

Internal Revenue Service

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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:3
PLR-129089-18

Date:
April 30, 2019

Legend

Distributing =

Controlled 1 =

Controlled 2 =

Partnership =

Shareholder A =

Shareholder B =

Shareholder C =

Shareholder D =

State A =

Business =

Asset 1 =

Asset 2 =

Asset 3 =

Asset 4 =

Asset 5 =

Asset 6 =

Asset 7 =

Asset 8 =

Asset 9 =

a =

b =

c =

d =

Date 1 =

Dear :

This letter responds to your letter dated September 28, 2018, requesting rulings on certain federal income tax consequences of a proposed transaction described below. The information submitted in that letter and in subsequent correspondence is summarized below.

This letter is issued pursuant to Rev. Proc. 2017-52, 2017-41 I.R.B. 283, as amplified and modified by Rev. Proc. 2018-53, 2018-43 I.R.B. 667, regarding one or more “Covered Transactions” under section 355 and/or section 368 of the Internal Revenue Code (the “Code”). This Office expresses no opinion as to the overall tax consequences of the transaction as to any issue not specifically addressed by the rulings below.

This office has made no determination regarding whether any of the Distributions (as defined below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporations or both (see section 355(a)(1)(B) and § 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 corporations (see section 355(e) and § 1.355-7).

Summary of Facts

Distributing is a closely held State A corporation that owns and operates Business. Distributing has one class of common stock outstanding that is owned equally by Shareholder A, Shareholder B, Shareholder C, and Shareholder D. Distributing has made an election under section 1362(a) to be treated as a subchapter S corporation (within the meaning of section 1361(a)) as of Date 1.

The fair market value of Distributing’s total gross assets is approximately \$a. Distributing also owns a general partnership interest in State A Partnership. The fair market value of Distributing’s general partnership interest is approximately \$b. Financial information has been submitted in accordance with Rev. Proc. 2017-52 indicating that Business has had gross receipts and operating expenses representing the active conduct of trade or business for each of the past five years.

To resolve differences of opinion among the shareholders as to how the Business should be conducted, taxpayer proposes the following transaction (the “Proposed Transaction”):

Proposed Transaction

1. Distributing will form Controlled 1 and Controlled 2 as State A corporations. Controlled 1 and Controlled 2 each will make an election under section 1362(a) to be treated as a subchapter S corporations (within the meaning of section 1361(a)). Controlled 1 and Controlled 2 each will have one class of stock outstanding, all of which will be owned directly by Distributing.

2. Distributing will transfer 50 percent of its assets and liabilities to Controlled 1, including 50 percent of its Partnership interest, 50 percent of Asset 1, 100 percent of each of Asset 2, Asset 3, and Asset 4, and \$c in cash in exchange for all of the stock of Controlled 1 and the assumption by Controlled 1 of liabilities (Contribution 1).
3. Distributing will transfer 50 percent of its assets and liabilities to Controlled 2, including 50 percent of its Partnership interest, 50 percent of Asset 1, 100 percent of each of Asset 5, Asset 6, Asset 7, Asset 8, and Asset 9, and \$d in cash in exchange for all of the stock of Controlled 2 and the assumption by Controlled 2 of liabilities (Contribution 2).
4. Distributing will distribute all of Controlled 1 stock to Shareholder A and to Shareholder B in exchange for all of their Distributing stock (Distribution 1).
5. Distributing will distribute all of Controlled 2 stock to Shareholder C and to Shareholder D in exchange for all of their Distributing stock (Distribution 2).
6. Distributing will be liquidated as part of the reorganization.
7. Controlled 1 and Controlled 2 will sell Asset 1 as soon as necessary steps required by State A law are completed.

Representations

Except as set forth below, Distributing makes all the representations in section 3 of the Appendix to Rev. Proc. 2017-52 in the form set forth therein.

(1) Distributing does not make the following representations:

- a. Representations 36, 37, 38, and 39 are not applicable because Distributing does not file a consolidated return.
- b. Representation 40 is not applicable because Distributing is not a member of an Expanded Affiliated Group (as defined in section 2.04 of the Appendix to Rev. Proc. 2017-52).

(2) Taxpayer has made the following alternative representations set forth in section 3 of the Appendix to Rev. Proc. 2017-52: 3(a), 8(a), 11(b), 15(a), 22(a), 31(a) and 41(b).

(3) Taxpayer has made the following representation concerning Rev. Proc. 2018-53: Distributing's liabilities are not evidenced by debt instruments now or at the time of the distribution.

Rulings

Based solely on the information submitted and the representations made, we rule as follows with respect to the Proposed Transaction:

1. Contribution 1 and Contribution 2, together with Distribution 1 and Distribution 2, followed by the liquidation of Distributing, will be a reorganization within the meaning of section 368(a)(1)(D). Distributing, Controlled 1, and Controlled 2 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 Contribution 1 or Contribution 2. Sections 357(a) and 361(a).
3. No gain or loss will be recognized by Controlled 1 on Contribution 1 or by Controlled 2 on Contribution 2. Section 1032(a).
4. Controlled 1’s basis in each asset received from Distributing in Contribution 1 will equal the basis of such asset in the hands of Distributing immediately before its transfer. Section 362(b).
5. Controlled 2’s basis in each asset received from Distributing in Contribution 2 will equal the basis of such asset in the hands of Distributing immediately before its transfer. Section 362(b).
6. The holding period for each asset received by Controlled 1 in Contribution 1 will include the period during which such asset was held by Distributing. Section 1223(2).
7. The holding period for each asset received by Controlled 2 in Contribution 2 will include the period during which such asset was held by Distributing. Section 1223(2).
8. No gain or loss will be recognized by Distributing on Distribution 1 or Distribution 2. Section 361(c)(1).
9. No gain or loss will be recognized by (and no amount will be included in the income of) Shareholder A or Shareholder B upon receipt of Controlled 1 stock in Distribution 1. Section 355(a)(1).
10. No gain or loss will be recognized by (and no amount will be included in the income of) Shareholder C or Shareholder D upon receipt of Controlled 2 stock in Distribution 2. Section 355(a)(1).

11. The aggregate basis of the Controlled 1 stock received by Shareholder A and Shareholder B immediately after Distribution 1 will be the same as such shareholder's aggregate basis in the Distributing stock surrendered in exchange therefor, allocated in the manner described in § 1.358-2(a)(2). Section 358(a)(1) and (b).
12. The aggregate basis of the Controlled 2 stock received by Shareholder C and Shareholder D immediately after Distribution 2 will be the same as such shareholder's aggregate basis in the Distributing stock surrendered in exchange therefor, allocated in the manner described in § 1.358-2(a)(2). Section 358(a)(1) and (b).
13. The holding period of the Controlled 1 stock received by Shareholder A and Shareholder B in Distribution 1 will include the holding period of the Distributing stock exchanged therefor, provided that such Distributing stock is held as a capital asset on the date of Distribution 1. Section 1223(1).
14. The holding period of the Controlled 2 stock received by Shareholder C and Shareholder D in Distribution 2 will include the holding period of the Distributing stock exchanged therefor, provided that such Distributing stock is held as a capital asset on the date of Distribution 2. Section 1223(1).
15. Distributing's earnings and profits will be allocated between Controlled 1 and Controlled 2 in accordance with section 312(h) and § 1.312-10(a).
16. The accumulated adjustments account of Distributing will be allocated between Controlled 1 and Controlled 2 in a manner similar to the manner in which the earnings and profits of Distributing will be allocated under section 312(h) in accordance with § 1.1368-2(d)(3).
17. Provided that Distribution 1 and Distribution 2 are undertaken immediately after Contribution 1 and Contribution 2, Distributing's momentary ownership of the stock of Controlled 1 and Controlled 2, as part of the reorganization under section 368(a)(1)(D), will not cause Controlled 1 or Controlled 2 to have an ineligible shareholder for any portion of their respective first taxable year under section 1361(b)(1)(B) and will not, in itself, render Controlled 1 or Controlled 2 ineligible to elect to be a subchapter S corporation for its respective first taxable year.

Caveats

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.

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.

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.

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,

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)