

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:2
PLR-131991-13

Date:
January 30, 2014

Legend

Foreign Parent =

Distributing =

Controlled =

Country A =

State A =

Business A =

Business B =

Date A =

a =

Building =

Dear :

This letter responds to your authorized representative's letter dated July 1, 2013, requesting rulings regarding certain federal income tax consequences of a proposed transaction. The information submitted in that request and in later correspondence is summarized below (collectively, the "PLR Submission").

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. 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.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding whether the Distribution (defined below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (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) of the Internal Revenue Code 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 any distributing corporation or any controlled corporation (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

Summary of Facts

Foreign Parent, a privately held Country A corporation, owns all of the issued and outstanding stock of Distributing, a State A corporation.

Distributing is directly engaged in Business A and Business B.

Financial information has been received indicating that Distributing's Business A and Business B each has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

The Distribution (defined below) is motivated, in whole or substantial part, by the following corporate business purposes: (1) to allow management of Business A and Business B to focus exclusively on the problems, opportunities, performance and profitability of their respective businesses, and (2) to ensure that Business A and Business B can continue to grow without each alienating the customers (competitors) of the other's line of business (collectively, the "Corporate Business Purposes").

Proposed Transaction

For what are represented to be valid business reasons, Distributing proposes to undertake the following transactions pursuant to a single plan (together, the "Proposed Transaction"):

- (i) On Date A, Distributing formed Controlled, a State A corporation.
- (ii) Distributing will transfer all of the Business A assets to Controlled, including cash and receivables (the "Contribution").
- (iii) Distributing will distribute all of the stock of Controlled to Foreign Parent (the "Distribution").

Distributing and Controlled will enter into the following agreements or arrangements for a term of up to a months after the Proposed Transaction, under which: (i) Controlled will provide certain services to Distributing at cost; (ii) Controlled and Distributing will lease or rent certain leasehold improvements, personal property, machinery or equipment from the other party at cost or for a monthly fee; and (iii) Controlled will pay Distributing for its allocable portion of the costs associated with the lease and utilities of Building. The foregoing agreements or arrangements are collectively referred to herein as the "Continuing Agreements."

Representations

The following representations are made with respect to the Contribution and Distribution:

- a. Distributing, Controlled, and Foreign Parent, will each pay its own expenses, if any, incurred in connection with the Proposed Transaction.

- b. The Contribution and Distribution will be undertaken pursuant to a plan of reorganization.
- c. The indebtedness, if any, owed by Controlled to Distributing after the Distribution will not constitute stock or securities.
- d. No part of the consideration to be distributed by Distributing in the Distribution will be received by Foreign Parent as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- e. The five years of financial information submitted on behalf of Business A to be conducted by Controlled following the Contribution is representative of the present operations of Business A and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- f. The five years of financial information submitted on behalf of Business B conducted by Distributing is representative of the present operations of such business and, with regard to Business B, there have been no substantial operational changes since the date of the last financial statements submitted.
- g. Neither Business A to be conducted by Controlled following the Contribution nor control of an entity conducting Business A will have been acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with expansions of Business A (Treas. Reg. § 1.355-3(b)(3)(ii)).
- h. Neither Business B conducted by Distributing nor control of an entity conducting Business B will have been acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with expansions of Business B (Treas. Reg. § 1.355-3(b)(3)(ii)).
- i. Following the Distribution, Distributing and Controlled will each continue the active conduct of its respective business, independently and with its separate employees (except as provided in the Continuing Agreement).
- j. The Distribution is being carried out for the Corporate Business Purposes. The Distribution is motivated, in whole or substantial part, by the Corporate Business Purposes.
- k. The Proposed Transaction is not being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

- l. For purposes of section 355(d), immediately after the Distribution, 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 five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- m. For purposes of section 355(d), immediately after the Distribution, 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 either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution, or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- n. The total adjusted bases of the assets transferred to Controlled by Distributing will equal or exceed the sum of (i) the total liabilities assumed (within the meaning of section 357(d)) by Controlled, and (ii) the total amount of any money and the fair market value of any other property (within the meaning of section 361(b)) received by Distributing and transferred to Distributing's shareholders or creditors in connection with the Proposed Transaction.
- o. The total fair market value of the assets that will be transferred to Controlled in the Contribution will exceed the sum of: (i) the amount of liabilities, if any, assumed (within the meaning of section 357(d)) by Controlled in connection with the Contribution; (ii) the amount of liabilities, if any, owed to Controlled by Distributing that are discharged or extinguished in connection with the Contribution; and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under section 361(a) without the recognition of gain) received by Distributing in connection with the Contribution. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.
- p. Liabilities, if any, to be assumed (within the meaning of section 357(d)) by Controlled in connection with the Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.

- q. No property will be transferred between Distributing and Controlled in the Contribution for which an investment credit under section 46 has been or will be claimed.
- r. Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Distribution.
- s. No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution, except the indebtedness arising under the Continuing Agreements, and obligations that may arise in the ordinary course of business.
- t. Any indebtedness owed by Controlled to Distributing following the Distribution will not constitute stock or securities.
- u. Except as provided with respect to the Continuing Agreements, payments made in connection with all continuing transactions 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.
- v. No two parties to the Distribution are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- w. Immediately after the transaction (within the meaning of section 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3)) in the stock of Distributing or Controlled who did not hold such an interest immediately before the transaction, or (ii) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- x. The Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 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).
- y. Neither Distributing nor Controlled (i) was or will be a United States real property holding corporation (as defined in section 897(c)(2)) at any time during the five-year period ending on the date of the Distribution, or (ii) will be a United States real property holding corporation immediately after the Distribution.

Rulings

Based solely on the information submitted and representations made, we rule as follows regarding the Contribution and the Distribution:

- (1) The Contribution together with the Distribution will qualify as 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) No gain or loss will be recognized by Distributing on the Contribution (sections 361(a) and 357(a)).
- (3) No gain or loss will be recognized by Controlled on the Contribution (section 1032(a)).
- (4) Controlled's basis in each asset received from Distributing in the Contribution will equal 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 from Distributing in the Contribution will include the period during which such asset was held by Distributing (section 1223(2)).
- (6) No gain or loss will be recognized by Distributing upon the Distribution (section 361(c)(1), Treas. Reg. § 1.367(e)-1(c)).
- (7) No gain or loss will be recognized by Foreign Parent (nor will it otherwise include any amount in income) on the receipt of shares of Controlled stock in the Distribution (section 355(a)(1)).
- (8) The basis of the stock of Distributing and Controlled in the hands of Foreign Parent immediately after the Distribution will be the same as the basis of the Distributing stock held by Foreign Parent immediately before the Distribution, allocated in proportion to the fair market value of Distributing and Controlled in accordance with Treas. Reg. § 1.358-2(a)(2) (section 358).
- (9) Foreign Parent's holding period in the Controlled stock received in the Distribution will include the holding period of the Distributing stock with respect to which the Distribution is made, provided that such Distributing stock is held as a capital asset on the date of the Distribution (section 1223(1)).
- (10) Earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with section 312(h) and Treas. Reg. § 1.312-10(a).

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transactions under other provisions of the Code or the regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that is not specifically covered by the above rulings. In particular, except as so provided, no opinion is expressed or implied regarding:

- (i) Whether the Distribution satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b);
- (ii) Whether the Distribution is being used principally as a device for the distribution of earnings and profits of Distributing, Controlled, or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); or
- (iii) Whether the Distribution 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 Distributing or Controlled (see section 355(e) and Treas. Reg. § 1.355-7).

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 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.

In accordance with the powers of attorney on file in this office, a copy of this ruling letter will be sent to the representative named therein.

Sincerely,

Isaac W. Zimbalist
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel (Corporate)