



FSub 4 =

FSub 5 =

Sub 6 =

Jurisdiction A =

Jurisdiction B =

Jurisdiction C =

Jurisdiction D =

a =

b =

c =

d =

e =

Dear :

This letter responds to your letter dated November 7, 2018, as supplemented by subsequent submissions, requesting rulings on certain federal income tax consequences of the Proposed Transaction (as defined below). The information provided in that letter and in subsequent correspondence is summarized below.

This letter is issued pursuant to Rev. Proc. 2017-52, 2017-41 I.R.B. 283, regarding one or more "Covered Transactions" under section 355 and/or section 368 of the Internal Revenue Code (the "Code"). This Office expresses no opinion as to any issue not specifically addressed by the rulings below.

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

### **Summary of Facts**

Distributing was formed on Date 1 as a State A corporation and has its principal place of business in State B. Distributing is the common parent of an affiliated group of corporations consisting of both domestic and foreign corporations. The group is engaged in both Business A and Business B, each of which it has carried on for more than five years.

Distributing has decided to separate Business A from Business B through the Proposed Transaction, in which it will spin off Business B in newly formed Controlled. Distributing has the following corporate business purposes for completing the Proposed Transaction: (i) it will improve Distributing and Controlled's ability to use their capital stock as currency in future transactions; (ii) it will provide cost savings through lower-cost access to capital for capital expenditures, acquisitions, and other business needs; (iii) it will resolve management and systemic problems caused by the operation of Business A and Business B within a single affiliated group; (iv) it will allow for the alignment of incentive compensation of the respective management teams of the two businesses; and (v) it will permit Distributing and Controlled to adopt strategies and objectives that are appropriate to the separate businesses, given their different financial, investment, and operating characteristics, return profiles, and growth potentials.

Distributing has a single class of stock outstanding. Partnership, a State B limited partnership, holds a percent of shares (an amount constituting control). Current and former employees of Distributing hold the remaining b percent of shares, which were issued through a stock incentive plan. The partners (directly and through trusts) in Partnership are six members of an extended family; all partners are U.S. citizens. Partner A is the general partner of Partnership and also serves as Chairperson and CEO of Distributing. As general partner, Partner A votes all shares held by the partnership.

Distributing wholly owns FSub 1, which is a Jurisdiction A limited liability company, and FSub 2, which is a Jurisdiction B limited liability company. FSub 1 wholly owns FSub 3, a Jurisdiction C branch, and FSub 4, a Jurisdiction C limited liability company.

Distributing owns c percent of FSub 5, a Jurisdiction D partnership. FSub 1 and FSub 2 are holding companies with no operations. FSub 3, FSub 4, and FSub 5 are all involved in Business B.

Distributing formed FSub 5 as a joint venture with an unrelated party on Date 2. At the same time, it contributed all of its directly held businesses to Sub 6, a wholly owned domestic subsidiary. On Date 3, having determined that it was unnecessary to operate its businesses through Sub 6 rather than directly, Distributing liquidated Sub 6.

Both Business A and Business B presently have substantial cash holdings. Cash and cash equivalents currently account for approximately d percent of Business A's assets and approximately e percent of Business B's assets. Distributing hopes to use at least some of these cash reserves for certain capital projects or to have entered into binding contracts for such capital projects before the Proposed Transaction. Prior to the Proposed Transaction, if any cash remains that has not yet been dedicated to capital expenditures under a binding agreement, Distributing will declare a sufficiently large cash dividend to its shareholders so that the nonbusiness asset percentage of each of Distributing and Controlled will be below 20 percent following the distribution of the dividend.

Distributing has a number of outstanding liabilities. In the Proposed Transaction, Controlled will assume the liabilities associated with Business B and with Business B's property and employees. None of these liabilities is evidenced by a debt instrument. Controlled therefore will not assume liability for any Distributing Debt within the meaning of Rev. Proc. 2018-53 § 3.01, 2018-43 I.R.B. 667.

Following the Proposed Transaction, Distributing will have certain continuing business relationships with Controlled. All such relationships will be based on arm's-length terms and conditions. Specifically, Distributing and Controlled will enter into employment agreements that address issues associated with the employment of Distributing and Controlled employees and other matters relating to employee benefit plans, agreements, and arrangements. Some of these services and employees will be shared by Distributing and Controlled. These relationships will be short-term in nature, and are expected to terminate within 12 months after the distribution.

Also, for up to 12 months after the distribution, employees of Distributing will continue to provide accounting, human resource, legal, and treasury services to Controlled, and employees of Controlled will provide IT and research and development services to Distributing. During this period, Distributing and Controlled will be assembling their own resources to handle these services. After the 12-month period, no services will be shared between Distributing and Controlled, and Distributing and Controlled will have no further transactions aside from purchases of each other's publicly available services and products at the prices charged to unrelated customers.

### **The Proposed Transaction**

To achieve the business purposes described above, the following series of steps is proposed:

1. Distributing will form Controlled, a new State A corporation.
2. In exchange for Controlled stock, Distributing will contribute to Controlled all of the assets of Business B, including all of its interests in FSub 1, FSub 2, and FSub 5, and Controlled will assume the liabilities of Business B (the "Contribution").
3. Following the Contribution, Distributing will distribute all of the Controlled stock to its shareholders (the "Distributees") pro rata, with each shareholder receiving one share of Controlled stock for each share of Distributing stock held by such shareholder (the "Distribution").
4. After the Distribution, Partner A will serve as Chairperson and CEO of Controlled, as well as a director of Distributing (Partner A will be the only overlapping board member). Two of the five remaining current directors of Distributing will continue to serve as directors of Distributing; the remaining three will serve as directors of Controlled. Distributing will begin a search for a new CEO and Chairperson.

### **Representations**

With respect to the Distribution, except as otherwise set forth below, Distributing has made all of the representations in § 3 of the Appendix to Rev. Proc. 2017-52, 2017-41 I.R.B. 283.

(1) Distributing has made the following alternative representations:

Representations 3(a), 8(a), 11(a), 15(a), 22(a), 31(a), 41(a)

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

Representations 7, 24, 25, 35

### **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 under section 368(a)(1)(D), and Distributing and Controlled will each 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 (section 361(a) and section 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 (including each stock interest) received from Distributing 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 for each asset received from Distributing in the Contribution will include the period during which Distributing held that asset (section 1223(2)).
6. No gain or loss will be recognized by Distributing on the Distribution (section 361(c)(1)).
7. No gain or loss will be recognized by (and no amount will otherwise be included in the income of) any Distributee upon receipt of Controlled stock in the Distribution (section 355(a)(1)).
8. The aggregate basis of the Distributing shares and the Controlled shares in the hands of each Distributee immediately after the Distribution will equal the aggregate basis of the Distributing shares held by the Distributee immediately before the Distribution, allocated between the shares of Distributing and Controlled in proportion to the fair market value of each immediately following the Distribution in accordance with Treas. Reg. § 1.358-2(a)(2) (section 358(b)(2) and (c)).
9. The holding period of the Controlled shares received by each Distributee in the Distribution will include the holding period of the Distributing shares on which the Distribution is made, provided the Distributing shares are held by the shareholder 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 Transaction under any provision of the Code and

regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the Proposed Transaction that is not specifically addressed by 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.

A copy of this letter should be attached to the federal income tax return of each taxpayer involved for the taxable year in which the transaction covered by this ruling letter is consummated. 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 this letter ruling.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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Mark S. Jennings  
Senior Technician Reviewer, Branch 1  
Office of Associate Chief Counsel (Corporate)

cc: