

**Internal Revenue Service**

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:CORP:6  
PLR-132679-13  
Date:  
January 30, 2014

Legend

Distributing =

Controlled =

State =

Date =

Shareholder 1 =

Shareholder 2 =

a =

b =

FSub =

Country =

Business =

Division =

Dear :

We respond to your July 11, 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.

### **Summary of Facts**

Distributing is a closely held State corporation that was incorporated on Date. Distributing has only one class of stock outstanding (voting common). Shareholder 1 owns a shares of Distributing's stock, and Shareholder 2 owns b shares of Distributing's stock. Distributing owns all of the stock of FSub, a controlled foreign corporation in Country.

Distributing is engaged, directly through various divisions and indirectly through FSub, in Business. Each division has its own unique customer base, inventory, and supply chain, and each maintains its own separate sales and customer service departments. Shareholder 1 and Shareholder 2 disagree about the management and operation of Distributing, especially with respect to the aspects of the Business that relate to the respective divisions being separated.

Distributing conducts Business on the accrual 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 incorporate a new corporation, Controlled, in State.

- Controlled also will have only one class of voting common stock outstanding and will use the accrual method of accounting and a calendar tax year.
- (ii) Distributing will transfer the assets of Division and all of its stock in FSub to Controlled in exchange for all of the stock of Controlled and the assumption by Controlled of any associated liabilities. In order to equalize the values of Distributing and Controlled in proportion to the respective shares held by Shareholder 1 and Shareholder 2, Distributing will assign the proceeds of so much of the accounts receivable or assume so much of the liabilities of Business as is necessary to make Distributing and Controlled of approximately equal values (the Contribution).
  - (iii) Immediately after the Contribution, Distributing will distribute all of the Controlled stock to Shareholder 2 in exchange for all of Shareholder 2's Distributing stock (the Distribution). Thereafter, Shareholder 1 will own all of the Distributing stock and Shareholder 2 will own all of the Controlled stock. Neither shareholder plans or intends to substantially reduce the respective business activities of Distributing and Controlled, and both contemplate entering into non-solicitation agreements and supply agreements between Distributing and Controlled on an arms' length basis.

### **Representations**

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

- (a) Each party to the Distribution will pay its own expenses, if any, incurred in connection with the Distribution.
- (b) 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.
- (c) No part of the consideration to be distributed by Distributing in the Distribution will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (d) 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.
- (e) The five years of financial information submitted for each part of Business to be transferred to Controlled is representative of that part of Business's

- present operation, and with regard to each part of Business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (f) Neither Business nor control of an entity conducting Business will have been acquired 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) Following the Distribution, Distributing and Controlled each 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 Distribution.
  - (h) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
  - (i) The Distribution is carried out for the following corporate business purpose: to eliminate irreconcilable differences between the two shareholders of the corporation by dividing the corporation equally between the two shareholders, with each shareholder to continue a separate active business through separate ownership of Distributing and Controlled. The Distribution is motivated, in whole or 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 or Controlled or both.
  - (k) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying the aggregation rules of 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.
  - (l) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying the aggregation rules of 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 either: (i) 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; or (ii) is received in the Distribution to the extent 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.
- (m) The total adjusted basis of the assets Distributing will transfer to Controlled in the Contribution will equal or exceed the sum of the amount of any liabilities assumed (within the meaning of section 357(d)) by Controlled in the Contribution.
  - (n) Any liabilities assumed (within the meaning of section 357(d)) by Controlled in the Contribution 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 Controlled in the Contribution will exceed the sum of the amount of any liabilities assumed (within the meaning of section 357(d)) by Controlled in the Contribution. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.
  - (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 Controlled at the time of, or subsequent to, the Distribution.
  - (r) No two parties to the Contribution and Distribution are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
  - (s) The Distribution is not part of a plan or series of related transactions (within the meaning of section 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).
  - (t) Immediately after the transaction (as defined in section 355(g)(4)), neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
  - (u) No investment credit determined under section 46 has been (or will be) claimed with respect to any property transferred between Distributing and Controlled.

### **Rulings**

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

- (1) The Contribution followed by the Distribution will qualify as a reorganization within the meaning of section 368(a)(1)(D). Distributing and Controlled each will be "a party to a reorganization" under section 368(b).
- (2) Distributing will not recognize any gain or loss on the Contribution (sections 361(a) and 357(a)).
- (3) Controlled will not recognize any gain or loss on the Contribution (section 1032(a)).
- (4) Controlled's basis of each asset received from Distributing in the Contribution will equal the basis of that asset in Distributing's hands immediately before the Contribution (section 362(b)).
- (5) Controlled's holding period for each asset received from Distributing in the Contribution will include the period during which Distributing held that asset (section 1223(2)).
- (6) Distributing will not recognize any gain or loss on its distribution of Controlled stock to Shareholder 2 (section 361(c)(1)).
- (7) Shareholder 2 will not recognize any gain or loss (and will not include any amount in income) on the receipt of Controlled stock in the Distribution (section 355(a)(1)).
- (8) The aggregate basis of the Controlled stock received by Shareholder 2 in the Distribution will equal the aggregate basis of the Distributing stock surrendered by Shareholder 2 in exchange therefor, allocated in the manner described in section 1.358-2(a)(2) (section 358(a)(1) and (b)(1)).
- (9) Shareholder 2's holding period for the Controlled stock received in the Distribution will include the period Shareholder 2 held the Distributing stock exchanged therefor, provided Shareholder 2 held that stock as a capital asset on the date of the Distribution (section 1223(1)).
- (10) Earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with section 312(h) and section 1.312-10(a).

### **Caveats**

We express no opinion about the federal income 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, this office has not reviewed any information pertaining to, and has made no determination regarding: (i) whether the Distribution satisfies the business purpose requirement of section 1.355-2(b); (ii) whether the Distribution is being used principally as a device for the distribution of the earnings and profits of either Distributing or Controlled or both (see section 355(a)(1)(B) and section 1.355-2(d)); and (iii) whether the Distribution is 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 Controlled (see section 355(e) and section 1.355-7).

### **Procedural Statements**

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.

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,

*Filiz A. Serbes*

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Filiz A. Serbes  
Branch Chief, Branch 3  
Office of Associate Chief Counsel (Corporate)

cc: