

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **201402002**

Release Date: 1/10/2014

Index Number: 368.00-00, 368.04-00, 355.00-00, 355.01-02

Third Party Communication: None  
Date of Communication: Not Applicable  
Person To Contact: , ID No.

Telephone Number:

Refer Reply To:  
CC:CORP:6  
PLR-117674-13  
Date:  
September 25, 2013

Legend

Distributing =

State =

Year =

Shareholder 1 =

Shareholder 2 =

Shareholder 3 =

Shareholder 4 =

Business =

Controlled 1 =

Controlled 2 =

Controlled 3 =

Controlled 4 =

Dear :

This letter responds to your April 9, 2013, request for rulings on certain federal income tax consequences of the Proposed Transaction (defined below). The information provided in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Distributions (defined below): (i) satisfy the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) are being used principally as a device for the distribution of the earnings and profits of Distributing, Controlled 1, Controlled 2, Controlled 3, or Controlled 4, or any combination thereof (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); or (iii) are 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 Distributing or any Controlled (see § 355(e) and § 1.355-7).

### **Summary of Facts**

Distributing is a closely held State corporation that was incorporated in Year. Distributing has always been treated as a subchapter S corporation. Distributing has one class of stock outstanding, voting common stock. Distributing's stock is owned equally by Shareholder 1, Shareholder 2, Shareholder 3, and Shareholder 4 (the "Shareholders").

Distributing is engaged in Business. Distributing conducts Business on the cash method of accounting and uses a calendar tax year. The financial information submitted by Distributing indicates that Business has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past

five years.

### **Proposed Transaction**

For what is represented to be a valid business purpose, Distributing has proposed the following transaction (the "Proposed Transaction"):

- (i) Distributing will cause Controlled 1, Controlled 2, Controlled 3, and Controlled 4 (each, a "Controlled") to be incorporated as State corporations. Each Controlled will make an election under § 1362(a) to be treated as a subchapter S corporation and will have one class of stock outstanding, voting common stock. Each Controlled will use the cash method of accounting.
- (ii) Distributing will transfer substantially equal portions of all of the assets related to the conduct of Business to each Controlled in exchange for all of the stock of each Controlled and the assumption by each Controlled of any liabilities associated with those assets (the "Contributions").
- (iii) Immediately after the Contributions, Distributing will distribute: (1) all of the Controlled 1 stock to Shareholder 1 in exchange for all of Shareholder 1's Distributing stock; (2) all of the Controlled 2 stock to Shareholder 2 in exchange for all of Shareholder 2's Distributing stock; (3) all of the Controlled 3 stock to Shareholder 3 in exchange for all of Shareholder 3's Distributing stock; and (4) all of the Controlled 4 stock to Shareholder 4 in exchange for all of Shareholder 4's Distributing stock (the "Distributions"). Thereafter, Shareholder 1 will own all of the Controlled 1 stock, Shareholder 2 will own all of the Controlled 2 stock, Shareholder 3 will own all of the Controlled 3 stock, and Shareholder 4 will own all of the Controlled 4 stock.
- (iv) Immediately after the Distributions, Distributing will liquidate.

### **Representations**

The following representations are made with regard to the Proposed Transaction:

- (a) Each party to the Distributions will pay its own expenses, if any, incurred in connection with the Distributions.
- (b) The indebtedness, if any, owed by any Controlled to Distributing after the Distributions will not constitute stock or securities.
- (c) The fair market value of the Controlled stock and other consideration to be received by each shareholder of Distributing will be approximately equal to the

fair market value of the Distributing stock surrendered by the shareholder in the exchange.

- (d) No part of the consideration to be distributed by Distributing in the Distributions will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (e) The five years of financial information submitted for Distributing is representative of Distributing's present operation, and with regard to Distributing, there have been no substantial operational changes since the date of the last financial statements submitted.
- (f) The five years of financial information submitted for each part of the Business to be transferred to each Controlled is representative of that part of the Business's present operation, and with regard to each part of the Business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (g) Neither Business nor control of an entity conducting Business will have been acquired during the five-year period ending on the date of the Distributions in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
- (h) Following the Distributions, each Controlled will continue, independently and with its separate employees, the active conduct of its share of all the integrated activities of the business conducted by Distributing prior to consummation of the Distributions. Distributing will be liquidated.
- (i) The Distributions are being carried out for the following corporate business purposes: to enable each shareholder to independently own and manage a separate business in accordance with each shareholder's own goals and priorities and to focus each shareholder's attention on each shareholder's own separate business. The Distributions are motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (j) The Distributions are not being used principally as a device for the distribution of the earnings and profits of Distributing, Controlled 1, Controlled 2, Controlled 3, or Controlled 4, or any combination thereof.
- (k) For purposes of § 355(d), immediately after the Distributions, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as

defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distributions.

- (l) For purposes of § 355(d), immediately after the Distributions, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of any Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of any Controlled stock that either: (i) was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distributions; or (ii) is received in the Distributions to the extent attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distributions.
- (m) The total adjusted basis of the assets Distributing will transfer to each Controlled in the Contributions will equal or exceed the sum of: (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by the respective Controlled in the Contributions; and (ii) the sum of any money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing from the respective Controlled in the Contributions and transferred by Distributing to its creditors in connection with the reorganization.
- (n) Any liabilities assumed (within the meaning of § 357(d)) by each Controlled in the Contributions and any liabilities to which the transferred assets are subject will have been incurred in the ordinary course of business and will be associated with the assets being transferred.
- (o) The total fair market value of the assets Distributing will transfer to each Controlled in the Contributions will exceed the sum of: (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by the respective Controlled in the Contributions; (ii) the amount of any liabilities owed to the respective Controlled by Distributing that are discharged or extinguished in connection with the Contributions; and (iii) the amount of any money and the fair market value of any other property (other than stock permitted to be received under § 361(a) without the recognition of gain) received by Distributing from the respective Controlled in the Contributions. The fair market value of the assets of each Controlled will exceed the amount of its liabilities immediately after the Contributions.
- (p) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.

- (q) No intercorporate debt will exist between Distributing and any Controlled, or among any Controlled, at the time of, or subsequent to, the Distributions.
- (r) Payments made in connection with all continuing transactions, if any, among any Controlled, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (s) No two parties to the Contributions and Distributions are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (t) The Distributions are not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or any Controlled (including any predecessor or successor of any such corporation).
- (u) Immediately after the transaction (as defined in § 355(g)(4)), neither Distributing nor any Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).
- (v) Distributing is an S corporation within the meaning of § 1362(a). Each Controlled will elect to be an S corporation pursuant to § 1362(a) on the first available date after its formation and there is no plan or intent to revoke or otherwise terminate the S corporation election of any Controlled.

### **Rulings**

Based solely on the information submitted and representations made, we rule as follows with regard to the Proposed Transaction:

- (1) The Contributions, followed by the Distributions, will qualify as a reorganization within the meaning of § 368(a)(1)(D). Distributing and each Controlled will be “a party to a reorganization” under § 368(b).
- (2) No gain or loss will be recognized to Distributing on the Contributions. §§ 361(a), 357(a).
- (3) No gain or loss will be recognized to any Controlled on the Contributions. § 1032(a).
- (4) The basis of each asset acquired by each Controlled in the Contributions will equal the basis of that asset in Distributing’s hands immediately before the Contributions. § 362(b).

- (5) Each Controlled's holding period for each asset acquired in the Contributions will include the period Distributing held that asset. § 1223(2).
- (6) No gain or loss will be recognized to Distributing on the Distributions. § 361(c)(1).
- (7) No gain or loss will be recognized to (and no amount will be includible in the income of) any of the Shareholders on their receipt of the respective Controlled stock in exchange for Distributing stock in the Distributions. § 355(a)(1).
- (8) The aggregate basis of the respective Controlled stock received by each of the Shareholders in the Distributions will equal the aggregate basis of the Distributing stock surrendered by the shareholder in exchange therefor, allocated in the manner described in § 1.358-2(a)(2). § 358(a)(1), 358(b)(1).
- (9) Each of the Shareholders' holding period for the respective Controlled stock received in the Distributions will include the period the shareholder held the Distributing stock exchanged therefor, provided the shareholder held that stock as a capital asset on the date of the Distributions. § 1223(1).
- (10) Distributing's momentary ownership of the stock of each Controlled, as part of the reorganization under § 368(a)(1)(D), will not cause any Controlled to have an ineligible shareholder for any portion of its first taxable year under § 1361(b)(1)(B) and will not, in itself, render any Controlled ineligible to elect to be an S corporation for its first taxable year.

### **Caveats**

We express no opinion about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, we express no opinion regarding: (i) whether the Distributions satisfy the business purpose requirement of § 1.355-2(b); (ii) whether the Distributions are being used principally as a device for the distribution of the earnings and profits of Distributing, Controlled 1, Controlled 2, Controlled 3, or Controlled 4, or any combination thereof (see § 355(a)(1)(B) and § 1.355-2(d)); (iii) whether the Distributions are 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 Distributing or any Controlled (see § 355(e) and § 1.355-7); and (iv) the validity of any S corporation election or the continuing eligibility for S corporation status of any Controlled, except as provided herein.

### **Procedural Statements**

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any 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 this ruling letter.

In accordance with the power of attorney on file in this office, a copy of this ruling letter is being sent to your authorized representative.

Sincerely,

*Thomas I. Russell*

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Thomas I. Russell  
Branch Chief, Branch 6  
Office of Associate Chief Counsel (Corporate)

cc: