

**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:BO3  
PLR-115562-24

Date:  
December 06, 2024

Legend

Distributing =

Controlled =

Sub 1 =

Sub 2 =

State A =

State B =

Business A =

Business B =

Shareholder 1 =

Shareholder 2 =

Shareholder 3 =

Shareholder 4 =

a =

b =

c =

d =

Continuing  
Arrangements =

Dear \_\_\_\_\_ :

This letter responds to your letter dated September 5, 2024, as supplemented by subsequent information and documentation, submitted on behalf of Distributing and its subsidiaries, requesting rulings under sections 355 and 368(a)(1)(D) and related provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and related regulations with respect to a series of proposed transactions (the "Proposed Transaction," as described below). The material information submitted in that request and subsequent correspondence is summarized below.

This letter is issued pursuant to Rev. Proc. 2024-1, 2024-1 I.R.B. 1, Rev. Proc. 2023-26, 2023-33 I.R.B. 486, and Rev. Proc. 2017-52, 2017-41 I.R.B. 283, as amplified and modified by Rev. Proc. 2024-24, 2024-21 I.R.B. 1214, regarding one or more "Covered Transactions" under section 355 and/or section 368. 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.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty 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 office has made no determination regarding whether the Proposed Transaction satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b).

### **Summary of Facts**

Distributing is a privately held State A corporation that 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 issued and outstanding, which is owned by Shareholder 1 (a%), Shareholder 2 (b%), Shareholder 3 (c%), and Shareholder 4 (d%).

Distributing directly owns all of the issued and outstanding stock of Sub 1, a State B corporation engaged in Business A, and of Sub 2, a State B corporation engaged in Business B. Each of Sub 1 and Sub 2 has elected to be treated as a qualified subchapter S subsidiary for U.S. federal income tax purposes under section 1361(b)(3)(B) ("QSub").

For purposes of satisfying the active trade or business requirements of section 355(b) with respect to the Proposed Transaction, Distributing relies on Business A, and Controlled relies on Business B. Distributing submitted financial information indicating that each of Business A and Business B 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

For what are represented to be valid business reasons, Distributing proposes to separate Business A and Business B. The relevant steps of the Proposed Transaction are set forth below.

Step 1: Distributing incorporated Controlled, a State B corporation, and timely elected to treat Controlled as a QSub for U.S. federal income tax purposes as of the date of its incorporation.

Step 2: Distributing will contribute all of the issued and outstanding stock of Sub 2 to Controlled (the "Contribution").

Step 3: Distributing will distribute all of the issued and outstanding stock of Controlled pro rata to Distributing's shareholders, Shareholders 1, 2, 3, and 4 (the "Distribution").

Step 4: Controlled will timely elect to be treated as a subchapter S corporation for U.S. federal income tax purposes, effective immediately after the Distribution (the "Controlled S Election").

Step 5: Controlled will timely elect to treat Sub 2 as a QSub for U.S. federal income tax purposes, effective immediately after the Controlled S Election.

## Representations

The following representations have been made with respect to the Proposed Transactions.

Except as set forth below, Distributing has made all of the representations in section 3 of the Appendix to Rev. Proc. 2017-52 with respect to the Proposed Transaction:

1. Distributing made the following alternative representations: 3(a), 8(a), 11(a), 22(a), 31(a), and 41(b).
2. Distributing has not made the following representations, which do not apply to the Proposed Transaction: 7, 25, 35, 36, 37, 38, 39, and 40.
3. Distributing has made the following additional representations in lieu of representations 14, 15, and 29:
  - a. Immediately after the Distribution, the fair market value of the business assets of each of Distributing and Controlled will be greater than 80 percent of the fair market value of its total assets. For this purpose, the term "business assets" of a corporation means its gross assets used in one or more businesses. Such assets include cash and cash equivalents held as a

reasonable amount of working capital for one or more businesses. Such assets also include assets required (by binding commitment or legal requirement) to be held to provide for exigencies related to a business or for regulatory purposes with respect to a business.

- b. There is no plan or intention by the shareholders or security holders of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in, or securities of, either Distributing or Controlled after the Distribution.
- c. There is no plan or intention by Distributing or Controlled, directly or through any related person (within the meaning of section 267(b) or section 707(b)(1)), to purchase any of its outstanding stock after the Distribution.
- d. There is no plan or intention to liquidate either Distributing or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the Distribution, except in the ordinary course of business.
- e. There will have been no agreement, understanding, arrangement, substantial negotiations, or any plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) at any point during the two-year period prior to the date of the Distribution regarding an acquisition of either Distributing or Controlled (including a predecessor or successor within the meaning of Treas. Reg. § 1.355-8) or a similar acquisition.

4. Distributing has made the following modified representations:

Representation 23: Distributing, Controlled and Sub 2 use and will continue to use the cash method of accounting. Except for any mismatch of income and deductions with respect to Sub 2's account receivables arising in the ordinary course of business, the Proposed 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.

Representation 32: Other than any amounts payable under the Continuing Arrangements, no intercorporate debt will exist between Controlled and Distributing (or their respective affiliates, as applicable) at the time of, or subsequent to, the Distribution.

In addition, except as set forth below, Distributing has made all of the representations in section 3 of Rev. Proc. 2024-24 with respect to the Proposed Transaction:

5. Distributing has made the following alternative representations: 1A and 15A.
6. Distributing has not made the following representations, which do not apply to the Proposed Transaction: 2, 3, 4, 5, 6, 17, 18, 19, 20, 25, 26, and 27.

### **Rulings**

Based solely on the information submitted and the representations made, we rule as follows with respect to the Proposed Transaction:

1. The Distribution will cause a termination of Controlled's and Sub 2's QSub elections because they will cease to be wholly owned, direct and indirect subsidiaries 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 Controlled stock. Sections 1361(b)(3)(B) and (C); Treas. Reg. § 1.1361-5(b)(1)(i).
2. The Contribution, together with the Distribution, will qualify as a reorganization and distribution pursuant to sections 368(a)(1)(D) and 355. Distributing and Controlled will each be a "party to the reorganization" within the meaning of section 368(b).
3. No gain or loss will be recognized by Distributing on the Contribution. Sections 357(a) and 361(a).
4. No gain or loss will be recognized by Controlled on the Contribution. Section 1032(a).
5. The basis in each asset received by Controlled from Distributing in the Contribution will equal the basis of the asset in the hands of Distributing immediately before the Contribution. Section 362(b).
6. The holding period in each asset received by Controlled from Distributing in the Contribution will include the period during which such asset was held by Distributing. Section 1223(2).
7. No gain or loss will be recognized by Distributing upon its distribution of the stock of Controlled on the Distribution. Section 361(c).
8. No gain or loss will be recognized by (and no amount otherwise will be included in the income of) the shareholders of Distributing upon the receipt of Controlled stock in the Distribution. Section 355(a)(1).
9. Each shareholder's aggregate basis in the Distributing stock and Controlled stock immediately after the Distribution will equal such shareholder's aggregate basis in the Distributing stock immediately before the Distribution. Section 358(a). The basis will be

allocated between the Distributing stock and Controlled stock in proportion to their fair market values. Section 358(b) and (c); Treas. Reg. § 1.358-2.

10. Each Distributing shareholder's holding period in its Controlled stock received in the Distribution will include the holding period of the Distributing stock with respect to which the Distribution will be made, provided that such Distributing stock was held as a capital asset on the date of the Distribution. Section 1223(1).

11. 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 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 eligible to make a subchapter S election under section 1362(a) for its first taxable year, provided that such election is made effective immediately upon the Distribution. For this purpose, Controlled will not be treated as a subchapter C corporation.

12. Immediately after the Distribution, Controlled may elect to treat Sub 2 as a QSub for U.S. federal income tax purposes under section 1361(b)(3)(B), provided that Sub 2 otherwise meets the requirements under section 1361 and such election is made effective immediately following the Distribution. For this purpose, the deemed formation of Sub 2 resulting from the termination of the Sub 2 QSub election in connection with the Distribution and the deemed liquidation of Sub 2 resulting from the subsequent Sub 2 QSub election following the Distribution will be disregarded, such that Sub 2 will not be treated as a subchapter C corporation. Treas. Reg. § 1.1361-5(b)(3), Ex. 9; Rev. Rul. 2004-85, 2004-2 C.B. 189 (Situation 2).

### **Caveats**

No opinion is expressed or implied about the tax treatment of the Proposed Transaction under any 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 is not specifically covered by the above rulings.

### **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 ruling must be attached to any federal 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 and control number (PLR-115562-24) of this letter ruling.

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

Sincerely,

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Brian R. Loss  
Branch Chief, Branch 5  
Office of Associate Chief Counsel (Corporate)

cc: