

## Internal Revenue Service

Number: **201408017**  
Release Date: 2/21/2014

Index Number: 355.01-00; 382.07-00;  
383.00-00

Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

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CC:CORP:B05  
PLR-124501-13

Date:  
November 18, 2013

### Legend

Parent =

Distributing =

Controlled =

Sub 1 =

Sub 2 =

LLC 1 =

LLC 2 =

Business A =

Business B =

Date 1 =

Agreements =

Dear :

This letter responds to your May 23, 2013 request for rulings, submitted by your authorized representatives, on certain federal income tax consequences of a series of proposed transactions. The information submitted in that letter is summarized below.

The rulings contained in this ruling letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials 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 verified any information pertaining to, and has made no determination regarding whether the Distribution (as defined below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is being used principally as a device for the distribution of any of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); and (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will directly or indirectly acquire stock representing a 50 percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

### **Summary of Facts**

Parent, a publicly traded corporation, is the common parent of an affiliated group of corporations that files a consolidated federal income tax return (collectively, the "Parent Group"). Parent owns all of the stock of Distributing and Sub 1. Distributing owns all of the stock of Controlled, which owns all of the stock of Sub 2. Sub 1 wholly owns LLC 1. Sub 2 wholly owns LLC 2. LLC 1 and LLC 2 are disregarded as entities separate from their respective owners for federal income tax purposes. All of the aforementioned entities are domestic.

Parent acquired Distributing in a nontaxable transaction on Date 1 (the “Acquisition”). In connection with the Acquisition, a section 382 limitation arose with respect to the net operating losses of Distributing and its subsidiaries (the “Distributing Group”). As a result, the Distributing Group became a loss subgroup, as defined in Treas. Reg. § 1.1502-91(d)(1), of the Parent Group. Certain of the Distributing Group’s losses are attributable to Controlled and Sub 2.

Distributing, through its separate affiliated group as defined in section 355(b)(3)(B) (the “Distributing SAG”), conducts Business A and Business B. Business B is conducted within the Distributing SAG by Controlled, through its separate affiliated group as defined in section 355(b)(3)(B) (the “Controlled SAG”). In addition, Sub 1 conducts Business B through LLC 1.

Parent plans to combine the Business B operations of the Controlled SAG with the Business B operations of Sub 1 to create various efficiencies for the Parent Group pursuant to a fit and focus plan. Financial information has been submitted indicating that Business A and Business B each 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 are represented to be valid business reasons, Parent proposes the following steps to separate Business B from Business A (collectively, the “Proposed Transaction”):

- (i) Distributing will distribute the stock of Controlled to Parent (the “Distribution”).
- (ii) Controlled and Sub 2 will merge into Sub 1, with Sub 1 surviving (the “Mergers”).
- (iii) LLC 2 will merge into LLC 1.

Before the Acquisition, LLC 2 and certain Distributing subsidiaries entered into the Agreements, pursuant to which LLC 2 provides certain services to the Distributing subsidiaries. Following the Proposed Transaction, Sub 1 will continue to provide these services, and will do so at cost.

### **Representations**

Parent makes the following representations regarding the Proposed Transaction:

- (a) Any indebtedness owed by Controlled to Distributing after the Distribution will not constitute stock or securities.

- (b) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of the corporation.
- (c) In applying section 355(b)(2)(A) regarding the active conduct of a trade or business, Distributing will treat all members of the Distributing SAG and Controlled will treat all members of the Controlled SAG as one corporation.
- (d) The five years of financial information submitted on behalf of Business A as conducted by the Distributing SAG is representative of the present operations of Business A, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) The five years of financial information submitted on behalf of Business B as conducted by the Controlled SAG is representative of the present operations of Business B, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (f) The Distributing SAG neither acquired Business A nor control of any entity conducting Business A during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
- (g) The Controlled SAG neither acquired Business B nor control of an entity conducting Business B during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
- (h) Following the Distribution, the Distributing SAG will continue, independently and with its separate employees, the active conduct of Business A, and the Controlled SAG will continue, independently and with its separate employees, the active conduct of Business B.
- (i) The Distribution is being carried out for the following corporate business purpose: fit and focus. The Distribution is motivated, in whole or in substantial part, by this corporate business purpose.
- (j) The Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing, Controlled, or both.
- (k) Immediately before the Distribution, items of income, gain, loss, deduction and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13 as published in T.D. 8597). Further, any excess loss

account of a member in the stock of another member that is required to be taken into account by Treas. Reg. § 1.1502-19 will be included in income, as appropriate.

- (l) Distributing and Controlled will each pay their separate expenses, if any, incurred in connection with the Proposed Transaction.
- (m) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 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 section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (n) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (o) No intercorporate debt will exist between Controlled and Distributing at the time of, or subsequent to, the Distribution other than payables arising in connection with services performed pursuant to the Agreements.
- (p) The Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 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 section 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (q) Immediately after the Distribution (taking into account section 355(g)(4)), neither Distributing nor Controlled will be a “disqualified investment corporation” as defined in section 355(g)(2)(A).
- (r) Except with respect to the Agreements, payments made in connection with all continuing transactions, if any, between Controlled (and its subsidiaries) and Distributing (and its subsidiaries) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

- (s) The distribution of Controlled stock to Parent in the Distribution is with respect to Parent's ownership of Distributing stock.
- (t) The Mergers will qualify as reorganizations within the meaning of section 368(a)(1)(A).

### **Rulings**

Based solely on the information submitted and representations made, and provided that: (i) the distribution of Controlled stock to Parent in the Distribution is with respect to Parent's ownership of Distributing stock, (ii) any other transfer of stock, money, or property between Distributing, Controlled, or Parent and any person related to Distributing, Controlled, or Parent is respected as a separate transaction, and (iii) the Mergers qualify as reorganizations within the meaning of section 368(a)(1)(A), we rule as follows:

- (1) Distributing will not recognize gain or loss upon the distribution of the Controlled stock in the Distribution. Section 355(c)(1).
- (2) No gain or loss will be recognized by (and no amount will be included in the income of) Parent on the receipt of the Controlled stock in the Distribution. Section 355(a)(1).
- (3) The basis of the stock of Distributing and Controlled in the hands of Parent immediately after the Distribution will be the same as the basis of the Distributing stock held immediately before the Distribution, allocated in proportion to the fair market value of Distributing and Controlled in accordance with Treas. Reg. § 1.358-2(a)(2). Section 358(a), (b), (c).
- (4) The holding period of Controlled stock received by Parent in the Distribution will include the holding period of the Distributing stock with respect to which the distribution is made, provided the Distributing stock is held as a capital asset on the date of the Distribution. Section 1223(1).
- (5) Distributing's earnings and profits will be adjusted and Controlled's earnings and profits will be determined in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(b) and 1.1502-33.
- (6) The Proposed Transaction will not result in an ownership change with respect to Controlled under section 382. Section 382(g).
- (7) The Proposed Transaction will not result in any limitation under sections 382 or 383 with respect to any minimum tax credits of Controlled and its subsidiaries. Section 383(a).

- (8) Sub 1 will succeed to and take into account the items of Controlled and Sub 2 described in section 381(c), subject to the conditions and limitations specified in sections 381, 382, 383, and 384 and the regulations thereunder. Section 381(a) and Treas. Reg. § 1.381(a)-1.

### **Caveats**

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code or 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, this office has not reviewed any information pertaining to and has made no determination regarding:

- (i) Whether the Distribution will satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b);
- (ii) Whether the Distribution is being used principally as a device for the distribution of earnings and profits of Distributing, Controlled, or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d));
- (iii) Whether the Distribution is part of a plan (or series of related transactions) pursuant to which one or more persons will directly or indirectly acquire stock representing a 50 percent or greater interest in the distributing corporation or a controlled corporation (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7);
- (iv) The federal income tax treatment of the Mergers; and
- (v) The potential application of section 482 to any continuing transactions that may occur between Distributing and its subsidiaries (on the one hand) and Controlled and its subsidiaries (on the other hand) that are based upon the total costs incurred by the provider(s) of such services.

### **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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

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 the letter ruling.

Sincerely,

*A Graham Magill*

A. Graham Magill  
Assistant Branch Chief, Branch 5  
Office of Associate Chief Counsel  
(Corporate)

cc: