

State B =

Shareholder M =

Shareholder N =

Business A =

Business B =

r =

s =

t =

u =

v =

w =

Date 1 =

Year X =

Year Y =

Year Z =

Dear :

This letter responds to your authorized representatives' letter dated December 30, 2020, requesting rulings on certain federal income tax consequences of a proposed transaction described below (the "Proposed Transaction"). The material information provided in that request and in subsequent correspondence is summarized below.

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 materials

submitted in support of the request for rulings, it is subject to verification on examination.

This letter is issued pursuant to Rev. Proc. 2017-52, 2017-41 I.R.B. 283, regarding one or more “Covered Transactions” under sections 355 and 368 of the Internal Revenue Code (the “Code”) and pursuant to section 6.03(2) of Rev. Proc. 2021-1, 2021-1 I.R.B. 1, regarding one or more significant issues under section 355 of the Code that only address one or more discrete issues involved in the transaction. This Office expresses no opinion as to the overall tax consequences of the transactions described in this letter 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 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. § 1.355-8 (see § 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

Summary of Facts

Distributing, a State A corporation, is engaged in Business A. Distributing made an election under section 1362(a) to be treated under subchapter S with an effective date of Date 1. Shareholder M and certain entities affiliated with Shareholder M own r% of the issued and outstanding interest of Distributing. Shareholder N owns the remaining s% of the issued and outstanding interest of Distributing.

Distributing owns (i) all the issued and outstanding interests of Sub 1, a State B corporation and (ii) all the issued and outstanding interests of LLC 1, a State B limited liability company classified as an entity disregarded as a separate for U.S. federal income tax purposes (a “Disregarded Entity”).

LLC 1 owns (i) t% of the issued and outstanding interests of LLC 2, a State A limited liability company classified as a partnership for U.S. federal income tax purposes, and (ii) u% the issued and outstanding interests of LLC 3, a State B limited liability company classified as a partnership for U.S. federal income tax purposes. Sub 1 owns the remaining v% of the issued and outstanding interests of LLC 2.

LLC 2 owns all the issued and outstanding interests of LLC 4, a State B limited liability company classified as a Disregarded Entity.

LLC 4 owns all the issued and outstanding interests of LLC 5, a State B limited liability company classified as a Disregarded Entity.

LLC 5 owns all the issued and outstanding interests of LLC 6, a State A limited liability company classified as a Disregarded Entity.

The remaining w% of LLC 3 is owned by unrelated holders.

LLC 3 has issued a revolving promissory note to Distributing (the "Note").

Distributing conducts Business A through LLC 2 and Business B through LLC 3. In Year X, Business A began developing Business B, a segment of Business A which provides support to Business A. In Year Y, the Business B assets were transferred to newly created LLC 3. Since then, Distributing has conducted Business B through LLC 3. Financial information has been submitted indicating that Business A has had gross receipts and operating expense representing the active conduct of a trade or business for each of the past five years.

Distributing established an unfunded incentive compensation plan for services related to Business B that is currently maintained at LLC 1 (the "Comp Plan").

The Proposed Transaction

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

- (i) Distributing will form Controlled, a State A corporation. Distributing will file an election to treat Controlled as a qualified subchapter S subsidiary for federal income tax purposes under section 1361.
- (ii) LLC 1 will distribute all of its equity interests in LLC 2 to Distributing, retaining the Comp Plan.
- (iii) Distributing will contribute LLC 1, and the Note to Controlled (the "Contribution").
- (iv) Distributing will distribute all of its equity interests in Controlled pro rata to Distributing's Shareholders (the "Distribution"). Controlled will elect under section 1362(a) to be treated under subchapter S immediately after the termination of its QSUB status.

Representations

With respect to the Distribution, except as otherwise 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:
Representations 3(a), 8(a), 11(b), 15(a), 22(a), 31(a), and 41(b).

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

Representations 7, 24, 25, 36, 37, 38, and 39.

Distributing has made the following additional representations:

- (1) Distributing has no actual knowledge that any party to the Proposed Transaction has a plan to cancel or otherwise extinguish the Note for less than full consideration.
- (2) Distributing and Controlled had no accumulated earnings and profits at the beginning of their respective tax years.
- (3) Distributing and Controlled will have no current earnings and profits as of the date of the Distribution.
- (4) No distribution of property by Distributing immediately before the transaction would require recognition of gain resulting in current earnings and profits for the taxable year of the Distribution.

Rulings

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

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 the 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).
3. No gain or loss will be recognized by Controlled on the Contribution. Sections 1032(a).

4. The basis in each asset received by Controlled in the Contribution will be the same as the basis of such asset in the hands of Distributing immediately before the Contribution. Section 362(b).
5. The holding period for each asset received by Controlled in the Contribution will include the period during which Distributing held that asset. Section 1223(2).
6. No gain or loss will be recognized by Distributing in connection with the Proposed Transaction. Section 355(c)(1).
7. No gain or loss will be recognized by (and no amount will be included in the income of) Distributing's shareholders upon receipt of the Controlled stock in the Distribution. Section 355(a)(1).
8. The basis of the stock of Distributing and Controlled in the hands of Distributing's shareholders after the Distribution will be the same as the basis of the Distributing stock held immediately before Distribution (Section 358(a) and Treas. Reg. Section 1.358-1(a)), allocated in proportion to the fair market value of each of Distributing and Controlled in accordance with Treas. Reg. Section 1.358-2(a)(2). Sections 358(b)(2) and 358(c).
9. The holding period of the Controlled shares received by each of Distributing's shareholders in the Distribution will include the holding period of the Distributing shares with respect to which the Distribution will be made, provided that the Distributing shares are held as a capital asset in that shareholder's hands on the date of the Distribution. Section 1223(1).
10. The Distribution will cause a termination of Controlled's qualified subchapter S subsidiary (QSUB) election because Controlled will cease to be a wholly owned subsidiary of an S corporation. For U.S. federal income tax purposes, Controlled will be treated as a new corporation acquiring all of its assets and assuming all of its liabilities from Distributing immediately before the termination of Controlled's QSUB election in exchange for the stock of Controlled, pursuant to Treas. Reg. Section 1.1361-5(b)(1)(i). Sections 1361(b)(3)(B) and (C).
11. Distributing's accumulated adjustment account immediately before the transaction will be allocated between Distributing and Controlled in a manner similar to the manner in which Distributing's earnings and profits will be allocated under § 312(h) in accordance with Treas. Reg. § 1.1368-2(d)(3). Treas. Reg. Sections 1.312-10(a) and 1.1368-2(d)(3).
12. Distributing's momentary ownership of the stock of Controlled, as part of the reorganization under Section 368(a)(1)(D), will not cause Controlled to have an ineligible shareholder for any portion of its first taxable year under Section 1361(b)(1)(B), and will not, in itself, render Controlled ineligible to elect to be an

S corporation for its first taxable year. If Controlled otherwise meets the requirements of a small business corporation under Section 1361, Controlled will be permitted to make a subchapter S election under Section 1362(a) for its first taxable year, provided that such election is made effective immediately following the termination of the original QSUB election.

13. No cancellation of debt will be realized or recognized in connection with the Contribution or Distribution. Section 108(e)(4).

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transactions under other provisions of the Code regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that is not specifically addressed in this letter.

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 the federal income tax return of each taxpayer involved for the taxable year in 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 the letter ruling [PLR-100129-21].

In accordance with the Power of Attorney on file in this office, a copy of this ruling letter will be sent to the authorized representatives named therein.

Sincerely,

Mark J. Weiss

Mark J. Weiss
Chief, Branch 2
Office of Associate Chief Counsel (Corporate)

cc: