

Internal Revenue Service

Number: **201748007**

Release Date: 12/1/2017

Index Number: 355.10-00

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:B3

PLR-137800-16

Date:

June 13, 2017

Legend

Distributing 2 =

Distributing 1 =

Business C Controlled =

State A =

Shareholder A Entities =

Shareholder B =

Date A =

Date B =

Date C =

Date D =

Date E	=
Date F	=
Date G	=
<u>a</u>	=
<u>b</u>	=
<u>c</u>	=
<u>d</u>	=
<u>e</u>	=
Business A	=

Dear :

This letter responds to your December 2, 2016 request, submitted by your authorized representatives, for rulings under section 355(e) relating to a proposed transaction. The information submitted 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 penalties of perjury statements executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This letter is issued pursuant to section 6.03 of Rev. Proc. 2016-1, 2016-1 I.R.B. 1, regarding significant issues presented in a transaction described under sections 332, 351, 355, 368, or 1036. The rulings contained in this letter only address one or more discrete legal issues involved in the transaction. This Office expresses no opinion as to the overall tax consequences of the transactions described in this letter or as to any issue not specifically addressed by the rulings below.

SUMMARY OF FACTS

Distributing 2, a State A corporation, is the parent of a worldwide group of domestic and foreign entities. Distributing 2 is the common parent of an affiliated group of corporations that join in filing a consolidated federal income tax return. Distributing 2

has a single class of common stock outstanding, which is publicly traded.

Pursuant to transactions described in PLR-130090-15 (issued on February 24, 2016), Distributing 2 proposed to effectuate the distribution of the stock of Distributing 1 and Business C Controlled, each a State A corporation, to Distributing 2's shareholders (together, the Distributions). The Distributions are intended to qualify under section 355. The Distributions were accomplished on or before Date A.

Before Date B, approximately a percent of Distributing 2's outstanding common stock was owned by affiliated entities (the Shareholder A Entities). The Shareholder A Entities sold approximately b percent of Distributing 2's outstanding common stock in a public offering on Date B and disposed of an additional approximately c percent of such stock shortly thereafter. Pursuant to a stock purchase agreement entered into on Date C, the Shareholder A Entities sold approximately d percent of the outstanding shares of common stock of each of Distributing 2, Distributing 1, and Business C Controlled to an unrelated party, Shareholder B, on Date D (a date that occurred after Date A). The Shareholder A Entities may dispose of additional shares of Distributing 2, Distributing 1, or Business C Controlled stock. Shareholder B is not a public shareholder (i.e., a shareholder who is not a "controlling shareholder" or "10 percent shareholder," within the meaning of Treas. Reg. §§1.355-7(h)(3) and (14)) (Public Shareholder).

Prior to the Distributions, on Date E and Date F, as well as on certain other dates, Distributing 2 publicly announced or disclosed Distributing 2's intention to engage in a stock buyback program to return capital to its shareholders. Following the Distributions, on Date G, Distributing 2 publicly announced that its board of directors had authorized share repurchases of up to e. Distributing 2 also may engage in additional share repurchases in the future.

Certain share repurchases will be made through (i) open market purchases, (ii) one or more accelerated share repurchase (ASR) programs, (iii) one or more tender offers open to all public holders of Distributing 2 common stock, or (iv) a combination thereof (the Share Repurchases). It is anticipated that only Public Shareholders will participate in the Share Repurchases. It is expected that, under the ASR program, Distributing 2 will purchase a specified number or dollar amount of its shares from a third-party investment bank at a price per share that is determined over a specified calculation period (which often may be terminated early at the bank's option) and may be subject to certain caps and/or floors. Distributing 2 would pay for the shares upfront, and the bank would obtain shares that it delivers upfront by borrowing shares (e.g., from customers or mutual funds). Then the bank would buy shares, generally in the open market, over time to return the borrowed shares and to obtain any additional shares it owes to Distributing 2, with a possible true-up adjustment as between Distributing 2 and the bank at maturity of the ASR program. The amount and timing of the Share Repurchases would be dependent upon, among other factors, the performance of Distributing 2's share price and the amount of free cash flow from Business A.

REPRESENTATIONS

- a) The Share Repurchases will be motivated by a business purpose, and the stock to be repurchased in the Share Repurchases will be widely held.
- b) The Share Repurchases, including at the time the tender offer is initiated, will not be motivated by a desire to increase or decrease the ownership percentage of any particular shareholder or group of shareholders.
- c) At the time that a Share Repurchase is consummated, Distributing 2 will not know the identity of any beneficial shareholder (i) from which Distributing 2 stock is repurchased in the open market; (ii) in the case of an ASR program, from which the third-party investment bank borrows Distributing 2 stock or purchases Distributing 2 stock to fulfill the bank's obligation to return borrowed shares; or (iii) that participates in a tender offer (except to the extent that the shareholder is the record holder of tendered shares or provides an identifying tax-related form or statement to Distributing 2 in connection with such participation).

RULINGS

Based upon the facts and information submitted and the representations made, we rule as follows:

- 1) To the extent the Share Repurchases are treated as part of a plan (or series of related transactions) with the Distributions for purposes of section 355(e), the Share Repurchases will be treated as being made from all Public Shareholders of Distributing 2 common stock on a pro rata basis for purposes of testing the effect of the Share Repurchases on the Distributions under section 355(e).
- 2) Any increase, directly or indirectly, in the percentage of either voting power or value of the stock of Distributing 2 owned by a shareholder by virtue of the Share Repurchases or acquisitions of the stock of Distributing 2, if any, as part of a plan (or series of related transactions) with the Distributions will be taken into account for purposes of section 355(e) only after reducing such increase for any reduction in such percentage interest, directly or indirectly, resulting from the Share Repurchases and any disposition of stock of Distributing 2 by such shareholder or issuance of stock by Distributing 2, if any, as part of a plan (or series of related transactions) with the Distributions.
- 3) The effect of the Share Repurchases will be taken into account under section 355(e) and these rulings only to the extent such Share Repurchases are otherwise treated for purposes of section 355(e) as part of a plan (or series of related transactions) with the Distributions.

CAVEATS

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

PROCEDURAL MATTERS

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 representative.

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,

Susan E. Massey
Assistant to the Branch Chief, Branch 4
Office of Associate Chief Counsel (Corporate)