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Person to Contact:

ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B05

PLR-104630-20

Date:

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LEGEND

Partnership =

LLC 1 =

Distributing =

Controlled =

Sub 1 =

LLC 2 =

New Holdco =

Country X =

State A =

State B =

State C =

State D =

Business A =

State B Regulator =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

\$a =

\$b =

\$c =

\$d =

\$e =

\$f =

Period A =

Year X =

Year Y =

Dear _____ :

This letter responds to your letter dated January 17, 2020, requesting rulings on certain federal income tax consequences of a series of completed transactions (the “Completed Transactions,” as defined below). The information provided in that letter and in subsequent correspondence is summarized below.

This letter is issued in part 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” under section 355 and/or section 368 of the Internal Revenue Code (the “Code”) and pursuant to section 6.03(2) of Rev. Proc. 2020-1, 2020-1 I.R.B. 1, regarding one or more significant issues under sections 355 and 368 of 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 upon information and representations 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 office has made no determination regarding whether the distribution in the Completed Transactions: (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is used primarily 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. § 1.355-8 (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

SUMMARY OF FACTS

Partnership is a Country X limited partnership that is treated as a partnership for U.S. federal tax purposes. Partnership is the sole member of LLC 1, a State A limited liability company that is disregarded as an entity separate from Partnership for U.S. federal tax purposes. LLC 1 operates as a holding company for a group of domestic entities engaged in Business A (the “LLC 1 Group”). The following describes the relevant corporate structure of the LLC 1 Group immediately prior to the Completed Transactions (described below).

LLC 1 owned all the stock in Distributing and Sub 1 and all the membership interests in LLC 2. Distributing owned all the stock in Controlled. Distributing and Controlled joined in filing a life-nonlife consolidated federal income tax return in accordance with the

provisions of sections 1501, 1502, and 1504(c)(2) and the Treasury regulations promulgated thereunder (the “Distributing Consolidated Group”).

Distributing is organized as a stock life insurance company under State B law and qualifies as a life insurance company under section 816(a). Throughout every day of the five-year base period defined in Treas. Reg. § 1.1502-47(d)(12)(ii), Distributing has conducted Business A with the assistance of (i) employees of LLC 2 (or, prior to Date 1, employees of LLC 1) pursuant to a services agreement, (ii) an unrelated service provider pursuant to an investment management agreement, and (iii) independent insurance agents pursuant to separate agency agreements. Managerial oversight of Distributing’s Business A is undertaken on a regular and continuous basis by Distributing’s corporate officers. Distributing has submitted financial information indicating that its Business A had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Controlled is organized as a stock life insurance company under State C law and qualifies as a life insurance company under section 816(a). Throughout every day of the five-year base period defined in Treas. Reg. § 1.1502-47(d)(12)(ii), Controlled has conducted Business A with the assistance of (i) employees of LLC 2 (or, prior to Date 1, employees of LLC 1) pursuant to a services agreement, (ii) an unrelated service provider pursuant to an investment management agreement, and (iii) independent insurance agents pursuant to separate agency agreements. Managerial oversight of Controlled’s Business A is undertaken on a regular and continuous basis by Controlled’s corporate officers. Controlled has submitted financial information indicating that its Business A had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Sub 1 is organized as a stock life insurance company under State D law and qualifies as a life insurance company under section 816(a). Sub 1 conducts Business A with the assistance of (i) employees of LLC 2 pursuant to a services agreement, (ii) an unrelated service provider pursuant to an investment management agreement, and (iii) independent insurance agents pursuant to separate agency agreements. Managerial oversight of Sub 1’s Business A is undertaken on a regular and continuous basis by Sub 1’s corporate officers.

LLC 2, a State A limited liability company that elected to be treated as an association taxable as a corporation for U.S. federal tax purposes, operates as a service company whose employees provide services to Distributing, Controlled, and Sub 1. It is anticipated that, after the Completed Transactions, Distributing, Controlled, and Sub 1 will continue, for the foreseeable future, their conduct of Business A with the employees of LLC 2 pursuant to their respective services agreements in the manner described above.

COMPLETED TRANSACTIONS

For what are represented to be valid business reasons, the LLC 1 Group undertook the following Completed Transactions with a view towards (i) filing a life-nonlife consolidated return that includes Distributing, Controlled, Sub 1, and LLC 2, and (ii) completing the Distribution (as defined below).

1. On Date 2, Sub 1 distributed a normal course dividend of \$a to Partnership (via LLC 1).
2. On Date 3, Partnership (via LLC 1) contributed \$b of cash to Distributing (the "First Distributing Capital Contribution"). Immediately thereafter, Distributing contributed the \$b of cash that it received in the First Distributing Capital Contribution to Controlled (the "First Controlled Capital Contribution").
3. On Date 4, LLC 1 organized New Holdco with a nominal amount of cash capital.
4. On Date 5, LLC 1 contributed all the stock in Sub 1 and Distributing to New Holdco in exchange for shares in New Holdco of equal fair market value (the "New Holdco Contribution").
5. On Date 6, Partnership (via LLC 1) contributed \$c of cash to New Holdco (the "New Holdco Capital Contribution"), which, in turn, contributed the \$c of cash to Distributing (the "Second Distributing Capital Contribution" and, together with the First Distributing Capital Contribution, the "Distributing Capital Contributions"). Immediately thereafter, Distributing contributed \$d of cash that it received in the Second Distributing Capital Contribution to Controlled (the "Second Controlled Capital Contribution" and, together with the First Controlled Capital Contribution, the "Controlled Capital Contributions").
6. By way of a letter dated Date 7 (the "State B Regulator Approval Letter"), Distributing received approval from the State B Regulator to complete the Distribution (as defined below).
7. On Date 8, in order to conform the Distribution to the amount of the distribution contemplated by the State B Regulator Approval Letter, Controlled distributed to Distributing \$e of the \$f of cash that Distributing had contributed to Controlled in the Controlled Capital Contributions.
8. On Date 9, LLC 1 contributed all the membership interests in LLC 2 to New Holdco (the "LLC 2 Contribution").
9. On Date 9, Distributing distributed all the stock in Controlled to New Holdco (the "Distribution").
10. On Date 10, Partnership (via LLC 1) contributed \$e of cash to New Holdco, which, in turn, contributed that same amount of cash to Controlled.

In keeping with Distributing's prior dividend history, Distributing generally intends to continue making annual distributions to its shareholder following the New Holdco Contribution (i.e., New Holdco), taking into account all pertinent Business A regulatory considerations, including those associated with the projected growth of its sales and the corresponding capital strain that such new business tends to cause. Assuming the surrounding business exigencies afford Distributing the opportunity to do so, Distributing intends to distribute a cash dividend to New Holdco during Period A of Year X (the "Year X Distributing Distribution").

REPRESENTATIONS

The following representations have been made with respect to the Completed Transactions:

1. At all times relevant to the matters discussed herein, each of Distributing, Controlled, and Sub 1 has qualified as a life insurance company under section 816(a) that is subject to tax under section 801.
2. For the five taxable years of Distributing preceding the Year Y taxable year, and at all other times relevant to the matters discussed herein, Distributing (i) will have been in existence and will have been a member of the Distributing Consolidated Group; (ii) will not have experienced a change in tax character within the meaning of Treas. Reg. § 1.1502-47(d)(12)(vii); and (iii) will not have undergone a disproportionate asset acquisition within the meaning of Treas. Reg. § 1.1502-47(d)(12)(viii).
3. For the five taxable years of Distributing preceding the Year Y taxable year, and at all other times relevant to the matters discussed herein, Controlled (i) will have been in existence and will have been a member of the Distributing Consolidated Group; (ii) will not have experienced a change in tax character within the meaning of Treas. Reg. § 1.1502-47(d)(12)(vii); and (iii) will not have undergone a disproportionate asset acquisition within the meaning of Treas. Reg. § 1.1502-47(d)(12)(viii).
4. Notwithstanding (i) the Controlled Capital Contributions and (ii) the timing of the New Holdco Contribution in relation to the LLC 2 Contribution, the fair market value of the shares of Distributing stock exceeded more than 50 percent of the aggregate fair market value of the assets contributed to New Holdco in these transactions. Therefore, solely as a result of owning all the stock in Distributing, Partnership (via LLC 1) owned more than 50 percent of the fair market value of the outstanding stock in New Holdco immediately after each of the New Holdco Contribution and the LLC 2 Contribution.
5. Although Sub 1 distributed a normal course dividend to Partnership (via LLC 1) on Date 2, that dividend distribution (i) would have occurred at such time notwithstanding the contemplated completion of the New Holdco Contribution,

(ii) did not have a material impact on the determination that, at all times relevant to the rulings requested herein, the fair market value of the shares of Distributing stock exceeds the aggregate fair market value of the shares of Sub 1 stock, the LLC 2 interests, and the New Holdco Capital Contribution, and (iii) was not the source of the New Holdco Capital Contribution.

6. Even if Controlled were not taken into account in determining the fair market value of the shares of Distributing stock, the shares of Distributing stock still would exceed the aggregate fair market value of the shares of Sub 1 stock, the LLC 2 interests, the New Holdco Capital Contribution, and the shares of Controlled stock at all times relevant to the rulings requested herein.
7. Apart from the New Holdco Capital Contribution, no assets other than the shares of Sub 1 stock, the shares of Distributing stock, and the LLC 2 interests were contributed by Partnership (or LLC 1) to New Holdco in connection with the New Holdco Contribution or the LLC 2 Contribution, and no liabilities were assumed by New Holdco in connection with those transactions.
8. Both the New Holdco Contribution and the LLC 2 Contribution satisfied the requirements for tax-free treatment under section 351.

With respect to the Distribution, except as otherwise set forth below, Distributing has made all the representations in section 3 of the Appendix to Rev. Proc. 2017-52, as of immediately prior to the Distribution.

Distributing has made the following alternative representations:

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

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

Representations 7, 17, 19, 20, 22, 24, 25, 35, and 39.

Distributing has made the following modified representation:

Representation 11: Following the Distribution, Distributing and Controlled each will continue, independently and with its separate employees (or with the operational employees of LLC 2), the active conduct of the business on which it relies to meet the active trade or business requirement of section 355(b).

RULINGS

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

1. Each of Distributing and Controlled has been engaged in the active conduct of a trade or business within the meaning of Treas. Reg. § 1.1502-47(d)(12)(i)(B)

throughout every day of the base period defined in Treas. Reg. § 1.1502-47(d)(12)(ii).

2. The Distributing Consolidated Group will remain in existence, immediately after the New Holdco Contribution, with New Holdco as the new common parent. Treas. Reg. § 1.1502-75(d)(3).
3. The Distributing Consolidated Group's election to file a life-nonlife consolidated return will remain in effect and otherwise will not be affected by the New Holdco Contribution.
4. New Holdco will be an eligible corporation (within the meaning of Treas. Reg. § 1.1502-47(d)(12)) with respect to the Distributing Consolidated Group immediately upon becoming the new common parent of that consolidated group.
5. The status of each of Distributing and Controlled as an eligible corporation (within the meaning of Treas. Reg. § 1.1502-47(d)(12)) with respect to the Distributing Consolidated Group will not be affected by the New Holdco Contribution.
6. For purposes of Treas. Reg. §§ 1.1502-31 and 1.1502-33, the New Holdco Contribution will qualify as a "group structure change" with respect to the Distributing Consolidated Group. Treas. Reg. § 1.1502-33(f)(1).
7. New Holdco's basis in stock of Distributing immediately after the group structure change will be Distributing's net asset basis as determined under Treas. Reg. § 1.1502-31(c), subject to the adjustments described in Treas. Reg. § 1.1502-31(d). Treas. Reg. § 1.1502-31(b)(2).
8. The earnings and profits of New Holdco will be adjusted immediately after New Holdco became the new common parent of the Distributing Consolidated Group to reflect the earnings and profits of Distributing immediately before Distributing ceased to be the common parent of the Distributing Consolidated Group. Treas. Reg. § 1.1502-33(f)(1).
9. Sub 1 will not be treated as having a separate return limitation year with respect to the Distributing Consolidated Group for any taxable year during which it is a member of that group (as determined without regard to section 1504(b)(2)) for each day of such year. Treas. Reg. § 1.1502-47(d)(11).
10. Section 818(e)(2) will not impact the application of Treas. Reg. § 1.1502-13(f)(2) with respect to the Year X Distributing Distribution.
11. The Distributing Capital Contributions will not affect the Distribution from otherwise qualifying under section 355.
12. The Controlled Capital Contributions, together with the Distribution, will be a reorganization within the meaning of section 368(a)(1)(D). Distributing and

Controlled will each be a “party to the reorganization” within the meaning of section 368(b).

13. Distributing will not recognize gain or loss on the Controlled Capital Contributions. Section 361(a).
14. Controlled will not recognize gain or loss on the Controlled Capital Contributions. Section 1032(a).
15. The basis in each asset received by Controlled in the Controlled Capital Contributions will equal the basis of that asset in the hands of Distributing immediately before the relevant contribution. Section 362(b).
16. Controlled’s holding period in each asset received from Distributing in the Controlled Capital Contributions will include the holding period during which Distributing held that asset. Section 1223(2).
17. No gain or loss will be recognized by (and no amount will be included in the income of) New Holdco on the receipt of Controlled’s stock in the Distribution. Section 355(a).
18. No gain or loss will be recognized by Distributing on the distribution of Controlled’s stock in the Distribution. Section 361(c).
19. The aggregate basis of the Distributing stock and the Controlled stock in the hands of New Holdco immediately after the Distribution will be the same as New Holdco’s basis in the Distributing stock immediately before the Distribution, allocated between the Distributing stock and the Controlled stock in proportion to the fair market value of each immediately following the Distribution in accordance with Treas. Reg. § 1.358-2(a)(2). Section 358(a)(1) and (b).
20. The holding period of the Controlled stock received by New Holdco in the Distribution will include the holding period of the Distributing stock held by New Holdco with respect to which the Distribution was made, provided that such Distributing stock was held as a capital asset on the date of the Distribution. Section 1223(1).
21. Earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with section 312(h), Treas. Reg. § 1.312-10(a), and Treas. Reg. § 1.1502-33(f)(2).

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Completed Transactions under other provisions of the Code or regulations or the tax treatment of any condition existing at the time of, or effects

resulting from, the Completed Transactions that is 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 federal 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 (PLR-104630-20) 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 representative.

Sincerely,

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

cc: