

State A =

Date 1 =

a =

b =

Dear :

This letter responds to a letter dated April 1, 2024, submitted on behalf of the taxpayer, requesting rulings on certain federal income tax consequences of a series of proposed transactions (the "Proposed Transactions"). The material information submitted in that request and subsequent correspondence is summarized below.

This letter is issued pursuant to Rev. Proc. 2017-52, 2017-41 I.R.B. 283, as modified by Rev. Proc. 2024-3, 2024-1 I.R.B. 143, regarding one or more "covered transactions" under sections 355 and 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 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 materials submitted in support of the request for rulings, it is subject to verification on examination.

We have made no determination regarding whether the Proposed Transactions satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b).

Summary of Facts

Distributing is a domestic corporation that operates Business A. Prior to Date 1, Distributing also directly operated Business B, which currently is operated by Controlled, a domestic corporation that is wholly owned by Distributing. Distributing has one class of stock issued and outstanding, all the shares of which are voting common stock. Distributing has a shareholders, b of whom are individuals who are not United States persons within the meaning of section 7701(a)(30) (the "non-U.S. Shareholders").

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

Proposed Transactions

Applicable federal and state regulations require Distributing to divest itself of Business B. Accordingly, in order to separate Business B from Business A, Distributing proposes to engage in the following transactions (the "Proposed Transactions"):

1. On Date 1, at the direction of Regulatory Agency, Distributing formed a new corporation (Controlled) under the laws of State A. Thereafter, Distributing transferred the Transferred Assets to Controlled in exchange for all of the issued and outstanding shares of Controlled (the "Contribution").
2. Distributing will distribute to its existing shareholders all of the issued and outstanding shares of Controlled on a pro rata basis (the "Distribution").

Following the Distribution, Distributing and Controlled may share certain officers and employees. However, appropriate cost sharing agreements shall be undertaken between the entities in respect of such employees, and each corporation also shall have its own employees.

Representations

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

- a) Distributing has not made the following representations, which do not apply to the Distribution: Representations 7, 36, 37, 38, and 39.
- b) Distributing has not made the following representations but provided the required explanations: Representations 14, 15, 29, and 42.
- c) Distributing has made the following alternative representations: 3(a), 22(a), 31(a), and 41(a).
- d) Distributing has made the following modified representations:

Modified Representation 11(a): Following the Distribution, Distributing and Controlled each will continue, independently and with its separate employees, the active conduct of the business on which it relies to meet the active trade or business requirement of § 355(b). Following the Distribution, Distributing and Controlled may share certain employees pursuant to agreements between Distributing and Controlled with respect to those employees based on arm's-length terms.

In addition, Distributing has made the following additional representations:

- 1) Immediately after the Distribution, the fair market value of the business assets of each of Distributing and Controlled will be greater than 80 percent of the fair market value of its total assets. For this purpose, the term “business assets” of a corporation means its gross assets used in one or more businesses. Such assets include cash and cash equivalents held as a reasonable amount of working capital for one or more businesses. Such assets also include assets required (by binding commitment or legal requirement) to be held to provide for exigencies related to a business or for regulatory purposes with respect to a business.
- 2) There is no plan or intention by the shareholders or security holders of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in, or securities of, either Distributing or Controlled after the transaction.
- 3) There is no plan or intention by Distributing or Controlled, directly or through any related person (within the meaning of section 267(b) or section 707(b)(1)), to purchase any of its outstanding stock after the transaction.
- 4) There is no plan or intention to liquidate either Distributing or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the transaction, except in the ordinary course of business.
- 5) There was no agreement, understanding, arrangement, or substantial negotiations at any point during the two-year period ending on the date of the distribution regarding an acquisition of either Distributing or Controlled (including a predecessor or successor within the meaning of § 1.355-8) or a similar acquisition.

Rulings

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

1. The Distribution, together with the Contribution, will qualify as a reorganization under sections 368(a)(1)(D) and 355. Distributing and Controlled will each be a “party to a reorganization” within the meaning of section 368(b).
2. No gain or loss was recognized by Distributing upon the Contribution. Sections 361(a) and 357(a).
3. No gain or loss was recognized by Controlled upon the Contribution. Section 1032(a).

4. The basis of each asset received by Controlled from Distributing in the Contribution was the same as the basis of that asset in the hands of Distributing immediately prior to the Contribution. Section 362(b).
5. The holding period of each asset received by Controlled from Distributing in the Contribution included the period during which the assets were held by Distributing. Section 1223(2).
6. No gain or loss will be recognized by Distributing upon the Distribution. Section 361(c).
7. No gain or loss will be recognized by—and no amount will be included in the income of—the Distributing shareholders upon the Distribution. Section 355(a).
8. Each Distributing shareholder's aggregate basis in Distributing common stock before the transaction will equal their aggregate basis in Distributing and Controlled common stock after the transaction, except that such basis shall be allocated between each shareholder's shares of Distributing common stock and Controlled common stock in proportion to their respective fair market values. Section 358(a)(1) and (b).
9. The holding period of the shares of Controlled common stock received by each Distributing shareholder will include the holding period of the shares of Distributing common stock with respect to which the Distribution was made, provided that such Distributing common stock was held as a capital asset on the date of the Distribution. Section 1223(1).
10. Earnings and profits will be allocated between Distributing and Controlled in accordance with section 312(h) and Treas. Reg. § 1.312-10(a).
11. No gain or loss will be recognized by reason of section 367(e) to Distributing upon the distribution of the shares of Controlled common stock to the non-U.S. Shareholders.
12. Distributing will have no withholding obligation under section 1441 with respect to the distribution of shares of Controlled stock to the non-U.S. Shareholders.
13. The non-U.S. Shareholders will not recognize gain under section 897 upon the Distribution.
14. Distributing will not have any withholdings obligations under section 1445 with respect to the Distribution.

Sincerely,

John B. Lovelace
Senior Counsel, Branch 3
Office of Associate Chief Counsel (Corporate)

cc: