

Internal Revenue Service

Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B05
PLR-136863-17

Date:
June 04, 2018

Legend

Distributing =

Controlled 1 =

Controlled 2 =

Controlled 3 =

Controlled 4 =

Shareholder A =

Shareholder B =

Shareholder C =

Shareholder D =

Shareholder E =

Shareholder F =

Shareholder G =

a =

b =

c =

d =

e =

f =

g =

State A =

Business A =

Business B =

Business C =

Business D =

Date 1 =

Year 1 =

Dear :

This letter ruling responds to your letter dated December 5, 2017, submitted by your authorized representative, requesting rulings on certain U.S. federal income tax consequences of a proposed transaction (described below) (the “Proposed Transaction”). The information provided in that request and in later correspondence is summarized below.

This letter ruling is issued pursuant to Rev. Proc. 2017-52, 2017-41 I.R.B. 283 regarding one or more “Covered Transactions” under section 355 of the Internal Revenue Code (the “Code”). This Office expresses no opinion as to any issue not specifically addressed by the rulings below.

The rulings contained in this 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 on the information, representations, and other data may be required as part of the audit process.

This Office has made no determination regarding whether any of the Distributions (as defined below): (i) satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); or (iii) 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 any of the controlled corporations, or any successor of a controlled corporation, within the meaning of Treas. Reg. § 1.355-8T (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

Summary of Facts

Distributing is a State A corporation. Distributing’s single class of common stock is owned as follows: Shareholder A owns a%; Shareholder B owns b%; Shareholder C

owns b%; Shareholder D owns c%; Shareholder E owns c%; Shareholder F owns d%; and Shareholder G owns d%. Collectively, Shareholder A, Shareholder B, Shareholder C, Shareholder D, Shareholder E, Shareholder F, and Shareholder G are referred to as the “Shareholders”.

Shareholder B and Shareholder C are siblings. Shareholder D, Shareholder E, Shareholder F, and Shareholder G are siblings. Shareholder B, Shareholder C, Shareholder D, and Shareholder E are the four members of Distributing’s board of directors.

Prior to the transaction at issue, Distributing formed Controlled 1, Controlled 2, and Controlled 3, each a State A corporation, and contributed a portion of its assets to each controlled corporation. Distributing owns all of the single class of common stock of each of Controlled 1, Controlled 2, and Controlled 3.

Distributing filed a consolidated tax return for Year 1 and all subsequent years as the common parent of an affiliated group of corporations that includes Controlled 1, Controlled 2, and Controlled 3 (the “Distributing Group”).

On Date 1, Distributing formed Controlled 4, a State A corporation (together with Controlled 1, Controlled 2, and Controlled 3, the “Controlled Corporations”). As part of the formation of Controlled 4, Distributing caused Controlled 1 to transfer assets used in Business D to Controlled 4. In exchange, Controlled 4 issued all of its single class of common stock to Distributing. Controlled 4 has been a member of the Distributing Group since its formation.

The transfer of Business D assets from Controlled 1 to Controlled 4 caused Controlled 1 to recognize gain under § 311(b) that was deferred under Treas. Reg. § 1.1502-13 (the “Deferred Gain”).

Controlled 1 is engaged in Business A and was engaged in Business D prior to Date 1. Controlled 2 is engaged in Business B. Controlled 3 is engaged in Business C. Controlled 4 is engaged in Business D.

Distributing has submitted financial information indicating that Business A, Business B, Business C, and Business D have had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing has no assets other than stock in each of the Controlled Corporations. Distributing and each of the Controlled Corporations use the cash method of accounting.

Proposed Transaction

Serious disputes arose among the Shareholders, which adversely affected the business operations of Distributing. To eliminate the Shareholder disputes, Distributing has proposed the following transactions (the “Distributions”):

- (i) Distributing will distribute all of the stock of Controlled 1 to Shareholder A, Shareholder B, and Shareholder C, in exchange for all of their stock in Distributing (“Distribution 1”).
- (ii) Distributing will distribute all of the stock of Controlled 4 to Shareholder D, in exchange for all of Shareholder D’s stock in Distributing (“Distribution 2”).
- (iii) Distributing will distribute all of the stock of Controlled 2 to Shareholder E, in exchange for all of Shareholder E’s stock in Distributing (“Distribution 3”).
- (iv) Distributing will distribute all of the stock of Controlled 3 to Shareholder F and Shareholder G, in exchange for all of their stock in Distributing (“Distribution 4”).
- (v) Immediately after the Distributions, Distributing will liquidate.

Immediately after the Distributions, Shareholder A will own approximately $e\%$ of the stock of Controlled 1, Shareholder B will own approximately $f\%$ of the stock of Controlled 1, and Shareholder C will own approximately $f\%$ of the stock of Controlled 1. Shareholder D will own all of the stock of Controlled 4. Shareholder E will own all of the stock of Controlled 2. Shareholder F will own $g\%$ of the stock of Controlled 3, and Shareholder G will own $g\%$ of the stock of Controlled 3.

Representations

With respect to each of the Distributions, except as set forth below, Distributing has made all of the representations in section 3 of the Appendix to Rev. Proc. 2017-52, 2017-41 I.R.B. 283.

- (1) Distributing has made the following alternative representations set forth in section 3 of the Appendix to Rev. Proc. 2017-52:

Representations 3(a); 8(a); 11(a); 15(a); 31(a); 41(a).

- (2) Distributing has not made the following representations, which do not apply to the Proposed Transaction:

Representations 4; 5; 6; 17; 18; 19; 20; 21; 22; 25; 26; 39; 40; 46.

(3) Distributing has made the following modified representation:

Representation 36: 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. Specifically, Controlled 1 will recognize the Deferred Gain when either Controlled 1 or Controlled 4 ceases to be a member of the Distributing Group.

Rulings

Based solely on the information and representations submitted, we rule as follows on each of the Distributions:

- (1) The Shareholders will not recognize gain or loss (and no amount will be otherwise included in income) upon the receipt of the Controlled stock. § 355(a).
- (2) Distributing will not recognize gain or loss upon the distribution of the Controlled stock to the Shareholders. § 355(c)(1).
- (3) The aggregate basis of the Controlled stock received by each Shareholder immediately after the distribution will equal the Shareholder's aggregate basis in the Distributing stock surrendered in the distribution, allocated in the manner described in Treas. Reg. § 1.358-2. See § 358(a) and (b).
- (4) The holding period of the Controlled stock received by each Shareholder will include the holding period of the Distributing stock with respect to which the distribution of the Controlled stock is made, provided that the Distributing stock is held as a capital asset on the date of the distribution. § 1223(1).
- (5) Earnings and profits, if any, will be allocated between Distributing and each of Controlled in accordance with § 312(h), Treas. Reg. §§ 1.312-10(b) and 1.1502-33(e).
- (6) The Deferred Gain will be taken into account as a result of the Distributions. Treas. Reg. § 1.1502-13(d).

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 addressed by this letter.

Procedural Statements

This ruling letter 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.

A copy of this letter should be attached to the federal income tax return of each taxpayer involved for the taxable year in which the transaction covered by this ruling letter is consummated. 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 letter ruling.

In accordance with the power of attorney on file with this Office, a copy of this letter is being sent to your authorized representative.

Sincerely,

William W. Burhop

William W. Burhop
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel (Corporate)