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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.

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Refer Reply To:

CC:CORP:1

PLR-104805-22

Date:

June 06, 2022

Legend

Distributing =

Controlled =

Activity =

Business A =

Family Branch A =

Family Branch B =

State A =

Continuing Transactions =

a =

b =

Dear :

This letter responds to a letter dated March 1, 2022, submitted on behalf of the taxpayer, 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 Transaction").

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. 2022-1, 2022-1 I.R.B. 1, Rev. Proc. 2022-10, 2022-6 I.R.B. 473, and 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 a Transactional Ruling for a Covered Transaction, and section 6.03(2) of Rev. Proc. 2022-1, regarding rulings on one or more significant issues that are presented in a transaction intended to qualify under section 355 or section 368 of 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 the Distribution (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

Distributing is a closely held corporation that operates Business A. Distributing has made an election under section 1362(a) to be treated as a subchapter S corporation (within the meaning of section 1361(a)). Distributing has a single class of common stock outstanding. All of Distributing's issued and outstanding stock is owned, directly and indirectly, by members of Family Branch A and Family Branch B. Family Branch A owns, directly and indirectly, a percent of the issued and outstanding stock of Distributing. Family Branch B owns, directly and indirectly, b percent of the issued and outstanding stock of Distributing.

Distributing is engaged in the conduct of Business A. Distributing has submitted financial information in accordance with Rev. Proc. 2017-52 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 Proposed Transaction

Family Branch A and Family Branch B have differences of opinion as to the management and operation of Business A and desire to split the assets and operate separate portions of Business A independently. Accordingly, Distributing proposes to engage in the following transactions (collectively, the "Proposed Transaction").

1. Distributing will incorporate Controlled, a State A corporation, and timely elect to treat Controlled as a qualified subchapter S subsidiary within the meaning of section 1361(b)(3) (a "QSub") as of the date of its incorporation.
2. Distributing will contribute certain Business A assets to Controlled in exchange for: (i) all the stock of Controlled; and (ii) potentially the assumption of certain

Business A liabilities to the extent necessary to equalize values (the “Contribution”).

3. Distributing will distribute all the stock of Controlled to Family Branch B in complete exchange for all of Family Branch B’s Distributing stock (the “Distribution”).
4. Controlled will timely elect under section 1362(a) to be treated as a subchapter S corporation for U.S. federal income tax purposes, effective immediately after the Distribution.

After the Distribution, Family Branch B will have no involvement in the management of Distributing, and Family Branch A will have no involvement in the management of Controlled. However, it is expected that Distributing and Controlled may engage in the Continuing Transactions.

Representations

Except with respect to Representations 6, 20, 25, 35, 36, 37, 38, 39, and 40 of section 3 of the Appendix to Rev. Proc. 2017-52, which are inapplicable to the Proposed Transaction, and Representations 8(b), 11(b), 23, and 32, which Distributing has modified below, Distributing makes all the representations in section 3 of the Appendix to Rev. Proc. 2017-52. With respect to representations that allow for alternative representations to be made and are not otherwise modified below, Distributing makes Representations 3(a), 15(a), 22(a), 31(a), and 41(b).

- (8(b)) Distributing may have securities outstanding, but it will not distribute Controlled stock, Controlled securities, or Other Property to any holder of such securities in the Distribution, in satisfaction thereof.
- (11(b)) Following the Distribution, and except with respect to the Continuing Transactions, Distributing and Controlled each will continue, independently and with its separate employees, the active conduct of its share of all the integrated activities of Business A, the business relied on by each of Distributing and Controlled to meet the active trade or business requirement of section 355(b), as conducted by Distributing prior to the consummation of the transaction. The Continuing Transactions will be subject to arm’s-length terms between Distributing and Controlled.
- (23) With the exception of (i) the Continuing Transactions, (ii) certain receivables that are disproportionately allocated to equalize values, and (iii) income and deductions taken in connection with Activity that occur after the Distribution, the transaction does not involve and will not result in a situation in which one party owns Property, but another party recognizes the income associated with such Property.

- (32) No intercorporate debt will exist between Distributing and Controlled at the time of the Distribution, and no intercorporate debt will exist between Distributing and Controlled subsequent to the Distribution except with respect to the Continuing Transactions.

In addition, except as set forth below, Distributing has made all the representations in section 3.04 of Rev. Proc. 2018-53.

Distributing has not made Representation 6, which does not apply to the Proposed Transaction.

Distributing has modified Representation 4 as follows:

- (4) Except with respect to debt incurred in the ordinary course of its business, Distributing incurred the Distributing Debt that will be assumed or satisfied (a) before the request for any relevant ruling is submitted and (b) no later than 60 days before the earliest of the following dates: (i) the date of the entry by Distributing into a binding agreement to engage in the Divisive Reorganization (as defined in section 1 of Rev. Proc. 2018-53) or a similar transaction, and (ii) the date of approval of the Divisive Reorganization or a similar transaction by the board of directors of Distributing.

Rulings

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

- (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) Distributing will not recognize gain or loss on the Contribution. Sections 361(a) and 357(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 such 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 the asset. Section 1223(2).
- (6) No gain or loss will be recognized by Distributing on the Distribution. Section

361(c).

- (7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Family Branch B upon its receipt of stock of Controlled in the Distribution in exchange for all their stock of Distributing. Section 355(a)(1).
- (8) In applying section 355(e) to the Distribution, any increase in ownership of Distributing stock, by vote or value, by a Distributing shareholder that occurs solely as a result of the exchange of Distributing stock for Controlled stock in the Distribution will be disregarded (and not treated as an acquisition for purposes of section 355(e)(2)(A)(ii)).
- (9) Each participating shareholder's aggregate basis in its Controlled stock immediately after the Distribution will equal such shareholder's aggregate basis in the Distributing stock surrendered in the Distribution and will be allocated among the shares received in the manner described in Treas. Reg. § 1.358-2(a). Section 358(a)(1) and (b)(1).
- (10) Each participating shareholder's holding period in its Controlled stock received in the Distribution will include the holding period of the Distributing stock received in exchange therefor, provided that such Distributing stock was held as a capital asset on the date of the Distribution. Section 1223(1).
- (11) The Distribution will cause a termination of Controlled's QSub election because Controlled will cease to be a wholly owned subsidiary of a subchapter 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. § 1.1361-5(b)(1)(i). Section 1361(b)(3)(B) and (C).
- (12) 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 section 312(h) in accordance with Treas. Reg. § 1.1368-2(d)(3). Treas. Reg. §§ 1.312-10(a) and 1.1368-2(d)(3).
- (13) 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, by itself, render Controlled ineligible to elect to be a subchapter 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 QSub election.

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,

Samuel G. Trammell

Samuel G. Trammell

Assistant to the Branch Chief, Branch 4

Office of Associate Chief Counsel (Corporate)

cc: