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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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CC:CORP:3

PLR-109279-21

Date:

October 12, 2021

Legend

Distributing =

Historic QSub 1 =

Historic QSub 2 =

Historic QSub 3 =

Historic LLC A =

Historic LLC B =

Historic LLC C =

Historic LLC D =

Historic LLC E =

Historic LLC F =

Historic LLC G =

Historic LLC H =

Historic LLC I =

Property 1 =

Property 2 =

Property 3 =

Property 4 =

Property 5 =

Property 6 =

Property 7 =

Property 8 =

Property 9 =

Property 10 =

Property 11 =

Property 12 =

Controlled Co 1 =

Controlled Co 2 =

Controlled Co 3 =

Controlled Co 4 =

Controlled Co 5 =

Controlled Co 6 =

Controlled Co 7 =

Controlled Co 8 =

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4

New LLC 1 =

New LLC 2 =

New LLC 3 =

New LLC 4 =

New LLC 5 =

New LLC 6 =

New LLC 7 =

New LLC 8 =

New LLC 9 =

New LLC 10 =

New LLC 11 =

New LLC 12 =

Business A =

Marital Trust A =

Trust B =

Shareholder A =

Shareholder B =

Shareholder C =

Shareholder D =

Shareholder E =

Shareholder F =

Shareholder G =

Shareholder H =

Shareholder I =

Shareholder J =

Shareholder K =

State A =

Year 1 =

Year 2 =

Year 3 =

Date 1 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

i =

k =

l =

m =

n =

o =

p =

q =

r =

s =

Dear :

This letter responds to your letter dated April 16, 2021, as supplemented by subsequent information and documentation, requesting rulings. The material information is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by 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 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” (as defined in section 2.03(1)(a) of the revenue procedure) under section 355 and/or section 368 of the Internal Revenue Code (the “Code”). This Office expresses no opinion 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 (also, the “Taxpayer”) is an accrual method taxpayer that was formed in Year 1 as a State A corporation and elected to be treated as an S corporation as of Date 1. Distributing directly and wholly owns Qualified Subchapter S Subsidiaries (each, a “Historic QSub” and together, “Historic QSubs”), including Historic QSub 1, Historic QSub 2, and Historic QSub 3. Distributing also directly and wholly owns limited liability companies (each, a “Historic LLC” and together, “Historic LLCs”), including

Historic LLC A, Historic LLC B, Historic LLC C, Historic LLC D, Historic LLC E, Historic LLC F, Historic LLC G, and Historic LLC H. Historic QSub 3 directly owns all of Historic LLC I.

Distributing manages and operates Business A through directly held Property 1, Property 2, Property 3, Property 4, Property 5, Property 6, Property 7, Property 8, and Property 9 and through indirectly held rental real estate properties held by the Historic QSubs and the Historic LLCs that are treated as disregarded entities for U.S. federal tax purposes.

Distributing has two classes of common stock: Class A voting stock and Class B non-voting stock. Distributing has a shares of Class A voting stock outstanding and b shares of Class B non-voting stock outstanding.

Marital Trust A owns a shares of Class A voting stock, representing c percent of Distributing stock outstanding. Marital Trust A also owns d shares of Class B non-voting stock, representing e percent of Distributing stock outstanding.

Shareholder A owns f shares of Class B non-voting stock, representing g percent of Distributing stock outstanding. Shareholder B, Shareholder F, Shareholder J, and Shareholder K, each own h shares of Class B non-voting stock, representing i percent of Distributing stock outstanding. Shareholder C owns j shares of Class B non-voting stock, representing k percent of Distributing stock outstanding. Shareholder D and Shareholder E, each own l percent of Class B non-voting stock, representing m percent each of Distributing stock outstanding. Shareholder G owns n shares of Class B non-voting stock, representing o percent of Distributing stock outstanding. Shareholder H and Shareholder I, each own p shares of Class B non-voting stock, representing q percent of Distributing stock outstanding.

The Shareholders represent eight family groups (each a "Family Group," together the "Family Groups"). Family Group 1 is represented by Marital Trust A. Family Group 2 is represented by Shareholder A. Family Group 3 is represented by Shareholder B. Family Group 4 is represented by Shareholder C, Shareholder D, and Shareholder E. Family Group 5 is represented by Shareholder F. Family Group 6 is represented by Shareholder G, Shareholder H, and Shareholder I. Family Group 7 is represented by Shareholder J. Family Group 8 is represented by Shareholder K.

Financial information has been submitted indicating that Business A has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

The Family Groups disagree with each other, and intense conflict exists among them. Due to the personal conflicts, serious disputes have arisen among the Family Groups regarding the operation of Distributing's Business A that have made it impossible to

continue operating the entire business under a single entity or through affiliated entities. Therefore, Distributing proposes the Proposed Transaction.

Proposed Transaction

To achieve the business purpose described above, Distributing proposes the following Proposed Transaction:

Step 1: Distributing has formed eight new companies, Controlled Co 1, Controlled Co 2, Controlled Co 3, Controlled Co 4, Controlled Co 5, Controlled Co 6, Controlled Co 7, and Controlled Co 8 (each, a “Controlled Co” and together, the “Controlled Cos”) as State A corporations. Distributing has elected to treat Controlled Cos as Qualified Subchapter S Subsidiaries (each, a “QSub” and together, the “QSubs”) as of the date of their organization.

Step 2(a): Distributing will form New LLC 1, New LLC 2, New LLC 3, New LLC 4, New LLC 5, New LLC 6, New LLC 7, New LLC 8, New LLC 9, New LLC 10, New LLC 11, New LLC 12 as State A limited liability companies (each “New LLC” and together, “New LLCs”).

Step 2(b): Distributing will transfer Property 1, Property 2, Property 3, Property 4, Property 5, Property 6, Property 7, Property 8, Property 9, Property 10, Property 11, and Property 12, cash and related assets to the New LLCs as follows (the “Preliminary Internal Reorganization”):

1. Distributing will transfer Property 1 and associated business operating assets (subject to liabilities) to New LLC 1 in exchange for New LLC 1 interests.
2. Distributing will transfer Property 2 and associated business operating assets (subject to liabilities) to New LLC 2 in exchange for New LLC 2 interests.
3. Distributing will transfer Property 3 and associated business operating assets (subject to liabilities) to New LLC 3 in exchange for New LLC 3 interests.
4. Distributing will transfer Property 4 and associated business operating assets (subject to liabilities) to New LLC 4 in exchange for New LLC 4 interests.
5. Distributing will transfer Property 5 and associated business operating assets (subject to liabilities) to New LLC 5 in exchange for New LLC 5 interests.
6. Distributing will transfer Property 6 and associated business operating assets (subject to liabilities) to New LLC 6 in exchange for New LLC 6 interests.
7. Distributing will transfer Property 7 and associated business operating assets (subject to liabilities) to New LLC 7 in exchange for New LLC 7 interests.
8. Distributing will transfer Property 8 and associated business operating assets (subject to liabilities) to New LLC 8 in exchange for New LLC 8 interests.
9. Distributing will transfer Property 9 and associated business operating assets (subject to liabilities) to New LLC 9 in exchange for New LLC 9 interests.

10. Distributing will transfer Property 10 and associated business operating assets (subject to liabilities) to New LLC 10 in exchange for New LLC 10 interests.
11. Distributing will transfer Property 11 and associated business operating assets (subject to liabilities) to New LLC 11 in exchange for New LLC 11 interests.
12. Distributing will transfer Property 12 and associated business operating assets (subject to liabilities) to New LLC 12 in exchange for New LLC 12 interests.

Step 3: Distributing will transfer New LLCs, Historic QSubs and Historic LLCs to Controlled Cos as follows (each, a “Contribution” and together, the “Contributions”):

1. Distributing will transfer New LLC 4, New LLC 6, New LLC 11, Historic LLC F, Historic LLC G, and Historic LLC H to Controlled Co 1.
2. Distributing will transfer Historic QSub 1 and Historic LLC D to Controlled Co 2.
3. Distributing will transfer New LLC 10, Historic QSub 2, and Historic QSub 3 to Controlled Co 3.
4. Distributing will transfer New LLC 9 to Controlled Co 4.
5. Distributing will transfer New LLC 8, New LLC 12, Historic LLC A, and Historic LLC B to Controlled Co 5.
6. Distributing will transfer New LLC 2 and Historic LLC C to Controlled Co 6.
7. Distributing will transfer New LLC 1, New LLC 3, and New LLC 5 to Controlled Co 7.
8. Distributing will transfer New LLC 7 and Historic LLC E to Controlled Co 8.

Step 4: Distributing will make the following distributions in the process of dissolving and terminating Distributing (each, a “Distribution” and together, the “Distributions” and the Contributions and Distributions together, the “Split-Up.”)

1. Controlled Co 1 will be distributed to Family Group 1 in proportion to Family Group 1’s ownership interest in Distributing.
2. Controlled Co 2 will be distributed to Family Group 2 in proportion to Family Group 2’s ownership interest in Distributing.
3. Controlled Co 3 will be distributed to Family Group 3 in proportion to Family Group 3’s ownership interest in Distributing.
4. Controlled Co 4 will be distributed to Family Group 4 in proportion to Family Group 4’s ownership interest in Distributing.
5. Controlled Co 5 will be distributed to Family Group 5 in proportion to Family Group 5’s ownership interest in Distributing.
6. Controlled Co 6 will be distributed to Family Group 6 in proportion to Family Group 6’s ownership interest in Distributing.
7. Controlled Co 7 will be distributed to Family Group 7 in proportion to Family Group 7’s ownership interest in Distributing.

8. Controlled Co 8 will be distributed to Family Group 8 in proportion to Family Group 8's ownership interest in Distributing.

Step 5: Each Controlled Co will file a Form 2553, Election by a Small Business Corporation electing to be treated as an S corporation as of the day of the Distributions (the "Effective Date").

It is anticipated that a line of credit in the amount of x and collateralized by two of the properties comprising Property 8 will be entered into before the Effective Date ("New Distributing Debt").

Step 6: As soon as practically possible under State A corporate law, Distributing will be terminated and dissolved.

Representations

With respect to the Proposed Transaction, except as set forth below, Taxpayer has made all of the representations in section 3 of the Appendix to Rev. Proc. 2017-52.

- (1) Taxpayer does not make the following representations which do not apply to the Proposed Transaction.

- Representation 4 is inapplicable to Taxpayer because no Controlled Co will owe any indebtedness to Distributing after the Distributions.
- Representations 5 and 6 are inapplicable to Taxpayer because the Proposed Transaction is intended to be treated as a "Split-Up" pursuant to section 355.
- Representation 19 is inapplicable to Taxpayer because no Controlled Co will issue or transfer any other property (as defined in Rev. Proc. 2017-52) to Distributing.
- Representation 20 is inapplicable to Taxpayer because no Controlled Co will issue any securities to Distributing.
- Representation 25 is inapplicable to Taxpayer because Distributing does not use the cash method of accounting or a similar method.
- Representation 33 is inapplicable to Taxpayer because there will be no continuing transactions between Distributing or any Controlled Co after the Distribution. However, any transactions among Controlled Cos will be for fair market value based on arm's length terms.
- Representation 35 is inapplicable to Taxpayer because there are no fractional shares of any Controlled Co or Distributing.
- Representations 36 through 40 are inapplicable to Taxpayer because it is not part of a consolidated return.

- (2) Taxpayer has made the following alternative representations: Representations 3(a), 8(a), 11(b), 15(a), 22(a), 31(a), and 41(b).

With respect to the Proposed Transaction, Taxpayer has made the following representations in section 3.04 of Rev. Proc. 2018-53:

- (1) Distributing is in substance the obligor of each Distributing Debt that will be assumed or satisfied.
- (2) No holder of Distributing Debt that will be assumed or satisfied is a person related to Distributing or any Controlled Cos within the meaning of section 267(b) or section 707(b)(1) (Related Person).
- (3) The holder of Distributing Debt that will be assumed or satisfied will not hold the debt for the benefit of Distributing, any of Controlled Co 1 through 8, or any Related Person.
- (4) Except for New Distributing Debt, Distributing incurred the Distributing Debt that will be assumed or satisfied (a) before the request for any relevant ruling was submitted and (b) no later than 60 days before the earliest of the following dates: (i) the date of the first public announcement (as defined in Reg. § 1.355-7(h)(10)) of the Divisive Reorganization or a similar transaction, (ii) the date of the entry by Distributing into a binding agreement to engage in the Divisive Reorganization or a similar transaction, and (iii) the date of approval of the Divisive Reorganization or a similar transaction by the board of directors of Distributing. The 1 proceeds from the New Distributing Debt that will be transferred to Controlled Cos will be used to provide working capital to Controlled Cos.
- (5) The total adjusted issue price (determined under Reg. § 1.1275-1(b)) of Distributing Debt that will be assumed or satisfied does not exceed the historic average of the total adjusted issue price of (a) Distributing Debt owed to persons other than Related Persons and (b) obligations that are evidenced by Non-contingent Debt Instruments and are owed by other members of Distributing's separate affiliated group (within the meaning of section 355(b)(3)(B)) to persons other than Related Persons.
- (6) Representation 6 is inapplicable to Taxpayer as no Distributing Debt will be satisfied with section 361 Consideration.
- (7) Distributing will not replace any Distributing Debt that will be assumed or satisfied with previously committed borrowing, other than borrowing in the ordinary course of business pursuant to a revolving credit agreement or similar arrangement.

Taxpayer has made additional representations, as follows:

- (1) Shareholder A was treated as the owner of Trust B under sections 671-679 until the time of the dissolution of the trust in Year 3. (Revenue Ruling 85-13, 1985-1 C.B. 184, provides that a grantor who is treated as the owner of the entire trust under sections 671-679 is treated as the owner of the trust assets for federal income tax purposes).
- (2) Distributing's assets that are vacant lots that are not used in Business A and cash make up approximately 5 percent of the total fair market value of Distributing's assets.

Rulings

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

1. The Distributions will cause a termination of Controlled Cos' QSub elections because Controlled Cos will cease to be wholly owned subsidiaries of an S corporation. For federal income tax purposes, each Controlled Co will be treated as a new corporation acquiring all of its assets and assuming all of its liabilities, if any, from Distributing immediately before the termination of such Controlled Co's QSub election in exchange for the stock of such Controlled Co, pursuant to Treas. Reg. § 1.1361-5(b)(1)(i) (section 1361(b)(3)(B) and (C)).
2. The Contributions followed by the Distributions to each Controlled Co will each qualify as a reorganization under section 368(a)(1)(D). Distributing and each Controlled Co will be "a party to a reorganization" within the meaning of section 368(b).
3. No gain or loss will be recognized by Distributing on the Contribution to Controlled Co 1 through Controlled Co 7 (section 361(a) and 357(a)). The gain realized by Distributing on the transfer of assets to Controlled 8 solely in exchange for Controlled Co 8 stock and the assumption of liabilities of Controlled 8 solely in exchange for Controlled Co 8 stock and the assumption of liabilities by Controlled Co 8, will be recognized, but in an amount not in excess of the amount by which the sum of the liabilities assumed plus the liabilities to which the property is subject exceed the total of the adjusted basis of the property transferred to Controlled Co 8 (section 361(b) and 357(c)).
4. No gain or loss will be recognized by any Controlled Co on the Contributions (section 1032(a)).
5. Controlled Co 1 through 7's basis in each asset received from Distributing in the Contributions will be the same as the basis of such asset in the hands of Distributing immediately before the Contributions (section 362(b)). The basis of the assets received by Controlled Co 8 from Distributing will be the same as the basis of such assets in the hands of Distributing immediately prior to the Contribution, increased by the amount of gain recognized under section 357(c) to Distributing on the transfer (section 362(b)).
6. Controlled Co 1 through 8's holding period for each asset received from Distributing in the Contributions will include the period during which Distributing held that asset (section 1223(2)).
7. No gain or loss will be recognized by Distributing on the Distribution of Controlled Co 1 through 8 (section 361(c)(1)).

8. No gain or loss will be recognized by (and no amount will be included in income of) any of Distributing's shareholders upon the receipt of Controlled Co 1 through 8 stock in the Distributions (section 355(a)(1)).
9. The basis of the shares of Controlled Co 1 through 8 in the hands of Family Group 1 through 8's shareholders immediately after the Distributions will be the same as the basis of their Distributing shares deemed surrendered in exchange therefor (section 358(a)(1)). Immediately prior to the Distributions, the basis of such Distributing shares will be increased by any gain recognized by Distributing under section 357(c) which is included in the taxable income of the Family Group shareholders on a pro rata basis (section 1366 and section 1367).
10. The holding period of the Controlled Co 1 through 8 shares received by each of the Family Group 1 through 8 shareholders respectively in the Distributions will include the holding period of the Distributing shares deemed surrendered in exchange therefore, provided that the Distributing shares were held as a capital asset in the hands of the Family Group 1 through 8 shareholders on the date of the Distribution (section 1223(1)).
11. Earnings and profits of Distributing will be allocated among Controlled Cos 1 through 8 in accordance with section 312(h) and § 1.312-10(a).
12. Distributing's accumulated adjustments account will be allocated among Controlled Co 1 through 8 in a manner similar to the manner in which earnings and profits of Distributing will be allocated under section 312(h) in accordance with Treas. Reg. § 1.1368-2(d)(3). Immediately prior to the Distributions, Distributing's accumulated adjustments account will be increased by any gain recognized by Distributing under section 357(c) that is included in the income of the Family Group shareholders on a pro rata basis (section 1368(e)).
13. Distributing's momentary ownership of the stock of Controlled Co 1 through 8, as part of the reorganization under section 368(a)(1)(D), will not cause Controlled Co 1 through 8 to have an ineligible shareholder for any portion of its first taxable year under section 1361(b)(1)(B). A Controlled Co may, without requesting the Commissioner's consent, make a valid S corporation election before the expiration of the five-year period described in section 1361(b)(3)(D) and Treas. Reg. § 1.1362-5(c)(1), provided that (i) immediately following the distribution of the Controlled Co stock, the Controlled Co is otherwise eligible to make an S corporation election, and (ii) the election is made effective on the date of the Distributions.

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of any condition existing at the time of, or effects resulting from, the proposed transactions that are not specifically addressed by 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 representatives.

Sincerely,

Robert M. Rhyne
Assistant to the Branch Chief, Branch 2
Office of Associate Chief Counsel (Corporate)

cc: