assets (the "Controlled 1 Contribution").
- (iv) Distributing will transfer approximately one-third of Property 1, and approximately one-third of certain equipment, and other assets used in connection with Business A (collectively the "Controlled 2 Assets") to Controlled 2 in exchange for all of the stock of Controlled 2, and the assumption by Controlled 2 of any liabilities associated with the Controlled 2 Assets (the "Controlled 2 Contribution").
- (v) Distributing will distribute all of the stock of Controlled 1 to Shareholder A, in exchange for all of Shareholder A's stock in Distributing ("Distribution 1").
- (vi) Distributing will distribute all of the stock of Controlled 2 to Shareholder B, in exchange for all of Shareholder B's stock in Distributing ("Distribution 2").

REPRESENTATIONS

With respect to each of the Distributions, 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.

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

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

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

Representations 5; 6; 25; 36; 37; 38; 39; 40; 42.

RULINGS

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

1. The Controlled 1 Contribution, followed by Distribution 1, will be a reorganization under section 368(a)(1)(D). Distributing and Controlled 1 each will be a “party to a reorganization” within the meaning of section 368(b).
2. The Controlled 2 Contribution, followed by Distribution 2, will be a reorganization under section 368(a)(1)(D). Distributing and Controlled 2 each 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 Controlled 1 Contribution. Sections 357(a) and 361(a).
4. No gain or loss will be recognized by Distributing on the Controlled 2 Contribution. Sections 357(a) and 361(a).
5. No gain or loss will be recognized by Controlled 1 on the Controlled 1 Contribution. Section 1032(a).
6. No gain or loss will be recognized by Controlled 2 on the Controlled 2 Contribution. Section 1032(a).
7. The basis in each asset received by Controlled 1 in the Controlled 1 Contribution will be the same as the basis of that asset in the hands of Distributing immediately before the Controlled 1 Contribution. Section 362(b).
8. The basis in each asset received by Controlled 2 in the Controlled 2 Contribution will be the same as the basis of that asset in the hands of Distributing immediately before the Controlled 2 Contribution. Section 362(b).
9. The holding period in each asset received by Controlled 1 in the Controlled 1 Contribution will include the period during which Distributing held that asset. Section 1223(2).

10. The holding period in each asset received by Controlled 2 in the Controlled 2 Contribution will include the period during which Distributing held that asset. Section 1223(2).
11. Distributing will recognize no gain or loss on the distribution of Controlled 1 and Controlled 2 stock to Shareholder A and Shareholder B, respectively, in Distribution 1 and Distribution 2. Section 361(c).
12. No gain or loss will be recognized by (and no amount will be otherwise included in the income of) Shareholder A upon receipt of the Controlled 1 stock in Distribution 1. Section 355(a).
13. No gain or loss will be recognized by (and no amount will be otherwise included in the income of) Shareholder B upon receipt of the Controlled 2 stock in Distribution 2. Section 355(a).
14. The basis of the Controlled 1 stock received by Shareholder A immediately after the distribution will equal Shareholder A's basis in the Distributing stock surrendered in Distribution 1, allocated in the manner described in Treas. Reg. § 1.358-2. Section 358(a) and (b).
15. The basis of the Controlled 2 stock received by Shareholder B immediately after the distribution will equal Shareholder B's basis in the Distributing stock surrendered in Distribution 2, allocated in the manner described in Treas. Reg. § 1.358-2. Section 358(a) and (b).
16. The holding period of the Controlled 1 stock received by Shareholder A will include the holding period of the Distributing stock with respect to which Distribution 1 is made, provided that the Distributing stock is held as a capital asset on the date of Distribution 1. Section 1223(1).
17. The holding period of the Controlled 2 stock received by Shareholder B will include the holding period of the Distributing stock with respect to which Distribution 2 is made, provided that the Distributing stock is held as a capital asset on the date of Distribution 2. Section 1223(1).
18. Earnings and profits, if any, will be allocated between Distributing, Controlled 1, and Controlled 2. Section 312(h) and Treas. Reg. § 1.312-10(a).
19. Distributing's accumulated adjustments account (AAA) will be allocated between Distributing and Controlled 1 and Controlled 2 in a manner similar to the manner in which earnings and profits of Distributing will be allocated under § 312(h) in accordance with Treas. Reg. § 1.1368-2(d)(3).
20. Provided that the Distributions of the stock of Controlled 1 and Controlled 2

are undertaken immediately after their Contributions, Distributing's momentary ownership of the stock of Controlled 1 and Controlled 2, as part of the reorganization under § 368(a)(1)(D), will not cause Controlled 1 or Controlled 2 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 1 or Controlled 2 ineligible to elect to be an S corporation for its first taxable year. If Controlled 1 and Controlled 2 otherwise meet the requirements of a small business corporation under § 1361, Controlled 1 and Controlled 2 will each be permitted to make a subchapter S election under § 1362(a) for its first taxable year.

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 is not specifically covered by the above rulings.

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, a copy of this letter is 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 [PLR-126380-18].

Sincerely,

Maurice M. LaBrie
Assistant to the Branch Chief, Branch 5
Office of Associate Chief Counsel (Corporate)

cc: