

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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, ID No.

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CC:CORP:3  
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Date:  
September 17, 2021

Legend

Distributing =

State A =

Business A =

Business B =

Year A =

Year B =

Stage A =

Stage B =

Dear :

This letter responds to your March 3, 2021 letter requesting a ruling on certain federal income tax consequences of a series of transactions (the "Proposed Transaction" as described below). The material information submitted in that request and subsequent correspondence is summarized below.

The ruling contained in this letter is based upon information and a representation submitted by the taxpayer and accompanied by a penalty 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 the ruling, it is subject to verification on examination.

This letter is issued pursuant to § 6.03(2)(b) of Rev. Proc. 2021-1, 2021-1 I.R.B. 1, 19, regarding a significant issue under section 355 of the Internal Revenue Code. The ruling contained in this letter only addresses one significant issue involved in the Proposed Transaction. This office expresses no opinion in this letter as to the overall tax

consequences of the Proposed Transaction or as to any issue not specifically addressed by the ruling below.

### **Facts**

Distributing is a publicly traded State A corporation. From its incorporation in Year A (more than five years ago), Distributing has engaged in research and development in Business A. Later, in Year B (more than five years ago), Distributing began research and development in Business B. In order to improve management focus, capital allocation, and employee recruitment and retention, Distributing intends to separate Business A from Business B.

Business A and Business B involve separate product lines in the same highly regulated industry. Before these products may be marketed or sold to the public, they must go through a series of steps in order to receive government approval. Because Business A has been operated longer, its products are further along in this process and are generally at Stage A. Business B's products are at an earlier stage of development and are generally at Stage B (an earlier stage than Stage A).

For more than five years, each of Business A and Business B has had substantial, continuing operational expenses and each business's employees have engaged in regular, continuing operational and managerial activities. Each of Business A and Business B has produced product revenue, entered into revenue-generating arrangements with third parties, and has held itself out as available to enter into such arrangements. Business A has had revenue in three of the past five years, while Business B has had revenue in all five of the past five years. In each year, each business's expenses have substantially exceeded its revenue.

### **Proposed Transaction**

For what are represented to be valid corporate business purposes, Distributing proposes to engage in the following transaction to separate Business A from Business B (the "Proposed Transaction"):

1. Distributing will form a domestic corporation ("Controlled") and contribute Business B to Controlled in exchange for all of the stock of Controlled and the assumption by Controlled of all of Business B's liabilities (the "Contribution").
2. Distributing will distribute all of the stock of Controlled pro rata to Distributing's shareholders (the "Distribution").

Following the Distribution, Distributing will continue to conduct Business A, and Controlled will conduct Business B.

### **Representation**

Distributing makes the following representation with respect to the Proposed Transaction:

Other than the absence of income collection in certain years, Distributing and Controlled each satisfy the active trade or business requirement of Section 355(b) and the Contribution and the Distribution will qualify as a transaction described in Section 368(a)(1)(D) and Section 355

### **Ruling**

Based solely on the facts and information submitted and the representation made, we rule as follows:

The absence of income collection in certain years does not prevent Distributing's Business A from constituting a "trade or business" within the meaning of Treas. Reg. § 1.355-3(b)(2)(ii) for purposes of determining whether the Distribution satisfies the active trade or business requirement of section 355.

### **Caveats**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transaction 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 Proposed Transaction that is not specifically covered by the above ruling.

### **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 information and 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, copies of this letter are being sent to your authorized representatives.

Sincerely,

Richard K. Passales  
Senior Counsel, Branch 4  
Office of Associate Chief Counsel (Corporate)

cc: