

## Internal Revenue Service

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### Legend

Distributing =

Target =

Controlled =

Merger Sub =

Business A =

Business B =

State A =

Date A =

Date B =

Date C =

Date D =

Date E =

Date F =

Date G =

Date H =

Date I =

Year 1 =

Year 2 =

Year 3 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

i =

k =

l =

m =

n =

o =

p =

g =

r =

Dear :

This letter responds to a letter dated June 2, 2015, submitted on behalf of Distributing, requesting a ruling on a significant issue presented under section 355(e) of the Internal Revenue Code (the “Code”). The information provided in that request and in subsequent correspondence is summarized below.

This letter is issued pursuant to section 6.03 of Rev. Proc. 2015-1, 2015-1 I.R.B. 1, regarding one or more significant issues under sections 332, 351, 355, 368, or 1036 of the Code. The ruling contained in this letter only addresses one or more discrete legal issues involved in the transactions described in this letter. This Office expresses no opinion as to the overall tax consequences of these transactions or as to any issue not specifically addressed by the ruling below.

The ruling contained in this letter is based upon information 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 ruling request. Verification of the facts, representations, and other information may be required as part of the audit process.

### Summary of Facts

Distributing is a publicly traded State A corporation and the parent of an affiliated group that files a consolidated federal income tax return. Prior to Date F, Distributing conducted Business A and Business B through its subsidiaries.

On Date A, Distributing’s board of directors authorized the expenditure of up to \$a to repurchase Distributing’s common stock (the “Prior Repurchase Program”). Under the Prior Repurchase Program, Distributing repurchased b shares for \$c during its taxable year that ended on Date B, and it repurchased d shares for \$e during its taxable year that ended on Date D. On Date C, the Prior Repurchase Program was extended for another year, but the program was suspended on Date E.

Target is a State A corporation whose stock was publicly traded prior to Date F. Pursuant to its own stock repurchase program, Target repurchased f shares of Target common stock in Year 1, g shares in Year 2, and h shares in Year 3.

On Date E, Distributing, along with Controlled and Merger Sub (State A corporations whose stock was wholly owned by Distributing), entered into an agreement with Target (the “Transaction Agreement”). Pursuant to the Transaction Agreement, the following

transactions occurred: (i) Distributing contributed and caused its subsidiaries to contribute to Controlled all assets and liabilities related to Business A; (ii) on Date F, Distributing made a pro rata distribution to its shareholders (the “Former Distributing Shareholders”) of all of the common stock of Controlled (the “Distribution”); and (iii) immediately after the Distribution, Merger Sub merged with and into Target, with Target surviving as a wholly owned subsidiary of Distributing (the “Merger”). Immediately after the Merger, the Former Distributing Shareholders owned 100% of Controlled and approximately i% of Distributing, and former shareholders of Target owned approximately j% of Distributing.

On Date G, Distributing’s board of directors authorized a new share repurchase program not to exceed the lesser of k shares of Distributing common stock or an aggregate purchase price of \$l (the “Authorized Share Repurchases”). As of Date H, Distributing had repurchased approximately m shares of its common stock under this program. On Date I, Distributing’s board of directors raised the cap on Authorized Share Repurchases to the lesser of n shares or an aggregate purchase price of \$o.

In addition to the Authorized Share Repurchases, Distributing may engage in additional share repurchases of up to p shares of Distributing common stock (the “Additional Share Repurchases”; together with the Authorized Share Repurchases, the “Share Repurchases”). The Share Repurchases could, in total, result in the repurchase of up to q shares of Distributing common stock, representing approximately r% of Distributing common stock outstanding before the Share Repurchases.

The Share Repurchases have been and will continue to be completed through an open market share repurchase program. All Distributing shareholders are allowed to participate in and benefit from the Share Repurchases, and Distributing is indifferent as to which shareholders participate in the Share Repurchases. The Share Repurchases have been made and will continue to be made when, consistent with Distributing’s overall capital deployment plan, Distributing has excess available cash and the opportunity to repurchase shares at an attractive price.

Before the Merger, neither Distributing nor Target had any “controlling shareholders” within the meaning of § 1.355-7(h)(3) of the Income Tax Regulations, and Distributing has had no such controlling shareholders since the Merger. Prior to Date F, the management of Distributing and Target held no discussions with particular shareholder groups or non-management shareholders regarding the possibility of engaging in stock repurchases following the Distribution and Merger. The Share Repurchases were not the subject of negotiations in connection with the Distribution or the Merger, and non-management shareholders have had no influence over the decision to engage in the Share Repurchases.

### **Representations**

Distributing makes the following representations:

- 1) The Share Repurchases will be motivated by a business purpose, the stock to be repurchased in the Share Repurchases will be widely held, and the Share Repurchases will be made in the open market.
- 2) The Share Repurchases are not motivated to any extent by a desire to increase or decrease the ownership percentage of any particular shareholder or group of shareholders.
- 3) Because the Share Repurchases will be made on the open market through a broker, Distributing will not know the identity of any shareholder from which Distributing stock is repurchased.

### **Ruling**

Based solely on the information submitted and representations made, we rule that, to the extent the Share Repurchases are treated as part of a plan (or series of related transactions) with the Distribution for purposes of section 355(e), the Share Repurchases will be treated as being made from all holders of Distributing common stock on a pro rata basis for purposes of testing the effect of the Share Repurchases on the Distribution under section 355(e).

### **Caveats**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the transactions described herein under any provision of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, these transactions that is not specifically covered by the above rulings.

### **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,

*Russell G. Jones*

Russell G. Jones  
Senior Counsel, Branch 1  
Office of Associate Chief Counsel (Corporate)