

**Internal Revenue Service**

Number: **201920008**

Release Date: 5/17/2019

Index Number: 355.01-01, 368.04-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

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PLR-127026-18

Date:

February 15, 2019

TY:

Distributing =

Controlled =

Exchange =

Distributing  
Common Stock =

Business

Segment 1 =

Segment 2 =

Segment 3 =

Segment 4 =

Business Evolution =

Services =

Continuing Relationships =

Distributing Restricted Stock =

Distributing  
Options =

Distributing RSUs =

Event =

Distributing Notes =

Disposition =

Product =

a =

b =

Date 1 =

Date 2 =

State A =

State B =

Dear :

This letter responds to your representative's September 7, 2018 letter, as supplemented on December 10, 2018, January 30, 2019, and February 13, 2019, requesting rulings under Section 355, 368(a)(1)(D), and related provisions of the Internal Revenue Code of 1986, as amended, and related regulations with respect to the proposed transaction described below (the "Proposed Transaction").

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement 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 Rev. Proc. 2019-1, 2019-1 I.R.B. 1, and Rev. Proc. 2017-52, 2017-41 I.R.B. 283, regarding a Transactional Ruling for a Covered Transaction. This Office expresses no opinion as to the overall tax consequences of the Proposed Transaction or as to any issue not specifically addressed by the rulings below.

This office has made no determination regarding whether the Distribution (as defined below): (i) satisfies 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 § 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 the distributing corporation or the controlled corporation, or any predecessor or successor of the distributing corporation or the controlled corporation, within the meaning of Treas. Reg. § 1.355-8T (see § 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

### **Summary of Facts**

Distributing is a State A corporation and the common parent of a group of affiliated corporations that join in filing a consolidated U.S. federal income tax return (the "Distributing Group"). Each member of the Distributing Group uses the accrual method of accounting. The outstanding capital stock of Distributing consists solely of Distributing Common Stock, which is publicly traded on Exchange.

Distributing is engaged in Business, which is comprised of Segments 1 through 4, although Distributing is in the process of exiting Segment 3. As a result of Business Evolution, Distributing expanded into Segments 2 through 4. Financial information has been submitted with respect to Business in accordance with Revenue Procedure 2017-52.

### **Proposed Transaction**

Distributing proposes to carry out the Proposed Transaction, which is comprised of the following steps:

1. On Date 1, Distributing formed Controlled, a State B corporation formed solely for the purposes of effecting the Proposed Transaction, with nominal capital in exchange for a shares of common stock of Controlled ("Controlled Common Stock").

2. Distributing will contribute all of the assets associated with Segment 4 and related operations to Controlled solely in exchange for additional shares of Controlled Common Stock and the assumption by Controlled of all of the liabilities associated with such assets and operations (collectively, the “Contribution”).
3. Distributing will distribute all of its Controlled Common Stock pro rata to its shareholders (the “Distribution”).

As part of the Proposed Transaction and immediately following the Distribution, Controlled will issue shares of Controlled Common Stock to one or more investors in exchange for cash (the “Offering”). Controlled will retain the proceeds of the Offering for use in Controlled’s operation of Segment 4.

In the event the distribution ratio for the Distribution (the “Distribution Ratio”) is other than one-to-one, no fractional shares of Controlled Common Stock will be issued. Instead, the distribution agent will aggregate such fractional shares into whole shares, sell such shares in the open market, and distribute the proceeds to each Distributing shareholder who would otherwise be entitled to receive a fractional share. No shareholder of Distributing will receive cash representing more than one share of Controlled Common Stock.

Distributing Restricted Stock held by directors who become directors of Controlled will be converted into Controlled Common Stock that will be subject to the same restrictions as the Distributing Restricted Stock (the “Controlled Restricted Stock”) and will revert to Controlled if forfeited by the holder thereof. Distributing Restricted Stock held by directors who remain directors of Distributing will be adjusted to reflect the Distribution. The shares of Controlled Restricted Stock will constitute less than b percent of the shares of Controlled Common Stock outstanding immediately prior to the Distribution.

Immediately after and contingent on the completion of the Distribution, each vested Distributing Option, including those held by employees who transfer to Controlled, will be split, with a portion of such option continuing as a vested option to acquire one share of Distributing Common Stock from Distributing (collectively, the “Vested New Distributing Options”) and the remainder exchanged for a new vested option to acquire one share of Controlled Common Stock or a fraction or multiple thereof, based on the Distribution Ratio (collectively, the “Vested Controlled Options”). The aggregate exercise price of the Vested New Distributing Option and the Vested Controlled Option will equal the exercise price of the vested Distributing Option and will be determined by reference to the relative equity values of Distributing immediately before the Distribution and of Distributing or Controlled, as applicable, immediately after the Distribution.

Each unvested Distributing RSU (other than unvested Distributing RSUs issued by Distributing to certain of its employees on Date 2) and unvested Distributing Option held by an employee who transfers to Controlled will be exchanged for a new RSU

(collectively, the “Controlled RSUs”) or unvested option (collectively, the “Controlled Unvested Options,” and, together with the Vested Controlled Options, the “Controlled Options”) to acquire shares of Controlled Common Stock from Controlled, rather than shares of Distributing Common Stock. The number of shares of Controlled Common Stock subject to each new Controlled award will be determined by reference to the Distribution Ratio. The aggregate exercise price of the Controlled Unvested Options will equal the aggregate exercise price of the unvested Distributing Options exchanged therefor. The per share exercise price of the Controlled Unvested Options will be determined by reference to the relative equity values of Distributing immediately before and of Controlled immediately after the Distribution.

The number of unvested Distributing RSUs (collectively, with the Controlled RSUs, the “Post-Separation RSUs”) and the number of, and exercise price per share applicable to, the unvested Distributing Options (collectively, with the Vested New Distributing Options and the Controlled Options, the “Post-Separation Options”) held by employees who will remain with Distributing will be adjusted to reflect the Distribution, but will not entitle the holders to any Controlled Common Stock.

The Post-Separation RSUs and the Post-Separation Options will be designed to preserve the economic terms of the Distributing RSUs and the Distributing Options. On the exercise of any Post-Separation Option, the exercise price will be paid directly to the issuing corporation in exchange for the underlying stock.

Following the Distribution, Distributing and Controlled will engage in the Continuing Relationships, including the provision of Services. Once Controlled ceases providing Services to Distributing, Controlled may not generate revenue, but it will continue to seek to generate future revenue through future Events.

## **Representations**

Except with respect to (i) representations 7, 25, 40, and 43 of section 3 of the Appendix to Revenue Procedure 2017-52, which are inapplicable to the Proposed Transaction, and (ii) representations 8(b), 10, 23, 32, 33, 34, and 46 of section 3 of the Appendix to Revenue Procedure 2017-52, which Distributing has modified below, and subject to the additional representation (8), below, Distributing makes all of the representations in section 3 of the Appendix to Revenue Procedure 2017-52. With respect to the representations that allow for alternative representations to be made and are not otherwise modified below, Distributing makes representations 3(a), 15(a), 22(a), 31(a), and 41(a).

1. Representation 8(b): In the Distribution, Distributing will not distribute Controlled stock, Controlled securities, or Other Property to any holder of the Distributing Notes or any other instrument that might be considered a security for U.S. federal income tax purposes.

2. Representation 10: With respect to the business relied on by each of Distributing and Controlled to meet the active trade or business requirement of section 355(b), there have been no substantial operational changes since the end of the taxpayer's most recent taxable year, other than the termination of Segment 3.
3. Representation 23: Except for the provision of Services, the transaction does not involve and will not result in a situation in which one party recognizes income but another party recognizes the deductions associated with such income or a situation in which one party owns Property but another party recognizes the income associated with such Property.
4. Representation 32: No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution, except for payables and receivables arising in connection with certain Continuing Relationships.
5. Representation 33: Payments made in connection with all continuing transactions, if any, between Distributing and Controlled after the Distribution will be for fair market value based on arm's length terms, other than payments in connection with certain Continuing Relationships, which will be provided at cost.
6. Representation 34: Distributing and Controlled will each pay its own expenses, if any, incurred in connection with the Distribution, except for legal and accounting expenses, appraisal fees, administrative costs of Controlled (such as those incurred for printing and clerical work), security underwriting and registration fees and expenses, transfer taxes, and transfer agents' fees, in each instance only to the extent that they are solely and directly related to the Distribution, all of which will be paid by Distributing.
7. Representation 46: Except for the Offering, Controlled will not issue stock or securities to a person other than Distributing in anticipation of the Distribution.
8. There is no plan or intention for Distributing or Controlled to divest of any of the historic business assets of Distributing before or after the Distribution, except for (i) the termination of Segment 3 by Distributing, (ii) the potential Disposition of Product by Controlled, and (iii) dispositions of assets in the ordinary course of business.

### **Rulings**

Based solely on the information submitted and the representations set forth above, we rule as follows regarding the Proposed Transaction:

- 1) The Contribution and the Distribution, together, will be a reorganization within the meaning of Section 368(a)(1)(D). Distributing and Controlled will each be a “party to a reorganization” within the meaning of Section 368(b).
- 2) No gain or loss will be recognized by Distributing on the Contribution. Sections 357(a) and 361(a), (b).
- 3) No gain or loss will be recognized by Controlled on the Contribution. Section 1032(a).
- 4) Controlled’s basis in each asset received in the Contribution will be the same as the basis of that asset in the hands of Distributing immediately before its transfer, increased by the amount of gain, if any, recognized by Distributing pursuant to Section 357(c) on the transfer. Section 362(b).
- 5) Controlled’s holding period in each asset received in the Contribution will include the period during which Distributing held the asset. Section 1223(2).
- 6) For purposes of Section 355(a)(1)(A) and (D), the Controlled Options and the Controlled RSUs will be treated as securities of Controlled. Treas. Reg. § 1.355-1(c).
- 7) Any exercise or vesting of, or lapse of restriction with respect to, a Controlled Option or Controlled RSU will not be treated as occurring prior to the Distribution. Cf. Rev. Rul. 2002-1, 2002-1 C.B. 268.
- 8) Neither Controlled nor any of its affiliates will be treated as a “successor” to Distributing or any of its affiliates for purposes of Section 1504(a)(3).
- 9) No gain or loss will be recognized by Distributing on the Distribution. Section 361(c).
- 10) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the Distributing shareholders upon their receipt of the Controlled Common Stock in the Distribution. Section 355(a).
- 11) Each Distributing shareholder’s basis in a share of Distributing Common Stock (as adjusted under Treas. Reg. § 1.358-1) will be allocated between the share of Distributing Common Stock with respect to which the Distribution is made and the Controlled Common Stock (or allocable portions thereof) received in the Distribution with respect to the share of Distributing Common Stock in proportion to their fair market values. Treas. Reg. § 1.358-2.



- 12) Each Distributing shareholder's holding period in the Controlled Common Stock received will include the holding period of the Distributing Common Stock with respect to which the Distribution of the Controlled Common Stock is made, provided the Distributing Common Stock is held as a capital asset on the date of the Distribution. Section 1223(1).
- 13) Earnings and profits (if any) will be allocated between Distributing and Controlled in accordance with Section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33(e)(3).
- 14) A Distributing shareholder that receives cash in lieu of a fractional share of Controlled Common Stock will recognize gain or loss measured by the difference between the basis of the fractional share received and the amount of cash received. Section 1001. Any gain or loss will be treated as a capital gain or loss, provided the fractional share of stock is held as a capital asset on the date of the Distribution. Sections 1221 and 1222.
- 15) Except for purposes of Section 355(g), any post-distribution payments made by Distributing or any of its affiliates to Controlled or any of its affiliates, or vice versa, that (i) have arisen or will arise with respect to a taxable period ending on or before the Distribution or for a taxable period beginning on or before and ending after the Distribution and (ii) will not have become fixed and ascertainable until after the Distribution will be treated as occurring immediately before the Distribution. See *Arrowsmith v. Comm'r*, 344 U.S. 6, 73 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.

### **Caveats**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

### **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,

Gerald B. Fleming  
Senior Technician Reviewer, Branch 2  
(Corporate)