

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:1
PLR-109775-21

Date:
September 10, 2021

Legend

Foreign Parent =

Parent =

Distributing 1 =

Distributing 2 =

Controlled =

Sub =

LLC =

State A =

State B =

State C =

Date 1 =

Dear :

This letter responds to a letter dated April 28, 2021, submitted on behalf of the taxpayer (the "Submission"), requesting rulings under Section 355 and related provisions of the Internal Revenue Code of 1986 (the "Code"), as amended, and related regulations, with respect to the proposed transactions described below (the "Proposed Transactions").

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

This letter is issued pursuant to Rev. Proc. 2021-1, 2021-1 I.R.B. 1, and Rev. Proc. 2017-52, 2017-41 I.R.B. 283, regarding a Transactional Ruling for a Covered Transaction. This office expresses no opinion as to any issue not specifically addressed by the rulings below.

This office has made no determination regarding whether the Distributions (as defined below) in each case: (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see Section 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 Section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

Summary of Facts

Foreign Parent owns all the stock of Parent, the common parent of an affiliated group of corporations that files a consolidated federal income tax return.

As of immediately before Date 1: (i) Parent wholly owned Distributing 2, a State A corporation, and LLC, a State B limited liability company that is classified as a disregarded entity for U.S. federal income tax purposes, (ii) Distributing 2 wholly owned Sub, a State C corporation, and Distributing 1, a State C corporation, and (iii) Sub wholly owned Controlled.

On Date 1, Sub merged with and into Distributing 1 with Distributing 1 surviving (the "Merger"), in a transaction intended to qualify as a reorganization under section 368 of the Code.

Thus, after Date 1: (i) Parent owns all the stock of Distributing 2 and LLC, (ii) Distributing 2 owns all the stock of Distributing 1, and (iii) Distributing 1 owns all the stock of Controlled.

The Proposed Transactions

- 1) Distributing 1 will distribute all the stock of Controlled to Distributing 2 (the "First Distribution").
- 2) Distributing 2 will distribute all the stock of Controlled to Parent (the "Second Distribution" and collectively with the First Distribution, the "Distributions").
- 3) Parent will contribute the stock of Controlled to LLC.
- 4) Controlled will file a check-the-box election on Form 8832 effective after the Distributions to be classified as a disregarded entity for U.S. federal income tax purposes (the "CTB election").

Representations

Except with respect to representations 3, 7, 17-20, 24-26, 30, 35, 39 of section 3 of the Appendix to Rev. Proc. 2017-52, which have not been made, and the representations listed below, which Distributing has modified as noted herein, Distributing makes all the representations in section 3 of the Appendix to Rev. Proc. 2017-52. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in section 2 of the Appendix to Rev. Proc. 2017-52.

With respect to the representations that allow for alternative representations to be made, Parent makes representations 8(b), 11(a), 15(b), 22(a), 31(a), 41(a), as modified below.

Parent makes:

- (i) representations 1, 4, 6, 13, 27, and 45 with respect to Distributing 1 and the First Distribution and Distributing 2 and the Second Distribution,
- (ii) representations 9, 10, and 12 with respect to Distributing 1 or the Distributing 1 Separate Affiliated Group (the "D1SAG") and Distributing 2 or the Distributing 2 Separate Affiliated Group (the "D2SAG"),

- (iii) representations 14, 21, 29, 31(a), 33, 41(a), 42, and 43 with respect to Distributing 1, Distributing 2, and Controlled or Distributing 1, Distributing 2, or Controlled, as applicable, and
- (iv) representations 28, 36, 37, 40, and 44 with respect to each of the First Distribution and the Second Distribution.

Parent makes the following modified representations:

2. In the First Distribution, Distributing 1 will distribute on the same day all the stock of Controlled that it holds immediately before the First Distribution. In the Second Distribution, Distributing 2 will distribute on the same day all the stock of Controlled that it holds immediately before the Second Distribution.

5. None of the Controlled stock to be distributed in the Distributions will be received in any capacity other than that of a shareholder of Distributing 1 or Distributing 2, as applicable.

8(b). Should Distributing 1 or Distributing 2 have securities outstanding, they will not distribute Controlled stock, Controlled securities or Other Property to any holder of such securities in the Distributions, in satisfaction thereof.

11(a). Following the Distributions, Distributing 1 or the D1SAG, Distributing 2 or the D2SAG, and Controlled or the Controlled Separate Affiliated Group each will continue, independently and with its separate employees (including employees of affiliates), the active conduct of the business on which it relies to meet the active trade or business requirement of Section 355(b).

15(b). Immediately after the Distributions, the fair market value of the gross assets of the trade or business on which each of Distributing 1, Distributing 2, and Controlled relies to satisfy the active trade or business requirement of Section 355(b) will be 10 percent or more of the fair market value of its gross investment assets. See section 5.01(3) of Rev. Proc. 2017-3.

22(a). No Property will be transferred by Distributing 1 or Distributing 2 to Controlled as part of the Distributions for which an investment credit determined under § 46 has been (or will be) claimed.

23. Other than potentially as a result of a Continuing Transaction (as described in the Submission), the transaction does not involve and will not result in a situation in which one party recognizes income but another party recognizes the deductions associated with such income or a situation in which one party owns Property but another party recognizes the income associated with such Property.

32. Other than intercorporate debt arising in the ordinary course of business, no intercorporate debt will exist between Distributing 1 or Distributing 2, on the one hand, and Controlled, on the other hand, at the time of, or subsequent to, the Distributions of Controlled stock.

34. Distributing 1, Distributing 2, and Controlled each will pay its own expenses (or bear the economic cost through allocation or otherwise), if any, incurred in connection with the Distributions.

46. Controlled will not issue stock or securities to a person in anticipation of the Distributions.

Additionally, Distributing makes the following representations:

1. The Merger was undertaken for reasons independent of the reasons for the Proposed Transactions and would have occurred regardless of whether the Proposed Transactions are undertaken or abandoned, and the Proposed Transactions will be undertaken for reasons independent of the reasons for the Merger and would be undertaken even if the Merger did not occur.
2. The Distributions would be undertaken even if Controlled did not make the CTB Election.
3. Controlled will not adopt a formal plan of liquidation prior to either of the Distributions.

Rulings

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

The First Distribution

- 1) No gain or loss will be recognized by Distributing 1 on the First Distribution. Section 355(c).
- 2) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 2 upon its receipt of the Controlled stock in the First Distribution. Section 355(a).
- 3) The aggregate basis of the Distributing 1 stock and the Controlled stock in the hands of Distributing 2 after the First Distribution will equal the aggregate adjusted basis of the Distributing 1 stock held by Distributing 2 immediately before the First Distribution, allocated in the manner described in Treas. Reg. § 1.358-2(a)(2). Section 358(b).
- 4) Distributing 2's holding period in the Controlled stock received will include the holding period of the Distributing 1 common stock with respect to which the distribution of the Controlled stock is made. Section 1223(1).
- 5) The earnings and profits of Distributing 1 and Controlled will be determined in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(b) and 1.1502-33(e)(3).

The Second Distribution

- 6) No gain or loss will be recognized by Distributing 2 on the Second Distribution. Section 355(c).
- 7) No gain or loss will be recognized by (and no amount will be included in the income of) Parent upon its receipt of the Controlled stock in the Second Distribution. Section 355(a).
- 8) The aggregate basis of the Distributing 2 stock and the Controlled stock in the hands of Parent after the Second Distribution will equal the aggregate adjusted basis of the Distributing 2 stock held by Parent immediately before the Second Distribution, allocated in the manner described in Treas. Reg. § 1.358-2(a)(2). Section 358(b).
- 9) Parent's holding period in the Controlled stock received will include the holding period of the Distributing 2 common stock with respect to which the distribution of the Controlled stock is made. Section 1223(1).
- 10) The earnings and profits of Distributing 2 and Controlled will be determined in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(b) and 1.1502-33(e)(3).

Caveats

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.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

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.

Sincerely,

Gerald B. Fleming

Gerald B. Fleming
Senior Technician Reviewer, Branch 2
(Corporate)

cc: