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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:5
PLR-128622-13

Date:
December 04, 2013

Legend

Distributing =

Controlled =

Sibling 1 =

Sibling 2 =

State A =

Year 1 =

Year 2 =

a =

b =

c =

d =

Business E =

Business F =

Dear :

We respond to your June 21, 2013, request for rulings on the Federal income tax consequences of a proposed transaction. The information submitted in that letter and in subsequent correspondence is summarized below.

FACTS

Distributing is a State A corporation that is a cash method taxpayer. It was founded in Year 1 by the father and mother of the current shareholders, Sibling 1 and Sibling 2 (collectively the Shareholders). Since Year 2, the Shareholders have owned in equal amounts the outstanding a shares of Distributing voting common stock.

Distributing owns approximately b acres of land, which can be distinguished into various separable tracts, and is directly engaged in Business E and Business F. Distributing has submitted financial and employment information indicating that it is actively engaged in these businesses and has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Sibling 1 is President of Distributing, operating and managing the businesses with active input from Sibling 2 and both siblings' adult children. In recent years, however, the Shareholders have disagreed significantly about the direction in which to take each of the businesses. Therefore, they propose the following transaction:

- (i) Distributing will form Controlled and transfer to it approximately c percent of Distributing's active trade or business assets, including some of the separable tracts of land, in exchange for all of Controlled's outstanding stock (the Contribution).
- (ii) Distributing will distribute to Sibling 2 all of the Controlled shares in exchange for all of Sibling 2's stock in Distributing (the Split-Off).

After the Split-Off, Sibling 1 will hold all of the outstanding stock of Distributing, which will remain actively engaged in its historic businesses using the remaining d percent of its historic business assets. Sibling 2 will hold all of the outstanding stock of Controlled,

which will be actively engaged in Business E using the c percent of Distributing's historic business assets received in the Contribution.

REPRESENTATIONS

- (a) The total adjusted basis, and the total fair market value, of the assets transferred to Controlled in the Contribution each will equal or exceed the total liabilities assumed (as determined under section 357(d)) by Controlled.
- (b) The total fair market value of the assets transferred to Controlled in the Contribution will exceed the sum of Controlled's aggregate adjusted basis in these assets and the amount of liabilities assumed by Controlled (as determined under section 357(d)).
- (c) Any liabilities to be assumed (as determined under section 357(d)) by Controlled in the Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.
- (d) It is not anticipated that any intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Split-Off, but any indebtedness that may arise and be owed by Controlled to Distributing after the Split-Off will not constitute stock or securities.
- (e) No part of the Controlled stock to be distributed by Distributing will be received by Sibling 2 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (f) The fair market value of the Controlled stock to be received by Sibling 2 will be approximately equal to the fair market value of the Distributing stock surrendered by Sibling 2 in the Split-Off.
- (g) The five years of financial information submitted on behalf of Distributing is representative of the corporation's present operations in Businesses E and F, and, with regard to each business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (h) Following the Split-Off, Distributing and Controlled each will continue the active conduct of their respective businesses, independently and with their separate employees.

- (i) The Split-Off will be carried out to resolve shareholder disputes by avoiding ongoing disagreements relating to the management of the businesses that have hindered operation and growth. The Split-Off is motivated in whole or substantial part by this corporate business purpose.
- (j) The Split-Off will not be used principally as a device for the distribution of the earnings and profits of Distributing, Controlled, or both.
- (k) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Split-Off.
- (l) Payments made in connection with all future transactions, if any, between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length. At the time of the Split-Off, there is no expectation of any continuing relationship between Distributing and Controlled.
- (m) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (n) For purposes of section 355(d), immediately after the Split-Off, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the 5-year period (determined after applying section 355(d)(6)) ending on the date of the Split-Off.
- (o) For purposes of section 355(d), immediately after the Split-Off, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the 5-year period (determined after applying section 355(d)(6)) ending on the date of the Split-Off.
- (p) The Split-Off is not part of a plan or series of related transactions (within the meaning of section 1.355-7) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50 percent or

greater interest (within the meaning of section 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).

- (q) Neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (r) Distributing, Controlled and each of their respective shareholders will pay their own expenses incurred in connection with the Proposed Transaction.
- (s) Neither the Distributing businesses nor control of an entity conducting these businesses was acquired during the five-year period ending on the date of the Split-Off in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Split-Off, Distributing has been the principal owner of the goodwill and significant assets of the businesses and it will continue to be the principal owner of its portion of the businesses following the Split-Off. Controlled will be the principal owner of the goodwill and significant assets of its portion of Business E following the Split-Off.

RULINGS

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

- (1) The Contribution by Distributing to Controlled in exchange for all of the Controlled stock followed by the Split-Off will constitute a reorganization within the meaning of section 368(a)(1)(D). Distributing and Controlled each will be a party to a reorganization within the meaning of section 368(b).
- (2) Distributing will not recognize any gain or loss on the Contribution (sections 357(a) and 361(a)).
- (3) Controlled will not recognize any gain or loss on the exchange of its stock for the assets received from Distributing in the Contribution (section 1032(a)).
- (4) Controlled's basis in each asset received in the Contribution will equal 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 holding period during which Distributing held such asset (section 1223(2)).
- (6) Distributing will not recognize any gain or loss on the Split-Off (section 361(c)).
- (7) Sibling 2 will not recognize gain or loss (and will include no amount in income) upon receipt of Controlled stock from Distributing (section 355(a)(1)).
- (8) The adjusted basis of the Controlled stock in the hands of Sibling 2 will equal the adjusted basis in the Distributing stock to be surrendered in exchange thereof, as adjusted under section 1.358-1 (section 358(a)(1)).
- (9) The holding period of the Controlled stock received by Sibling 2 will include the holding period during which Sibling 2 held the Distributing stock exchanged therefor, provided that the Distributing stock is held as a capital asset on the date of the Split-Off (section 1223(1)).
- (10) Distributing's earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with section 312(h) and section 1.312-10(a).

We express no opinion about the tax treatment of any transaction described above under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effect resulting from, any of these transactions that is not specifically covered by the above rulings. In particular, no opinion is expressed as to whether the Split-Off satisfies the business purpose requirement of section 1.355-2(b), whether the transaction 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 section 1.355-2(d)), and whether the Split-Off is part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii) and section 1.355-7.

The rulings contained in this ruling letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by the 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 ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

It is important that a copy of this ruling letter be attached to the Federal income tax return of each party involved for the taxable year in which the transaction covered by this letter is consummated. 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-128622-13) of this letter ruling.

Pursuant to the power of attorney on file in this Office, a copy of this letter is being sent to Distributing's authorized representative.

Sincerely,

Filiz A Serbes

Filiz A. Serbes
Chief, Branch 3
Office of Associate Chief Counsel (Corporate)