

Internal Revenue Service

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

Telephone Number:

Refer Reply To:
CC:CORP:B01
PLR-132809-18
Date:
February 19, 2019

Legend

- Distributing =
- Controlled =
- Corp1 =
- Corp2 =
- Corp3 =
- Corp4 =
- Corp5 =
- StateA =
- StateB =
- BusinessA =
- BusinessB =
- FamilyA =
- AgencyA =

Dear _____ :

This letter responds to your letter dated November 1, 2018, as supplemented by subsequent submissions, requesting rulings on certain federal income tax consequences of the Proposed Transaction (as defined below). The information provided in that letter and in subsequent correspondence is summarize below.

This letter is issued pursuant to Rev. Proc. 2017-52, 2017-41 I.R.B. 283 regarding one or more “Covered Transactions” under §§ 355 and 368 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 of the information, representations, and other data may be required as part of the audit process.

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 primarily 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, a StateA corporation, is the common parent of an affiliated group whose includible corporations join in filing a consolidated federal income tax return (the “Distributing Group”). Distributing has one class of privately-held common stock outstanding owned directly and indirectly by three generations of FamilyA.

Distributing wholly owns Corp1, a StateA corporation, and Controlled, a StateB corporation.

Corp1 wholly owns Corp2, a StateA corporation.

Corp2 wholly owns Corp3 and Corp4, StateA corporations.

Corp3 wholly owns Corp5, a StateA corporation.

The Distributing Group is engaged in two businesses: BusinessA and BusinessB. BusinessA is conducted by Distributing, Corp1, Corp2, and Corp3. BusinessB is conducted by Controlled, Corp4, and Corp5. The financial information submitted by Distributing indicates that BusinessA and BusinessB each have had gross receipts and operating expenses representing an active trade or business for each of the past five years.

Distributing intends to apply to AgencyA to change its business status for BusinessA. The Proposed Transaction will allow Distributing to meet certain regulatory requirements so that its application may be approved.

The Proposed Transaction

To achieve the business purpose described above, the following series of steps are proposed:

- (i) Corp3 will distribute Corp5 stock to Corp2.
- (ii) Corp2 will distribute Corp4 and Corp5 stock to Corp1.
- (iii) Corp1 will distribute Corp4 and Corp5 stock to Distributing.
- (vi) Distributing will contribute Corp4 and Corp5 stock to Controlled (the "Contribution").
- (v) Distributing will distribute Controlled stock to Distributing Shareholders (the "Distributees"), pro rata (the "Distribution").

Representations

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

- (1) Distributing has made the following alternative representations:

Representations 3(a); 8(a); 11(a); 15(b); 22(a); 31(a); 41(a)

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

Representations 7; 17; 19; 20; 24; 25; 35; 39

Rulings

1. The Contribution, followed by the Distribution, will qualify as a reorganization under § 368(a)(1)(D), and Distributing and Controlled will each be “a party to a reorganization” within the meaning of § 368(b).
2. No gain or loss will be recognized by Distributing on the Contribution (§§ 361(a) and 357(a)).
3. No gain or loss will be recognized by Controlled on the Contribution (§1032(a)).
4. Controlled’s basis in each asset (including each stock interest) received from Distributing in the Contribution will be the same as the basis of such asset in the hands of Distributing immediately before the Contribution (§ 362(b)).
5. Controlled’s holding period for each asset received from Distributing in the Contribution will include the period during which Distributing held that asset (§ 1223(2)).
6. No gain or loss will be recognized by Distributing on the Distribution (§ 361(a)(1)).
7. No gain or loss will be recognized by (and no amount will otherwise be included in the income of) any Distributee upon receipt of Controlled stock in the Distribution (§ 355(a)(1)).
8. The aggregate basis of the Distributing shares and the Controlled shares in the hands of each Distributee (including any fractional share interest in Controlled to which the Distributee may be entitled) immediately after the Distribution will equal the aggregate basis of the Distributing shares held by the Distributee immediately before the Distribution, allocated between the shares of Distributing and Controlled in proportion to the fair market value of each immediately following the Distribution in accordance with Treas. Reg. § 1.358-2(a)(2) (§ 358(b)(2) and (c)).
9. The holding period of the Controlled shares received by each Distributee in the Distribution (including any fractional share interest in Controlled to which the Distributee may be entitled) will include the holding period of the Distributing shares on which the Distribution is made, provided the Distributing shares are held by the shareholder as a capital asset on the date of the Distribution (§ 1223(1)).
10. Earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with § 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33(e)(3).
11. Following the Distribution, Controlled will not be a successor of Distributing for purposes of § 1504(a)(3). Therefore, Controlled and its direct and indirect subsidiaries

that are “includible corporations” under §1504(b) and satisfy the ownership requirements of § 1504(a)(2) will be members of an affiliated group of corporations entitled to file a consolidated federal income tax return with Controlled as the common parent.

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 is directed only to the taxpayer requesting it. § 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,

Mark S. Jennings

Mark S. Jennings
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel (Corporate)