

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters
(Also Part I, §§ 355, 1.355-1.)

Rev. Proc. 2018-53

SECTION 1. PURPOSE

This revenue procedure provides procedures for taxpayers requesting private letter rulings regarding certain issues pertaining to reorganizations under § 368(a)(1)(D) and § 355 of the Internal Revenue Code of 1986 (Divisive Reorganizations), including representations, information, and analysis that taxpayers requesting these rulings should submit.

SECTION 2. BACKGROUND

In a Divisive Reorganization, a corporation (Distributing) transfers property to a corporation it controls (within the meaning of § 368(c)) immediately thereafter (Controlled), in exchange for consideration. The consideration received by Distributing (§ 361 Consideration) includes Controlled stock and also may include money, securities or other debt obligations of which Controlled is the obligor, and other property. Controlled may also assume liabilities of Distributing. To complete the Divisive Reorganization, Distributing distributes the Controlled stock, and

possibly other § 361 Consideration, to its shareholders and may also distribute § 361 Consideration in satisfaction of its obligations to holders of its securities or to other creditors.

In section 5.01(10) of Rev. Proc. 2013-3, 2013-1 I.R.B. 113, the Internal Revenue Service (Service) modified its prior practice and stated that it would no longer rule on whether § 355 or § 361 applied to Distributing's distribution of Controlled stock or securities in exchange for, and in retirement of, putative Distributing debt if such Distributing debt was issued in anticipation of the distribution. The Service set forth this no-rule position most recently in section 5.01(4) of Rev. Proc. 2017-3, 2017-1 I.R.B. 130. In Rev. Proc. 2017-38, 2017-22 I.R.B. 1258, the Service modified Rev. Proc. 2017-3 to remove this no-rule position.

In Rev. Proc. 2017-52, 2017-41 I.R.B. 283, the Service introduced a pilot program to allow rulings on the overall federal income tax consequences of Divisive Reorganizations and other distributions under § 355, provided procedures for taxpayers requesting these rulings, and clarified procedures for taxpayers requesting rulings on significant issues (defined in section 3.01(53) of Rev. Proc. 2018-3, 2018-1 I.R.B. 130).

On October 13, 2017, the Service released a statement to inform taxpayers and their advisers of changes relating to requests for private letter rulings on certain corporate transactions. This statement provides, in part, the following:

If, in connection with a section 355 distribution, a distribution of stock, securities or other property to the distributing corporation's shareholders or creditors is substantially delayed, IRS will continue to rule on whether the delayed distribution is tax-free under section 355 or section 361.

However, rulings on such issues will not be based solely on the length of the delay. Instead, IRS will rule on this issue only based on substantial scrutiny of the facts and circumstances (including the circumstances of the delay) and full consideration of the legal issues and the effects of a ruling on federal tax administration.

The Department of the Treasury and the Service continue to study the issues relating to assumption and satisfaction of Distributing's obligations in Divisive Reorganizations. The Service has determined, however, that taxpayers requesting rulings on certain of these issues should follow specified procedures and submit specified representations and related information and analysis.

SECTION 3. APPLICATION AND PROCEDURES

.01 Ruling requests to which procedures apply

A taxpayer engaging in a Divisive Reorganization may request rulings that no gain or loss will be recognized to Distributing (i) upon Controlled's assumption of liability for an obligation of Distributing (§ 357(a)), and (ii) upon Distributing's receipt of § 361 Consideration and its distribution of the § 361 Consideration to a creditor in satisfaction of Distributing's debt obligation (§§ 361(b) and (c)). Each such ruling may be a Significant Issue Ruling, described in section 6.03(2) of Rev. Proc. 2018-1, 2018-1 I.R.B. 1, or it may be included in a Transactional Ruling, defined in section 2.03(1)(c) of Rev. Proc. 2017-52.

The procedures described in section 3.03 of this revenue procedure apply to a request for a Significant Issue Ruling or a Transactional Ruling, as appropriate, to the extent that a subject of the request is an assumption by Controlled of liability for

Distributing Debt or the satisfaction of Distributing Debt with § 361 Consideration. For purposes of this revenue procedure, an obligation is Distributing Debt if (a) Distributing is the obligor, and (b) the obligation (i) is evidenced by a debt instrument (defined in § 1.1275-1(d)) that is not a contingent payment debt instrument subject to § 1.1275-4 (Non-contingent Debt Instrument) and (ii) by its terms is payable only in money. (For example, Distributing Debt does not include an obligation that, by its terms, can be satisfied with § 361 Consideration at Distributing's option.)

.02 Ruling requests on similar or related transactions

The Service will continue to rule on transactions that are not described in section 3.01 of this revenue procedure but are similar to such transactions. These transactions include assumption or satisfaction of Distributing's obligations that are not Distributing Debt (for example, contingent liabilities) and distributions of § 361 Consideration to Distributing's shareholders. However, this revenue procedure does not describe procedures for requesting such rulings or the representations, information, or analysis that taxpayers requesting such rulings should submit. See generally Rev. Proc. 2018-1 and Rev. Proc. 2017-52.

A taxpayer may request rulings regarding assumption or satisfaction of some obligations that are, and of other obligations that are not, Distributing Debt. In this situation, the taxpayer should follow the procedures described in section 3.03 of this revenue procedure with respect to the Distributing Debt and should follow the procedures described in Rev. Proc. 2018-1 and Rev. Proc. 2017-52 with respect to the other obligations. Additional representations, information, and analysis may be required.

.03 Procedures

In a request for rulings described in section 3.01 of this revenue procedure, the taxpayer should submit (in addition to the representations, information, and analysis described in Rev. Proc. 2018-1 and Rev. Proc. 2017-52) information that describes (1) the Distributing Debt that will be assumed or satisfied (including the relevant terms of the Non-contingent Debt Instruments that evidence the Distributing Debt and the date or dates on which the Distributing Debt was incurred), (2) the § 361 Consideration that will be distributed to creditors in satisfaction of the Distributing Debt, and (3) the transactions that will implement Controlled's assumption of liability for Distributing Debt or Distributing's receipt of § 361 Consideration and its distribution of § 361 Consideration to creditors in satisfaction of Distributing Debt.

The taxpayer should also submit information and analysis to establish that (1) any assumption of Distributing Debt by Controlled will be consideration received by Distributing in the Divisive Reorganization, and (2) any distribution of § 361 Consideration by Distributing to its creditors in satisfaction of Distributing Debt will be in connection with the plan of reorganization.

If, at the time of the first distribution of Controlled stock to Distributing shareholders, the assumption or satisfaction of Distributing Debt is subject to any contingency, the taxpayer should (1) describe each contingency and any alternative transactions and (2) establish that there are one or more substantial business reasons for the plan not being fixed and determined at that time. Documentation of such business reasons should be submitted only if requested.

In addition, the taxpayer should submit the representations, information, and analysis set forth in section 3.04 of this revenue procedure.

.04 Representations, information, and analysis

The representations, information, and analysis described in paragraphs (1) through (8) of this section 3.04 should be submitted. With respect to these representations, the taxpayer should not follow the procedures in section 3.04 of Rev. Proc. 2017-52. Instead, the taxpayer should set forth each applicable representation and the additional information and analysis described in this section 3.04. If the taxpayer believes that any of the representations is not applicable, the taxpayer should explain its rationale for this belief.

If the taxpayer is unable to submit an applicable representation in the form set forth in this section 3.04 (Standard Representation), the taxpayer should submit (1) an explanation for its inability to provide the Standard Representation and (2) the rationale supporting the issuance of each relevant requested ruling in the absence of the Standard Representation. If appropriate, the taxpayer should submit (1) a modified representation that addresses the same matter, (2) an explanation of the modification, and (3) the rationale supporting the issuance of each relevant requested ruling, taking into account the modified Standard Representation.

The representations in this section 3.04 use terms defined in this revenue procedure. The taxpayer should include in its request either (1) definitions of these terms that are consistent with the definitions in this revenue procedure or (2) a statement to the effect that these terms have the meanings set forth in this revenue procedure.

(1) Distributing as obligor in substance. Submit the following

REPRESENTATION: *Distributing is in substance the obligor of each Distributing Debt that will be assumed or satisfied.* With respect to any such Distributing Debt, the taxpayer should submit information regarding any co-obligation, guarantee, indemnity, surety, make-well, keep-well, or similar arrangement, including security provided by any person other than Distributing. The taxpayer should also submit information and analysis to establish that, taking into account any such arrangement, Distributing is in substance the obligor of such Distributing Debt.

(2) Holder not a Related Person. Submit the following **REPRESENTATION:** *No holder of Distributing Debt that will be assumed or satisfied is a person related to Distributing or Controlled within the meaning of § 267(b) or § 707(b)(1) (Related Person).* If a holder is a Related Person, the taxpayer should establish that the § 361 Consideration received by the Related Person will be used to satisfy an obligation that is evidenced by a Non-contingent Debt Instrument and is held by a person other than a Related Person. The taxpayer should also submit information and analysis to address any potential application of the consolidated return regulations, including § 1.1502-13(g).

(3) Holder of Distributing Debt. Submit the following **REPRESENTATION:** *The holder of Distributing Debt that will be assumed or satisfied will not hold the debt for the benefit of Distributing, Controlled, or any Related Person.* A collateral benefit received by Distributing from an arrangement with an intermediary (for example, facilitation of exchanges of § 361 Consideration for Distributing Debt) will not be treated as the intermediary holding Distributing Debt for the benefit of Distributing, Controlled, or a

Related Person. If an intermediary will acquire pre-existing Distributing Debt from any person, and such Distributing Debt will be satisfied with § 361 Consideration, submit the following additional **REPRESENTATIONS**: *[Name of intermediary] will not acquire Distributing Debt from Distributing, Controlled, or any Related Person. Neither Distributing, nor Controlled, nor any Related Person will participate in any profit gained by [name of intermediary] upon an exchange of § 361 Consideration; nor will any such profit be limited by agreement or other arrangement. The value of the § 361 Consideration received by [name of intermediary] in satisfaction of the Distributing Debt will not exceed the amount to which the holder is entitled under the terms of the Distributing Debt.* The taxpayer should describe any co-obligation, guarantee, indemnity, surety, make-well, keep-well, or similar arrangement, including additional security, provided to the intermediary by Distributing, Controlled, or any Related Person for risk of loss with respect to the Distributing Debt.

(4) Distributing Debt as historic debt. Submit the following **REPRESENTATION**: *Distributing incurred the Distributing Debt that will be assumed or satisfied (a) before the request for any relevant ruling is submitted and (b) no later than 60 days before the earliest of the following dates: (i) the date of the first public announcement (as defined in § 1.355-7(h)(10)) of the Divisive Reorganization or a similar transaction, (ii) the date of the entry by Distributing into a binding agreement to engage in the Divisive Reorganization or a similar transaction, and (iii) the date of approval of the Divisive Reorganization or a similar transaction by the board of directors of Distributing.* A transaction is a similar transaction if it would have effected a direct or indirect separation of all, or a significant portion of, the same assets as the Divisive Reorganization that is

the subject of the taxpayer's ruling request (cf. § 1.355-7(h)(12) and (13) (describing the terms "similar acquisition (not involving a public offering)" and "similar acquisition involving a public offering," respectively)). If Distributing incurred or will incur any of the Distributing Debt that will be assumed or satisfied at a later time, the taxpayer should establish that, based on all the facts and circumstances, the borrowing and the assumption or satisfaction of such Distributing Debt will result in an allocation of historic Distributing Debt between Distributing and Controlled or an exchange of historic Distributing Debt for Controlled stock. As one example, the taxpayer may establish that the proceeds of the more-recently incurred Distributing Debt were used to satisfy other Distributing Debt that was incurred no later than the time described in the representation in this section 3.04(4) (cf. Rev. Rul. 79-258, 1979-2 C.B. 143 (in connection with a Divisive Reorganization, Controlled's assumption of liability for debt newly issued by Distributing to replace historic debt incurred in connection with the business to be transferred to Controlled did not cause § 357(b) to apply to the assumption)). As another example, the taxpayer may establish that the proceeds of the Distributing Debt assumed or satisfied were or will be used in Controlled's business.

(5) Historic average. Submit the following **REPRESENTATION**: *The total adjusted issue price (determined under § 1.1275-1(b)) of Distributing Debt that will be assumed or satisfied does not exceed the historic average of the total adjusted issue price of (a) Distributing Debt owed to persons other than Related Persons and (b) obligations that are evidenced by Non-contingent Debt Instruments and are owed by other members of Distributing's separate affiliated group (within the meaning of § 355(b)(3)(B)) to persons other than Related Persons. The historic average of total*

adjusted issue price should be determined based on debt outstanding as of the close of the eight fiscal quarters that ended or will end immediately before the date of approval of the Divisive Reorganization by the board of directors of Distributing.

(6) Delayed satisfaction of Distributing Debt. If applicable, submit the following **REPRESENTATIONS**: *There are one or more substantial business reasons for any delay in satisfying Distributing Debt with § 361 Consideration beyond 30 days after the date of the first distribution of Controlled stock to Distributing's shareholders. All the Distributing Debt that will be satisfied with § 361 Consideration will be satisfied no later than 180 days after such distribution.* The taxpayer should submit information and analysis to establish the substantial business reasons for any delay in satisfying Distributing Debt after the 30-day period beginning on the date of the first distribution of Controlled stock to Distributing's shareholders. If satisfaction of any Distributing Debt with § 361 Consideration will occur more than 180 days after the date of such first distribution, the taxpayer should submit information and analysis to establish that, based on all the facts and circumstances, the satisfaction will be in connection with the plan of reorganization. Documentation of the matters described in this section 3.04(6) should be submitted only if requested.

(7) No replacement of Distributing Debt. Submit the following **REPRESENTATION**: *Distributing will not replace any Distributing Debt that will be assumed or satisfied with previously committed borrowing, other than borrowing in the ordinary course of business pursuant to a revolving credit agreement or similar arrangement.* The purpose of this representation is to establish that the application of § 361 to the proposed transactions is consistent with the purposes of § 361. If

Distributing is a prospective borrower under a revolving credit agreement or similar arrangement, the taxpayer should submit information and analysis to establish that the agreement or arrangement was not entered into, and amounts of borrowing provided for therein were not increased, in a transaction related to the Divisive Reorganization.

(8) General information and analysis. Submit information and analysis to establish that, under general principles of tax law, the transactions (including any exchange facilitated by an intermediary) should not be recast, recharacterized, or otherwise treated as one or more transactions that would not qualify under the relevant provisions of the Internal Revenue Code of 1986.

SECTION 4. MISCELLANEOUS

Taxpayers and their advisers are encouraged to contact the Office of Associate Chief Counsel (Corporate) with questions and comments regarding these matters. Taxpayers seeking rulings described in section 3.01 of this revenue procedure are encouraged to request pre-submission conferences. See section 10.07 of Rev. Proc. 2018-1.

SECTION 5. EFFECT ON OTHER DOCUMENTS

.01 Section 6.03(3)(d) of Rev. Proc. 2018-1 is modified by deleting the second paragraph and adding the following text in its place:

The taxpayer should consult other published authorities (see, for example, Appendix G of this revenue procedure, which identifies certain checklist and guideline revenue procedures, including Rev. Proc. 2017-52 and Rev. Proc. 2018-53, to identify information or representations but only to the extent that they relate to the issue).

.02 Section 7.01(2)(a) of Rev. Proc. 2018-1 is modified by deleting the text of the second sentence of the first paragraph and adding the following text in its place:

But see section 3.02 and section 4 of Rev. Proc. 2017-52, 2017-41 I.R.B. 283, for requirements relating to ruling requests under § 355, and section 3.04 of Rev. Proc. 2018-53, 2018-43 I.R.B. XXX, for requirements relating to ruling requests involving assumption or satisfaction of the distributing corporation's debt in connection with § 355 distributions.

.03 Section .01 of Appendix G to Rev. Proc. 2018-1 is modified as follows:

(1) In the column titled REVENUE PROCEDURE AND NOTICE, in the text corresponding to "Subchapter C—Corporate Distributions, Adjustments, Transfers, and Reorganizations" found in the column CODE OR REGULATION SECTION, by deleting the text and adding the following text in its place:

Rev. Proc. 77-37, 1977-2 C.B. 568, as modified by Rev. Proc. 89-30, 1989-1 C.B. 895, and as amplified by Rev. Proc. 77-41, 1977-2 C.B. 574, Rev. Proc. 83-81, 1983-2 C.B. 598 (see also Rev. Proc. 2018-3), Rev. Proc. 84-42, 1984-1 C.B. 521 (superseded, in part, as to no-rule areas by Rev. Proc. 2018-3), Rev. Proc. 86-42, 1986-2 C.B. 722, Rev. Proc. 89-50, 1989-2 C.B. 631, Rev. Proc. 2017-52, 2017-41 I.R.B. 283 (relating to Transactional Rulings for Covered Transactions), and Rev. Proc. 2018-53, 2018-43 I.R.B. XXX. But see section 3.01(53) of Rev. Proc. 2018-3, which states that the Service will not issue a letter ruling as to whether a transaction constitutes a reorganization within the meaning of § 368 (except as provided in section 6.03(2)(b) of this revenue procedure). However, the Service will issue a letter ruling addressing significant issues (within the meaning of section 3.01(53) of

Rev. Proc. 2018-3) presented in a reorganization within the meaning of § 368. The information and representations described in these revenue procedures should be included in a letter ruling request only to the extent that they relate to the significant issues with respect to which the letter ruling is requested. See section 6.03(2) of this revenue procedure.

(2) In the column titled REVENUE PROCEDURE AND NOTICE, in the text corresponding to “355 Checklist questionnaire” found in the column CODE OR REGULATION SECTION, by deleting the text and adding the following text in its place:

Rev. Proc. 2017-52, 2017-41 I.R.B. 283, and Rev. Proc. 2018-53, 2018-43 I.R.B. XXX. See also section 6.03(2) of this revenue procedure.

.04 Rev. Proc. 2017-52 is amplified and modified.

SECTION 6. EFFECTIVE DATE

This revenue procedure will apply to all ruling requests postmarked or, if not mailed, received by the Service after October 3, 2018. If a ruling request described in section 3.01 of this revenue procedure is pending on such date, the taxpayer should consider a supplemental submission with the representations, information, and analysis described in section 3.03 and section 3.04 of this revenue procedure (to the extent this material has not been submitted).

SECTION 7. PAPERWORK REDUCTION ACT

The collections of information in this revenue procedure have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1522.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in section 3. This information is required to determine whether a taxpayer would qualify for tax-free treatment to the extent allowed under § 357 and § 361. The collections of information are required to obtain a benefit. The likely respondents are corporations that control another corporation, as well as the management of the corporation the stock of which is distributed or that controls the corporation the stock of which is being distributed.

The estimated total annual reporting burden for Rev. Proc. 2018-1 is 326,436 hours.

The estimated annual burden per respondent for Rev. Proc. 2018-1 varies from 1 to 200 hours, depending on individual circumstances, with an estimated average of 82 hours. The estimated number of respondents is 3,956.

The estimated total annual reporting burden for this revenue procedure adds 955 hours to the burden imposed by Rev. Proc. 2018-1.

The estimated annual burden per respondent for this revenue procedure varies from 5 to 50 hours, depending on individual circumstances, with an estimated average of 15 hours. The estimated number of additional respondents added to Rev. Proc. 2018-1 by this revenue procedure is 2, increasing the estimated number of respondents to Rev. Proc. 2018-1 to 3,958.

The estimated average burden for Rev. Proc. 2018-1, as increased by this revenue procedure, is 82 hours.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue tax law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is J.P. Stemwedel of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue procedure, please contact Mr. Stemwedel at (202) 317-5024.