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Subject: RE: Section 1.358-2(a)(2)

On June 4, 1993, the Service issued a private letter ruling to Taxpayer dealing with the tax consequences of a proposed same day, double spin of Controlled to the shareholders of the Parent of Distributing. Immediately prior to the double spin, Parent wholly owned Distributing and Distributing wholly owned the only class of stock of Controlled (common stock). Between the first spin and the second spin, Controlled issued X % (a minority interest) of a new class of common stock in an IPO to the public. The only difference between the two classes of Controlled stock is voting power; both classes are voting, but one class of stock carries more votes, per share, than does the other. You ask for guidance in applying Treas. Reg. section 1.358-2(a)(2) in determining the proper allocation of Parent's basis in the Distributing stock it held and the Controlled stock it received in the first spin -- assuming a valid non-taxable section 355 transaction.

Specifically, with regard to the first spin off (i.e., Distributing's distribution of Controlled to Parent), you ask: What is the relevant time period for determining the fair market value of the Controlled stock for purposes of allocating Parent's basis in its Distributing stock between the Distributing stock it held and the Controlled stock it received? You ask whether the fair market value of the Controlled stock is to be determined after the spin off but immediately before the IPO, or must the offering price of the stock issued in the IPO be taken into account in valuing the Controlled regardless of when the IPO occurred?

Answer: The Controlled stock received by Parent in the spin off should be valued with reference to the IPO price, because regardless of whether the IPO occurred immediately before or immediately after the first spin off, the FMV of the Controlled stock would be taken into account in determining the value of the Controlled stock at the point in time, when it was spun off. That is, the price of that stock in the open market would clearly have reflected the IPO. It is our understanding that the IPO was planned along with the spin off

transaction and that the IPO offering was public knowledge before the spin off and the IPO actually took place. In addition, in determining the FMV of the Controlled stock and the Distributing stock it is appropriate to apply any relevant discount and/or premium, as might apply to such stock under the facts of the case.

You also ask: Whether the Service should apply a control premium in determining the fair market value of the Controlled stock received by the Parent in the first spin off. You state that in calculating the fair market value of the Controlled stock, that the Taxpayer treated the stock as a minority interest because, as Taxpayer contends, the Parent had no ability to market the Controlled stock, on account of the fact that the Parent was bound by the plan to immediately distribute the Controlled stock to its multiple shareholders. You believe, however, that the second spin off is irrelevant in determining the fair market value of the Controlled stock in the hands of Parent for purposes of Reg. Section 1.358-2(a)(2).

Answer: We agree with you. A controlled premium should be applied in determining the fair market value of the Controlled stock in the hands of Parent after the first spin. The fact that the Controlled stock received by the Parent was immediately spun off to its shareholders is irrelevant to whether the stock that Parent received in the spin off was subject to a control premium. The fact that the second spin off was a prearranged deal that was to follow the first spin off and even the fact that the Parent may have been legally obligated to make the distribution of the Controlled stock to its shareholders does not change the controlling fact that at the instant that Parent received the Controlled stock, it possessed a controlling interest in Controlled. Moreover, Parent's prearranged disposition of the Controlled stock was a matter of its own discretion. Parent had to have decided that it wanted to distribute the controlled stock it was to receive to its shareholders.