

Internal Revenue Service

Number: 201422012

Release Date: 5/30/2014

Index Number: 355.01-00, 368.04-00

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:B03
PLR-135032-13
Date:
February 12, 2014

Legend

Distributing =

Controlled =

Sub =

Business A =

Business B =

State A =

Country B =

x =

Investor =

Employee Y =

Employee Z =

! =

m =

n =

o =

p =

q =

Dear :

This letter responds to the August 7, 2013 letter from your authorized representative requesting rulings as to the federal income tax consequences of a proposed transaction (the "Proposed Transaction"). The information provided in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material 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 Proposed Transaction: (i) satisfies the business purpose requirement of Treas. Reg. §1.355-2(b); (ii) is being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled 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 or controlled corporation (see section 355(e) and Treas. Reg. §1.355-7).

SUMMARY OF FACTS

Distributing is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Distributing owns all of the stock of Controlled, a State A corporation, and Sub, a Country B corporation. Country B is contiguous to the United States and Distributing has elected under section 1504(d) to treat Sub as a domestic corporation. Sub, along with Controlled, is a member of Distributing's consolidated group. Distributing has a single class of voting common stock outstanding ("Distributing Common Stock") which is held by x shareholders. Distributing presently engages in Business A and Business B.

Distributing believes that the separation of Business A from Business B will allow Business B to raise additional capital. Investor will invest in Business B only if it is

separated from Business A due to potential environmental liabilities associated with Business A.

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

THE PROPOSED TRANSACTION

For the purposes described above, Distributing, and the parties indicated below, will undertake the following transaction (Some steps may have already been consummated.):

- (i) Distributing will transfer the stock of Sub and assets of Business B to Controlled in exchange for the deemed issuance of additional Controlled stock and Controlled's assumption of liabilities of Business B (the "Contribution"). Controlled's stock will be comprised of one class of voting stock.
- (ii) Distributing will distribute all of the Controlled stock pro rata to its shareholders (the "Distribution").
- (iii) Controlled intends to make an election under section 1504(d) to treat Sub as a domestic corporation.
- (iv) Under a letter of intent, Investor has indicated an intention to buy l shares of Controlled common stock from Controlled for \$m ("Initial Investment").
- (v) Investor will receive an option to purchase n shares of Controlled stock for \$o ("the Option"). The Option would be exercisable at any time after p years after the Initial Investment is closed. If the Option is exercised, within q days of the purchase of the new shares by Investor, Controlled will be obligated to offer to purchase n shares for \$o from existing shareholders of Controlled (the "Offering"). Controlled shareholders will be under no obligation to tender their shares to Controlled as part of the Offering.

Representations

Distributing has made the following representations regarding the Proposed Transaction:

- (a) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of the corporation.
- (b) Distributing did not acquire Business A, nor Business B nor control of an entity conducting any such business 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.
- (c) The five years of financial information submitted on behalf of Business A, and Business B, conducted by Distributing, are representative of the present operation of Business A and Business B and there have been no substantial operational changes in the business since the date of the last financial statements submitted.
- (d) Following the Distribution, Distributing and Controlled each will continue the active conduct of its business independently with its separate employees except that after the Distribution, Distributing and Controlled will share the services of Employee Y and Employee Z. Employee Y and Employee Z will be on the payroll of Controlled after the Distribution and Distributing will reimburse Controlled for the time Employee Y and Employee Z spend working for Distributing. The services provided by Employee Y and Employee Z for Distributing will be directed by the Board of Directors of Distributing. The services Employee Y and Employee Z will provide to Controlled will be directed by the Board of Directors of Controlled.
- (e) The Distribution is being carried out for the following business purpose: to enable Business B to raise capital and protect Business B from potential environmental liabilities associated with Business A. The Distribution is motivated, in whole or substantial part, by this corporate business purpose. The transaction is not being used principally as a device for the distribution of earnings and profits of Distributing or Controlled or both.
- (f) The total adjusted basis and fair market value of the assets transferred to Controlled in the Contribution will equal or exceed the sum of (i) the total liabilities assumed (as determined under section 357(d)) by Controlled in the Contribution, and (iii) the total amount of any money and the fair market value of any other property (within the meaning of section 361(b)), if any, received by Distributing and transferred to its creditors in connection with the Contribution.
- (g) The total fair market value of the assets transferred to Controlled in the Contribution will be equal to or exceed Distributing's aggregate adjusted basis in those assets immediately before the Contribution.

- (h) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Proposed Transaction.
- (i) The liabilities assumed (within the meaning of section 357(d)) were incurred in the ordinary course of business and are associated with the assets being transferred.
- (j) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution except for debt arising in the ordinary course of business.
- (k) None of the parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (l) For purposes of §355(d), immediately after the Distribution, no person (determined after applying §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 any Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that either: (i) was acquired by purchase (as defined in sections 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) is attributable to distributions on Distributing stock or securities that was acquired by purchase (as defined in sections 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 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).
- (o) Immediately after the Distribution, either (1) 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 investment immediately

- before the transaction or, (2) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (p) 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.
 - (q) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations. Further, Distributing's excess loss account with respect to the Controlled stock, if any, will be included in income immediately before the Distribution to the extent required by regulations (see Treas. Reg. §1.1502-19).
 - (r) Distributing, Controlled and their shareholders will each pay their respective expenses, if any, for the transaction.

Rulings

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

- (1) The Contribution and the Distribution, taken together, will qualify as a reorganization within the meaning of section 368(a)(1)(D). Distributing and Controlled each will be a party to the reorganization within the meaning of section 368(b).
- (2) Distributing will not recognize any gain or loss on its transfer of assets to Controlled in exchange for Controlled stock and Controlled's assumption of liabilities in the Contribution (sections 361(a) and 357(a)).
- (3) Controlled will not recognize any gain or loss on its receipt of assets from Distributing in exchange for Controlled stock and Controlled's assumption of liabilities in 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 Distributing's hands 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 Distributing held that asset (section 1223(2)).
- (6) Distributing will not recognize any gain or loss upon its distribution of Controlled stock to its shareholders in the Distribution (section 361(c)).

- (7) No gain or loss will be recognized by (and no amount will be included in the income of) the Distributing shareholders on the receipt of Controlled stock in the Distribution (section 355(a)(1)).
- (8) The basis of the Distributing stock and the stock of Controlled in the hands of each Distributing shareholder after the Distribution will equal the basis of the Distributing stock held by the shareholder immediately before the Distribution. This basis will be allocated between the Distributing and Controlled stock in proportion to the fair market values of the Distributing and Controlled stock immediately after the Distribution in accordance with Treas. Reg. §1.358-2(a)(2) (section 358(a)(1), (b) and (c)).
- (9) The holding period of the Controlled stock received by each Distributing shareholder in the Distribution will include the holding period of the Distributing stock on which the Distribution will be made, provided the 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), Treas. Reg. §§1.312-10(a) and 1.1502-33(e)(3).

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effect resulting from the Proposed Transaction that is not specifically covered by the above rulings. In particular, no opinion was requested and no opinion is expressed as to the validity of any election(s) under section 1504(d). See Kohler Co. v. United States, 124 F.3d 1451 (Fed. Cir. 1997), and Treas. Reg. §1.367(a)-1T(c)(5). Additionally, except as so provided, no opinion is expressed or implied regarding (1) whether the transaction satisfies the business purpose requirement of Treas. Reg. §1.355-2(b); (2) whether the transaction is being 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 (3) whether the acquisition or acquisitions are part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii).

Procedural Statements

This ruling letter 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 of the letter ruling.

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

Sincerely,

Richard M. Heinecke

Richard M. Heinecke
Assistant to the Branch Chief, Branch 6
Office of Associate Chief Counsel
(Corporate)

cc: