

Internal Revenue Service

Number: **202521001**

Release Date: 5/23/2025

Index Number: 355.00-00, 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-101404-24

Date:

February 24, 2025

Legend

Distributing =

Controlled =

DRE 1 =

Controlled Assets =

Business A =

Business B =

Business C =

Business C Assets

Family =

Shareholder Trusts =

Continuing Arrangements =

Debt =

Trade Payables =

Line of Credit =

Date 1 =

Date 2 =

Dear :

This letter responds to a letter dated January 6, 2024, submitted on behalf of the taxpayer, requesting rulings on certain federal income tax consequences of a series of proposed transactions (the “Proposed Transactions”). The material information submitted in that request and subsequent correspondences is summarized below.

This letter is issued pursuant to Rev. Proc. 2024-1, 2024-1 I.R.B. 1 and Rev. Proc. 2017-52, 2017-41 I.R.B. 283, as amplified and modified by Rev. Proc. 2018-53, 2018-43 I.R.C. 667, regarding one or more “covered transactions” under section 355 and 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 Proposed Transaction satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b).

Summary of Facts

Distributing is a domestic, closely held corporation. Effective as of Date 1, Distributing made an election under section 1362(a) to be treated as a subchapter S corporation (within the meaning of section 1361(a)). Distributing has both voting and non-voting stock outstanding. All of Distributing’s issued and outstanding stock is owned, indirectly through the Shareholder Trusts, by members of the Family.

Distributing wholly owns Controlled, a domestic corporation. Effective Date 2, Distributing elected to treat Controlled as a qualified subchapter S subsidiary (“QSub”) for federal income tax purposes under section 1361(b)(3)(B). Distributing also owns various other subsidiaries, as well as entities treated as disregarded entities for federal income tax purposes (the “Distributing DREs”). Distributing owns certain of the Distributing DREs through Controlled (the “Controlled DREs”). Among them is DRE 1, the legal obligor on the Debt.

Distributing is engaged, directly and indirectly through its subsidiaries and through the Distributing DREs, in the conduct of Business A, Business B, and Business C. Distributing has submitted financial information in accordance with Rev. Proc. 2017-52 indicating that Business A and Business B have had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

The Proposed Transaction

For what are represented to be valid business reasons, Distributing has or will undertake the following transactions (collectively, the “Proposed Transaction”):

1. Pursuant to a preparatory internal restructuring:
 - a. Certain of the Distributing DREs will transfer various assets, including the Business C Assets, to Distributing.
 - b. Distributing will transfer all the assets associated with Business B and Business C to Controlled, to the extent such assets are not already held by Controlled.
 - c. Distributing, and certain Distributing DREs that are not Controlled DREs, may further transfer Business A assets among themselves. Controlled and the Controlled DREs may further transfer Business B assets and the Business C Assets among themselves.
2. Distributing will distribute all of the outstanding stock of Controlled pro rata to the Shareholder Trusts (the “Distribution”).
3. Controlled will timely elect under section 1362(a) to be treated as a subchapter S corporation for federal income tax purposes, effective immediately after the Distribution.

Controlled will not assume (or engage in any transaction that would cause it to be treated as assuming, for federal income tax purposes) any portion of the liability for the Line of Credit.

Following the Distribution, Distributing and Controlled will have no overlapping directors or officers. Further, Distributing and Controlled will engage in the Continuing Arrangements. Payments made in connection with the Continuing Arrangements will be determined and paid for based on arm’s-length terms, except that compensation with respect to certain transition agreements will be based on cost.

Representations

Rev. Proc. 2017-52:

Except as set forth below, Distributing has made all of the representations in Section 3 of the Appendix to Rev. Proc. 2017-52 with respect to the Proposed Transaction:

Distributing has made the following alternative representations:

Representations 3(a), 8(a), 11(a) (as modified below), 22(a), 31(a), and 41(b).

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

Representations 7, 35, 36, 37, 38, 39 and 40.

Distributing has made the following representations in lieu of Representations 14 and 15:

Additional Representation 1: Immediately after the Distribution, the fair market value of the business assets of each of Distributing and Controlled will be greater than 80 percent of the fair market value of its total assets. For this purpose, the term “business assets” of a corporation means its gross assets used in one or more businesses. Such assets include cash and cash equivalents held as a reasonable amount of working capital for one or more businesses. Such assets also include assets required (by binding commitment or legal requirement) to be held to provide for exigencies related to a business or for regulatory purposes with respect to a business.

Additional Representation 2: There is no plan or intention by the shareholders or security holders of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in, or securities of, either Distributing or Controlled after the transaction.

Additional Representation 3: There is no plan or intention by Distributing or Controlled, directly or through any related person (within the meaning of section 267(b) or section 707(b)(1)), to purchase any of its outstanding stock after the transaction.

Additional Representation 4: There is no plan or intention to liquidate either Distributing or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the transaction, except in the ordinary course of business.

Distributing has made the following representation in lieu of Representation 29:

Additional Representation 5: There was no agreement, understanding, arrangement, or substantial negotiations at any point during the two-year period ending on the date of the Distribution regarding an acquisition of either Distributing or Controlled (including a predecessor or successor within the meaning of § 1.355-8) or a similar acquisition.

Distributing is unable to make the following representations but has provided the required explanations:

Representation 23, and

Representation 42

Distributing has made the following modified representations:

Representation 11(a): Except for in connection with the Continuing Arrangements, following the Distribution, Distributing and Controlled each will continue, independently and with its separate employees, the active conduct of the business on which it relies to meet the active trade or business requirement of § 355(b).

Representation 33: Payments made in connection with all continuing transactions, if any, between Distributing and Controlled after the Distribution will be for fair market value based on arm's-length terms, except that compensation with respect to certain transition agreements will be based on cost.

Rev. Proc. 2018-53:

Except as set forth below, Distributing has made all of the representations in Section 3.04 of Rev. Proc. 2018-53 with respect to the Debt:

Distributing has not made Representation 6, which does not apply to the Proposed Transaction.

Additional Representations:

Distributing has made the following additional representations with respect to the Proposed Transaction:

Additional Representation 6: Each shareholder of Distributing is an eligible S corporation shareholder.

Additional Representation 7: The S corporation election of Distributing was valid and will continue to be valid.

Additional Representation 8: The QSub election of Controlled was valid and will continue to be valid until the point immediately before the Distribution.

Additional Representation 9: There is no plan or intention by Controlled (or its post-Distribution shareholders) to sell, exchange, transfer by gift, or otherwise dispose of any of Controlled's Business C Assets after the Distribution.

Additional Representation 10: The Trade Payables were incurred in the ordinary course of business and are associated with the assets transferred.

Rulings

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

1. The Distribution will cause a termination of Controlled's QSub election because Controlled will cease to be a wholly owned subsidiary of a subchapter S corporation. For federal income tax purposes, Controlled will be treated as a new corporation acquiring the Controlled Assets from Distributing in exchange for stock of Controlled and the assumption by Controlled of the Debt and the Trade Payables immediately before the termination of Controlled's QSub election, pursuant to Treas. Reg. § 1.1361-5(b)(1)(i) and section 1361(b)(3)(B) and (C) (the "Contribution").
2. The Contribution and the Distribution together will constitute a reorganization within the meaning of section 368(a)(1)(D). Distributing and Controlled will each be a party to the reorganization within the meaning of section 368(b).
3. No gain or loss will be recognized by Distributing on the Contribution. Sections 357(a) and 361(a).
4. No gain or loss will be recognized by Controlled on the Contribution. Section 1032(a).
5. The basis of the assets received by Controlled in the Contribution will equal the basis of such assets in the hands of Distributing immediately before the Contribution. Section 362(b).
6. The holding period in each asset received by Controlled in the Contribution will include the period during which the asset was held by Distributing. Section 1223(2).
7. Distributing will not recognize gain or loss on the Distribution. Section 361(c).
8. Distributing's shareholders will not recognize gain or loss (and no amount otherwise will be includible in their income) upon the receipt of Controlled stock in the Distribution. Section 355(a).
9. The basis of the Distributing stock and Controlled stock in the hands of Distributing's shareholders immediately after the Distribution will be the same as the basis of the Distributing stock held by Distributing's shareholders immediately before the Distribution, allocated between Distributing stock and Controlled stock in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2). Section 358(b)(2) and (c).

10. The holding period of the Controlled stock received by each Distributing shareholder in the Distribution will include the holding period of the Distributing stock held by such shareholder with respect to which the Distribution is made, provided that such Distributing stock is held by the shareholder as a capital asset on the date of the Distribution. Section 1223(1).
11. Earnings and profits of Distributing will be allocated amongst Distributing and Controlled in accordance with section 312(h) and Treas. Reg. § 1.312-10(a).
12. Distributing's momentary ownership of the stock of Controlled, as part of the reorganization under section 368(a)(1)(D), will not cause Controlled to have an ineligible shareholder for any portion of its first taxable year under section 1361(b)(1)(B), and will not, in itself, render Controlled ineligible to elect to be a subchapter S corporation for its first taxable year. If Controlled otherwise meets the requirements of a small business corporation under section 1361, Controlled will be eligible to make a subchapter S election under section 1362(a) for its first taxable year, provided that such election is made effective immediately upon the Distribution.
13. Distributing's accumulated adjustment account immediately before the transaction will be allocated between Distributing and Controlled in a manner similar to the manner in which Distributing's earnings and profits will be allocated under section 312(h) in accordance with Treas. Reg. § 1.1368-2(d)(3). Treas. Reg. §§ 1.312-10(a) and 1.1368-2(d)(3).

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.

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 (PLR-101404-24) of this letter ruling.

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

Sincerely,

Katherine Zhang
Senior Counsel, Branch 5
Office of the Associate Chief Counsel (Corporate)

cc: