



Dear \_\_\_\_\_ :

This letter responds to your letter dated March 8, 2019, requesting a ruling on certain federal income tax consequences of the Proposed Transaction, defined below. The information submitted in that letter and in subsequent correspondence is summarized below.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty 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 the ruling, it is subject to verification on examination.

This letter is issued pursuant to section 4 of Rev. Proc. 2017-52, 2017-41 I.R.B. 283, amplified and modified by Rev. Proc. 2018-53, 2018-43 I.R.B. 667, and section 6.03(2) of Rev. Proc. 2018-1, 2018-1 I.R.B. 1, regarding a significant issue under section 355 of the Internal Revenue Code. The ruling contained in this letter only addresses a significant issue involved in the Proposed 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 ruling below.

### **Summary of Facts**

Distributing, a State A corporation, is owned equally by Shareholder 1, Shareholder 2, and Shareholder 3 (the "Shareholders"). Distributing is directly engaged in Business A. The Shareholders and Employee, as employees of Distributing, perform X Services for Business A. Other Individuals, who are not employees of Distributing, perform Y Services and the majority of Z Services for Business A.

### **Proposed Transaction**

For what are represented to be valid corporate business purposes, Distributing proposes to engage in the following transaction (the "Proposed Transaction"):

1. Distributing will form Controlled 1 and Controlled 2 as State A corporations. Distributing will contribute a portion of the assets of Business A to Controlled 1 in exchange for all of the stock of Controlled 1 and the assumption by Controlled 1 of a portion of Distributing's liabilities ("Contribution 1"), and a portion of the assets of Business A to Controlled 2 in exchange for all of the stock of Controlled 2 and the assumption by Controlled 2 of a portion of Distributing's liabilities ("Contribution 2"). Immediately after Contribution 1 and Contribution 2, Distributing (not including the value of the stock of Controlled 1 and Controlled 2), Controlled 1, and Controlled 2 each will have a fair market value (assets less its assumed liabilities) that is equal to one-third of Distributing's fair market value immediately prior to Contribution 1 and Contribution 2.

2. Distributing will distribute all of the stock of Controlled 1 to Shareholder 1 in exchange for all of Shareholder 1's stock in Distributing ("Distribution 1"), and Distributing will distribute all of the stock of Controlled 2 to Shareholder 2 in exchange for all of Shareholder 2's stock in Distributing ("Distribution 2, and together with Distribution 1, the "Distributions").

Following the Distributions, Shareholder 3 and Employee will perform X Services for the portion of Business A remaining in Distributing; Shareholder 1 and Employee will perform X Services for the portion of Business A contributed to Controlled 1; and Shareholder 2 and Employee will perform X Services for the portion of Business A contributed to Controlled 2.

Distributing has submitted all of the information required by § 3.03(3) of Rev. Proc. 2017-52 for each of the Distributions.

### **Representations**

With respect to each of the Distributions, Distributing has made the following representations in the Appendix to Rev. Proc. 2017-52: 9, 10, 12, and 15(a).

Distributing also makes the following representations:

1. Following the Distributions, Distributing, Controlled 1, and Controlled 2 each will continue, independently and with its separate employees, the active conduct of its share of all the integrated activities of the business on which it relies to meet the active trade or business requirement of section 355(b), as conducted by Distributing prior to consummation of the transaction, except that Distributing, Controlled 1, and Controlled 2 will share the services of Employee. Distributing, Controlled 1, and Controlled 2 each will pay Employee directly for the value of his services.
2. Except for the issue of whether section 355(b) has been satisfied, Contribution 1 and Distribution 1 will qualify as a transaction in which no gain or loss is recognized to Distributing, Controlled 1, or Distributing's shareholders, and no amount is included in the income of Distributing's shareholders, under section 368(a)(1)(D) and section 355.
3. Except for the issue of whether section 355(b) has been satisfied, Contribution 2 and Distribution 2 will qualify as a transaction in which no gain or loss is recognized to Distributing, Controlled 2, or Distributing's shareholders, and no amount is included in the income of Distributing's shareholders, under section 368(a)(1)(D) and section 355.

## Ruling

Based solely on the facts and information submitted and the representations made, we rule as follows:

Distributing, Controlled 1, and Controlled 2 each is engaged immediately after the Distributions in the active conduct of a trade or business within the meaning of section 355(b).

### Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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,

*Russell P. Subin*

Russell P. Subin  
Senior Counsel, Branch 3  
Office of Associate Chief Counsel (Corporate)

cc: