

Related Party Note =

Dear :

This letter responds to the letter dated August 24, 2021, submitted on behalf of Distributing and its shareholders requesting rulings on certain federal income tax consequences of a proposed transaction (the "Proposed Transaction"). The material information submitted in that request and 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 of the Internal Revenue Code (the "Code"). 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.

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 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 transaction) 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. § 1.355-8T (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

Summary of Facts

Distributing is a State A corporation engaged in Business A which has a single class of voting common stock issued and outstanding (the "Distributing Stock"). Distributing Stock is owned equally by three families, Family A, Family B, and Family C. Distributing has outstanding debt, including the Related Party Note.

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

The Proposed Transaction

For what has been represented to be a valid business purpose, Distributing proposes to divide Business A operations in the following Proposed Transaction:

- (i) Distributing will form Controlled as a State A corporation and contribute a portion of the assets of Business A to Controlled in exchange for all the issued stock of Controlled and the assumption by Controlled of Distributing's liabilities associated with the assets contributed, including the Related Party Note (the "Contribution").
- (ii) Distributing will distribute all of the Controlled stock to Family B in exchange for all Family B's Distributing's stock (the "Distribution").

Rev. Proc. 2017-52 Representations

With respect to the Contribution, Distributing has made all of the representations in Section 3 of the Appendix to Rev. Proc. 2017-52, except as otherwise set forth below:

- (1) Distributing has made the following alternative representations:

Representations 3(a), 11(a), 15(a), 22(a), 31(a), and 41(a).

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

Representation 6, 24, 25, 36, 37, 38, 39, and 40.

- (3) Distributing has not made Representation 42 but has provided the required explanation.

Rev. Proc. 2018-53 Representations

Except as otherwise provided below, Distributing has made all the representations provided in Section 3 of Rev. Proc. 2018-53 with respect to the Proposed Transaction. For purposes of the other representations, which Distributing has modified as set forth below, terms used but not otherwise defined in this letter have the meanings set forth in Rev. Proc. 2018-53. Distributing has made the following modified representations:

Representation 2: With the exception of the Related Party Note, no holder of Distributing Debt that will be assumed is a person related to Distributing or Controlled within the meaning of section 267(b) or section 707(b)(1). No Related Person will receive any section 361 Consideration in satisfaction of the Related Party Note.

Representation 3: Excluding the Related Party Note, the holder of Distributing Debt that will be assumed or satisfied will not hold the debt for the benefit of Distributing, Controlled, or any Related Person.

Rulings

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

- (1) The Contribution followed by the Distribution will qualify as a reorganization within the meaning of section 368(a)(1)(D) of the Code. Distributing and Controlled will each be a "party to a reorganization" within the meaning of section 368(b).
- (2) Distributing will not recognize gain or loss on the Contribution. Sections 357(a) and 361(a).
- (3) Controlled will not recognize gain or loss on the Contribution. Section 1032(a).
- (4) Controlled's basis in each asset received in the Contribution will be the same as the basis of that asset in the hands of Distributing immediately before the Contribution. Section 362(b).
- (5) Controlled's holding period in each asset received in the Contribution will include the period during which Distributing held that asset. Section 1223(2).
- (6) Distributing will not recognize gain or loss on the Distribution. Section 361(c)(1).
- (7) The holders of Distributing Stock will not recognize gain or loss on the receipt of Controlled stock in the Distribution. Section 355(a).
- (8) The basis of the Controlled stock in the hands of each Family B shareholder immediately after the Distribution will be the same as the basis of the Distributing Stock held by that Family B shareholder immediately before the Distribution. Section 358(a)(1).
- (9) Each Family B shareholder's holding period in the Controlled stock received in the Distribution will include the period during which that Family B shareholder held the Distributing Stock exchanged therefor, provided that such stock is held as a capital asset on the date of the Distribution. Section 1223(1).
- (10) Earnings and profits will be allocated between Distributing and Controlled in accordance with section 312(h) and Treas. Reg. § 1.312-10(a).

Caveats

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings.

Procedural Statements

The ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be sued 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 returns that provides the date on and control number (PLR-118385-21) of this ruling letter.

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

Sincerely,

John B. Lovelace,
Senior Counsel, Branch 3
Office of Associate Chief Counsel (Corporate)

cc: