

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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ID No.

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Refer Reply To:  
CC:CORP:B02  
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Date:  
September 06, 2017

**Legend**

Distributing =

Controlled =

Acquiring =

MergerSub =

Business A =

State A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

a =

Investment =  
Advisor

Dear :

This letter responds to a letter dated October 19, 2016, 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. 2016-1, 2016-1 I.R.B. 1, regarding one or more significant issues under section 355 of the Internal Revenue Code (the "Code"). The ruling contained in this letter only addresses 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 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. Such materials are subject to verification on examination.

### **Summary of Facts**

Acquiring and Distributing are each publicly traded State A corporations that are not related to each other. Controlled is a State A corporation that was formed to effectuate the Distribution described below and was wholly owned by Distributing until Date 2. MergerSub was a State A corporation wholly owned by Acquiring that was formed to effectuate the acquisition of Controlled described below.

On Date 1, Distributing, Controlled, and Acquiring entered into an agreement ("Separation Agreement") to effectuate the separation of Business A from the other businesses of Distributing. Also on Date 1, Distributing, Controlled, Acquiring, and MergerSub entered into an agreement ("Merger Agreement") pursuant to which Acquiring would acquire Controlled. Pursuant to the Separation Agreement and Merger Agreement, the following steps were undertaken:

- i. Distributing contributed the assets and liabilities associated with Business A to newly formed Controlled in exchange for the Controlled stock.

- ii. Distributing made a pro rata distribution (the "Distribution") of the Controlled stock to its shareholders (the "Historic Distributing Shareholders").
- iii. Immediately after the Distribution, MergerSub merged with and into Controlled, with Controlled surviving as a wholly owned subsidiary of Acquiring (the "Merger").

The Distribution and Merger were completed on Date 2. The Historic Distributing Shareholders received approximately a% of Acquiring's common stock as consideration in the Merger.

Acquiring has engaged in open market repurchases of its common stock for several years. Acquiring recently adopted a new share repurchase plan that provides for share repurchases ("Share Repurchases") following the Merger. The Share Repurchases will be conducted through a broker, who will have full discretion with respect to the execution of all purchases, and will be made on the open market. All Acquiring shareholders will be allowed to participate in and benefit from the Share Repurchases, and Acquiring is indifferent as to which shareholders participate in the Share Repurchases.

On Date 3, Investment Advisor filed a Schedule 13G with respect to Acquiring indicating beneficial ownership of more than ten percent of Acquiring's common stock. Item 6 on that Schedule 13G stated that no one person's interest in the common stock of Acquiring was more than five percent of the total outstanding common shares.

### **Representations**

Distributing makes the following representations:

- 1) The Share Repurchases are 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, Acquiring will not know the identity of any shareholder from which Acquiring stock is repurchased.
- 4) During the two years before the Merger, neither Distributing nor Acquiring had any "controlling shareholders" within the meaning of § 1.355-7(h)(3) (a

“Controlling Shareholder”), and Acquiring has had no such Controlling Shareholders since the Merger.

- 5) As of Date 4, except for Investment Advisor, which filed a Schedule 13G on Date 3, no shareholder of Acquiring has filed a Form 3, Form 4, Schedule 13D, or Schedule 13G indicating that it owns enough shares to be a “ten-percent shareholder” within the meaning of § 1.355-7(h)(14) (a “Ten-Percent Shareholder”) since the Merger, and Acquiring has no Actual Knowledge of any Ten-Percent Shareholders since the Merger.

Actual Knowledge means the actual knowledge of the Vice President of Investor Relations, the General Counsel, or a successor position at Acquiring of the existence of a Controlling Shareholder or Ten-Percent Shareholder.

### **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 Public Shareholders of Acquiring common stock (defined as shareholders who are neither Controlling Shareholders nor Ten-Percent Shareholders) on a pro rata basis for the purpose of testing the effect of the Share Repurchases on the Distribution under Section 355(e).

For purposes of this ruling, each Acquiring common stock shareholder will be treated as a Public Shareholder until five business days after either (1) Actual Knowledge, or (2) the filing of a Schedule 13D, Schedule 13G, Form 3, or Form 4, indicating it holds enough shares to be considered a five-percent shareholder within the meaning of § 1.355-7(h)(8) (and it actively participates in the management or operation of Acquiring, as described in § 1.355-7(h)(3)) or a Ten-Percent Shareholder. For purposes of determining whether a Ten-Percent Shareholder exists, Acquiring may disregard a Schedule 13G unless Item 6 reports such a shareholder or is left blank, or the filer discloses its status as a Ten-Percent Shareholder on Form 3 or Form 4.

### **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 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,

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

cc: