Internal Revenue Service

Number: **201801005**
Release Date: 1/5/2018

Index Number: 355.10-00

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:05
PLR-113452-17

Date:
October 13, 2017

Distributing =

Controlled =

Merger Partner =

Merger Sub =

Merger Partner Funds =

Fiduciary =

Transferred Business =

State A =

State B =

Date A =

Date B =

a =

b =

c =

d =

e =

f =

g =

Dear :

This letter responds to a letter dated April 18, 2017, submitted on behalf of Distributing, requesting a ruling on two significant issues presented under section 355(e) of the Internal Revenue Code (the "Code"). This letter supersedes the letter dated October 11, 2017. The material information provided in that request is summarized below.

This letter and the rulings contained therein are issued pursuant to section 6.03 of Rev. Proc. 2017-1, 2017-1 I.R.B. 1, 19, regarding one or more significant issues under section 355, and only address one or more discrete legal issues involved in the transaction. This office expresses no opinion as to the overall tax consequences of the transactions described in this letter or as to any issue not specifically addressed by the rulings below.

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.

Summary of Facts

Distributing is a publicly traded State A corporation that is the common parent of an affiliated group that files a consolidated federal income tax return (the "Distributing Group"). Prior to the Distribution (as defined in step (iii), *infra*), the Distributing Group was engaged in several lines of business, including the Transferred Business. Controlled is a State B corporation that was wholly owned by Distributing until the Distribution.

Merger Partner is a publicly traded State B corporation that is unrelated to the Distributing Group and is the common parent of an affiliated group that files a consolidated federal income tax return. Prior to the Merger (as defined in step (iv), *infra*), Merger Partner wholly owned Merger Sub, a State B corporation which was formed for the sole purpose of facilitating the Transaction.

Merger Partner has historically engaged in share repurchases through various share repurchase plans, including through both non-accelerated repurchases and accelerated share repurchase programs ("ASR Programs"). Pursuant to accelerated share repurchase agreements, Merger Partner would repurchase a specified number or volume range of its shares of common stock from a third-party investment bank at an agreed-upon price per share or other price mechanism. The bank would obtain the shares of common stock by borrowing such shares, and the bank would buy the shares, typically on the open market, over time to return the borrowed shares. In the non-accelerated repurchases, Merger Partner appointed a financial institution as agent to repurchase shares of Merger Partner common stock. Subject to certain securities law restrictions, as well as price, volume, and other parameters set forth in the plans, the agent was authorized to purchase Merger Partner's shares at the then-prevailing market price on the principal exchange on which Merger Partner common stock is traded, any national securities exchange, in the over-the-counter market, on an automated trading system, or otherwise.

On the day before the Merger, approximately a% of the total outstanding shares of Merger Partner stock was owned by the Merger Partner Funds, each of which is held by a retirement plan qualified under section 401(a).

On Date A, Distributing, Controlled, Merger Partner, and Merger Sub entered into a merger agreement (as amended, the "Merger Agreement") and various other agreements governing certain terms of the Transaction. On the same date, Distributing and Controlled entered into a separation agreement (as amended, the "Separation Agreement") governing certain terms of the Transaction. Pursuant to the Separation Agreement and the Merger Agreement, the following steps were taken (together, the "Transaction"):

i. Distributing, Controlled, and certain of each of their subsidiaries engaged in a series of steps to effect an internal reorganization to prepare for the separation of the Transferred Business from the other businesses of the Distributing Group.

ii. On Date B, Distributing transferred its ownership interests in certain assets related to the Transferred Business to Controlled in exchange for Controlled common stock, Controlled's assumption of certain liabilities related to the Transferred Business, and a cash payment of approximately $b (the "Transfer").

iii. On Date B and following the Transfer, Distributing exchanged all of the shares of Controlled common stock for shares of Distributing (the "Distribution"). The Distribution was intended qualify as a distribution of Controlled common stock to Distributing's shareholders pursuant to section 355 and, together with the Transfer, as a "reorganization" described in section 368(a)(1)(D).

iv. On Date B and following the Distribution, Merger Sub merged with and into Controlled, with Controlled being the surviving corporation of the merger and a wholly owned subsidiary of Merger Partner (the "Merger"). In the Merger, each share of Controlled common stock held by Distributing stockholders was automatically converted into the right to receive c share(s) of Merger Partner common stock. Immediately after the consummation of the Merger, approximately d% (more than 50%) of the outstanding shares of Merger Partner common stock was held by shareholders who held Distributing stock prior to step (iii). Step (iv) was intended to qualify as a "reorganization" within the meaning of sections 368(a)(1)(A) (by reason of section 368(a)(2)(E)) and/or 368(a)(1)(B).

v. Pursuant to the Separation Agreement, within e months following the Distribution, Distributing will distribute the cash proceeds received in step (ii) to Distributing's creditors in retirement of outstanding Distributing indebtedness or to Distributing's shareholders in repurchase of, or distribution with respect to, Distributing's shares. Step (v) is intended to qualify as money distributed to Distributing's creditors or stockholders in connection with the reorganization in step (ii) and step (iii) for purposes of section 361(b).

Merger Partner intends to engage in repurchases of its common stock through open market purchases or accelerated share repurchase transactions (collectively, the "Share Repurchases") when, consistent with its overall capital deployment plan, Merger Partner has excess available cash and the opportunity to repurchase shares at an attractive price. Merger Partner intends to adopt a new share repurchase plan providing for share repurchases in an open market, and may adopt additional programs on substantially similar terms in the future. The proposed share repurchase plans will be on similar terms as Merger Partner's previous non-accelerated repurchases, except that the proposed share repurchase plans will require any repurchases to be in the open market. In addition, Merger Partner intends to adopt a new ASR Program that is expected to operate on terms substantially the same as the accelerated share repurchase agreements entered into by Merger Partner in the past. Under the Share Repurchases, Merger Partner expects to repurchase, in the aggregate, less than f% of its common stock outstanding after the closing of the Transaction. Merger Partner is indifferent as to which shareholders participate in the Share Repurchases.

Immediately after the Merger, the Merger Partner Funds owned approximately g% of the total outstanding shares of Merger Partner stock. No other retirement plans of Merger Partner (or any person that is treated as the same employer as Merger Partner

or Controlled under section 414(b), (c), (m), or (o)) qualifying under section 401(a) or 403(a) has owned any Merger Partner stock since the date that is two years before Date B.

Merger Partner intends to issue additional shares of Merger Partner stock to the Merger Partner Funds, and the Merger Partner Funds may, from time to time, acquire additional shares of Merger Partner stock from open market purchases during the two-year period following the Distribution and Merger (collectively, the "Fund Acquisitions"). During the two-year period following the Distribution and Merger, other than the Fund Acquisitions, Merger Partner will not issue Merger Partner common stock to any other retirement plan of Merger Partner (or any person that is treated as the same employer as Merger Partner or Controlled under section 414(b), (c), (m), or (o)) qualifying under section 401(a) or 403(a), nor will any such plan otherwise acquire Merger Partner stock.

Representations

Distributing makes the following representations:

1. The Share Repurchases will be motivated by a business purpose, the stock to be repurchased in the Share Repurchases will be widely held, and the Share Repurchases will be made in the open market or through an ASR Program.

2. The Share Repurchases are not motivated to any extent by a desire to increase or decrease the ownership percentage of any particular shareholder or group of shareholders.

3. To the extent that the Share Repurchases are made on the open market through a broker, Merger Partner will not know the identity of any shareholder from which Merger Partner stock is repurchased. To the extent that the Share Repurchases are made through an ASR Program, Merger Partner will not know with certainty the identity of any shareholder from which Merger Partner stock is borrowed or purchased by each bank that participates in such ASR Program.

4. No shareholder of Distributing who actively participates in the management or operation of Distributing has filed a Form 3, Form 4, Schedule 13D, or Schedule 13G indicating that it owned enough shares to be a "controlling shareholder" within the meaning of § 1.355-7(h)(3) (a "Controlling Shareholder") during the two-year period before the Distribution (the "2-Year Pre-Distribution Period"), and Distributing has no Actual Knowledge of any Controlling Shareholders during the 2-Year Pre-Distribution Period. No shareholder of Merger Partner who actively participates in the management or operation of Merger Partner has filed a Form 3, Form 4, Schedule 13D, or Schedule 13G indicating that it owns enough shares to be a Controlling Shareholder since the Merger, and Merger Partner has no

Actual Knowledge of any Controlling Shareholders since the Merger.

5. No shareholder of Merger Partner has filed a Form 3, Form 4, Schedule 13D, or Schedule 13G indicating that it owns enough shares to be a "ten-percent shareholder" within the meaning of § 1.355-7(h)(14) (a "Ten-Percent Shareholder") since the Merger, and Merger Partner has no Actual Knowledge of any Ten-Percent Shareholders since the Merger.

   For purposes of representations (4) and (5), "Actual Knowledge" means the actual knowledge of the Vice President of Investor Relations, the General Counsel, or a functionally similar position at Distributing or Merger Partner, as applicable, of the existence of a Controlling Shareholder or Ten-Percent Shareholder.

Rulings

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

1. To the extent the Share Repurchases are treated as part of a plan (or series of related transactions) with the Distribution for purposes of section 355(e), the Share Repurchases will be treated as being made from all Public Shareholders of Merger Partner common stock on a pro rata basis for the purposes of testing the effect of the Share Repurchases on the Distribution under section 355(e).

   For purposes of this ruling, each Merger Partner common stock shareholder will be treated as a Public Shareholder with respect to any Share Repurchases that occur on or prior to five business days after either (1) Actual Knowledge or (2) the filing of a Schedule 13D, Schedule 13G, Form 3, or Form 4, indicating the shareholder holds enough shares to be considered a five-percent shareholder within the meaning of Treas. Reg. § 1.355-7(h)(3) (and it actively participates in the management or operation of Acquiring, as described in Treas. Reg. § 1.355-7(h)(3)) or a Ten-Percent Shareholder. For purposes of determining whether a Ten-Percent Shareholder exists, Merger Partner may disregard a Schedule 13G unless Item 6 reports such a shareholder or is left blank, or the filer discloses its status as a Ten-Percent Shareholder on Form 3 or Form 4.

2. For purposes of section 355(e), the Merger Partner Funds are treated as having indirectly acquired an amount of Controlled common stock in the Merger (the "Merger Shares") equal to (i) the number of shares of Merger Partner common stock held by the Merger Partner Funds immediately after the Merger multiplied by (ii) a fraction, the numerator of which is the total number of shares of Controlled common stock outstanding immediately after the Merger and the denominator of which is the total number of shares of Merger Partner common

stock outstanding immediately after the Merger.

3. Treas. Reg. § 1.355-7(d)(9)(i) applies to the Merger Shares in an amount (the "Pre-Distribution Amount") to the extent the Pre-Distribution Amount does not represent more than ten percent of the total combined voting power of all classes of stock entitled to vote, or more than ten percent of the total value of all shares of all classes of stock, of Controlled outstanding immediately after the Merger. The Pre-Distribution Amount is equal to (i) the excess of the number of shares of Merger Partner common stock acquired by the Merger Partner Funds in the 2-Year Pre-Distribution Period over the number of shares of Merger Partner common stock disposed of by the Merger Partner Funds in the 2-Year Pre-Distribution Period, multiplied by (ii) a fraction, the numerator of which is the total number of shares of Controlled common stock outstanding immediately after the Merger and the denominator of which is the total number of shares of Merger Partner common stock outstanding immediately after the Merger.

4. For purposes of section 355(e), each acquisition of Merger Partner common stock by the Merger Partner Funds is treated as an indirect acquisition of Controlled stock (each, a "Post-Distribution Acquisition"). During the period in which Controlled remains a wholly owned subsidiary of Merger Partner, Treas. Reg. § 1.355-7(d)(9)(i) will apply to each Post-Distribution Acquisition to the extent that such Post-Distribution Acquisition, when combined with the acquisitions of the Pre-Distribution Amount and all previous Post-Distribution Acquisitions, do not represent acquisitions of more than ten percent of the total combined voting power of all classes of stock entitled to vote, or more than ten percent of the total value of shares of all classes of stock, of Controlled outstanding immediately after the Post-Distribution Acquisition, calculated as a fraction (i) the numerator of which is the excess of the number of shares of Merger Partner common stock acquired by the Merger Partner Funds in the four-year period beginning two years before the Distribution (the "4-Year Period") over the number of shares of Merger Partner common stock disposed of by the Merger Partner Funds in the 4-Year Period and (ii) the denominator of which is the total number of shares of Merger Partner common stock outstanding immediately after the Post-Distribution Acquisition.

Caveats

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.

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.

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

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.

Sincerely,

William W. Burhop
Assistant Branch Chief, Branch 2
Office of the Associate Chief Counsel (Corporate)

cc: