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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
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CC:CORP:4
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Date:
March 03, 2015

LEGEND

Distributing =

Controlled 1 =

Controlled 2 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

New GP =

Newco TRS =

Partnership =

LLC Group 1 =

LLC Group 2 =

LLC Group 3 =

DRE 1 =

DRE 2 =

DRE 3 =

DRE 4 =

DRE 5 =

DRE 6 =

New LLC =

Business A =

Size of Business
A

Business B =

c =

d =

e =

State F =

Date G =

Date H =

Date I =

Year J =

Dear _____ :

This letter responds to your March 26, 2014 request for rulings under sections 332, 355, 361, and 368 of the Internal Revenue Code (the "Code") and related provisions with respect to a proposed transaction described below (the "Proposed Transaction"). The information provided in that request and in later correspondence is summarized 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.

This letter is issued pursuant to section 6.03 of Rev. Proc. 2014-1, 2014-1 I.R.B. 15, regarding one or more significant issues under sections 332, 351, 355, 368, or 1036. The rulings contained in this letter 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.

FACTS

Distributing is a State F corporation. Distributing and its predecessors have been indirectly engaged in Business A (since Date G) and Business B. Distributing has been a real estate investment trust ("REIT") within the meaning of section 856(a) since Date H, and its stock is publicly traded.

Distributing owns all of the equity interests in Sub 1, a State F limited liability company ("LLC") which is classified as a corporation for U.S. federal income tax purposes and as a taxable REIT subsidiary within the meaning of 856(l) (a "TRS"). Sub 1's principal asset is a c percent general partner interest in Partnership, a domestic entity that is classified as a partnership for U.S. federal income tax purposes; Distributing owns the remaining d percent interest in Partnership as a limited partner. Distributing and Sub1 created Partnership in Year J in a transaction in which no gain or loss was recognized. Additionally, Distributing owns all of the equity interests in DRE 1, a State F LLC which is disregarded as separate from Distributing for U.S. federal income tax purposes. DRE 1 owns a single property and Business A is operated in a portion of that property.

Partnership owns all the equity interests in DRE 2, a State F LLC disregarded as separate from Partnership for U.S. federal income tax purposes. DRE 2 owns all of the equity interests in a number of LLCs ("LLC Group 1") that are disregarded as separate from Partnership for U.S. federal income tax purposes and which own a majority of

Distributing's real estate holdings by value. Additionally, DRE 2 owns certain land associated with Business B (the "Additional Land"), and DRE 2 owns all of the equity interests in Sub 2, a State F LLC which is classified as a corporation and as a TRS for U.S. federal income tax purposes. Sub 2 is the common parent of a group of corporations that file a consolidated U.S. federal income tax return.

Sub 2 owns, *inter alia*, all of the stock of Sub 3, a State F corporation, and all of the equity interests in Sub 4, a State F LLC which is classified as a corporation for U.S. federal income tax purposes. Sub 4 owns all of the equity interests in DRE 3, a State F LLC disregarded as separate from Sub 4 for U.S. federal income tax purposes, and all of the equity interests in a number of LLCs ("LLC Group 2") that are disregarded as separate from Sub 4 for U.S. federal income tax purposes. DRE 3 is the nominal employer of personnel associated with Business A and Business B, and holds certain land associated with Business B. Sub 3 owns all of the equity interests in DRE 4, a State F LLC disregarded as separate from Sub 3 for U.S. federal income tax purposes. Each of Sub 3 and Sub 4 is a TRS.

DRE 4 owns all of the equity interests in DRE 5, a State F LLC disregarded as an entity separate from Sub 3 for U.S. federal income tax purposes. Among other assets, DRE 5 owns and operates a core property of Business B, and owns and operates Business A. Additionally, DRE 4 owns all of the equity interests in DRE 6, a State F LLC, and all of the equity interests in a number of LLCs ("LLC Group 3") that are disregarded as separate from Sub 3 for U.S. federal income tax purposes. The LLC Group 3 entities own and operate various aspects of Business B.

PROPOSED TRANSACTION

For what are represented as valid business purposes, the parties propose to undertake the following Proposed Transaction steps, pursuant to an overall plan and in the order set forth below:

1. DRE 2 will distribute all the stock of Sub 2 and the Additional Land to Partnership, and Partnership will distribute all the stock of Sub 2 and the Additional Land to Distributing and Sub 1, pro rata (the "Partnership Distribution"). Prior to DRE 2's distribution of the Additional Land to Partnership, DRE 2 may contribute the Additional Land to one or more disregarded LLCs and then distribute the Additional Land to Partnership by means of a distribution of all of the membership interests in the disregarded LLCs. References to the Additional Land include references to all of the membership interests in the disregarded LLCs in the event the Additional Land is contributed to these disregarded LLCs prior to DRE 2's distribution to Partnership. Step 1 and the subsequent steps are intended to result in the addition of Sub 3, the entity that owns and operates Business A (through DRE 4 and DRE 5), to Distributing's separate affiliated group (as defined in section 355(b)(3)(B)), for purposes of the active trade or business requirements of section 355(b).

2. Sub 1 will form New GP, a new wholly-owned subsidiary, and contribute its general partnership interest in Partnership in exchange for all of the stock of New GP (the "Sub 1 Contribution").
3. Sub 1 will merge with and into Distributing with Distributing surviving the merger (the "Sub 1 Merger," and together with the Sub 1 Contribution, the "Sub 1 Restructuring").
4. DRE 5 will form a new wholly-owned LLC ("New LLC") as an entity disregarded as separate from Sub 3 for U.S. federal income tax purposes, and will contribute all of the assets it uses in conducting Business A to New LLC in exchange for all of the interests in New LLC (and New LLC will assume all of the liabilities associated with DRE 5's conduct of Business A).
5. DRE 5 will distribute all of its interests in New LLC to DRE 4.
6. DRE 4 will form Newco TRS, a new wholly-owned subsidiary that will make a joint election with Distributing to be a TRS, and DRE 4 will transfer New LLC and DRE 6 to Newco TRS in exchange for all of Newco TRS's stock in a transaction (when combined with the following step) intended to qualify as a reorganization within the meaning of section 368(a)(1)(D).
7. DRE 4 will distribute all the stock of Newco TRS to Sub 3, which, in turn, will distribute all the stock of Newco TRS to Sub 2 in a transaction intended to qualify as a nonrecognition transaction under section 355 (the "Newco TRS Distribution").
8. Sub 4 will merge with and into Sub 2 with Sub 2 surviving the merger (the "Sub 4 Merger").
9. DRE 3 will distribute certain employee arrangements and land associated with Business B to Sub 2.
10. Sub 2 will form Controlled 1, a new wholly-owned domestic subsidiary that will make a joint election with Distributing to be a TRS, and Sub 2 will contribute to Controlled 1 all of its interests in Newco TRS, DRE 3, LLC Group 2, and any other assets held by Sub 4 at the time of the Sub 4 Merger that are not associated with Business B (such assets, other than the stock of Newco TRS, collectively the "Retained Sub 4 Assets") in exchange for all of Controlled 1's stock (the "Controlled 1 Contribution"), in a transaction (when combined with the following step) intended to qualify as a reorganization within the meaning of section 368(a)(1)(D).
11. Sub 2 will distribute all of the Controlled 1 stock to Distributing in a transaction intended to qualify as a nonrecognition transaction under section 355 (the

“Controlled 1 Distribution”).

12. Distributing will form Controlled 2, a new wholly-owned domestic subsidiary that will make a joint election with Distributing to be a TRS, and Distributing will contribute to Controlled 2 all the stock of Sub 2, the Additional Land, and any other assets associated with Business B, if any (potentially including DRE 1), in exchange for all of the stock of Controlled 2, Controlled 2’s assumption of certain compensatory-related liabilities and/or other liabilities associated with Business B and cash (the “section 361(b) Proceeds”) that may be funded by a borrowing by Controlled 2, in a transaction intended to qualify as a reorganization within the meaning of section 368(a)(1)(D) (the “Controlled 2 Contribution”).
13. Distributing will distribute all of the stock of Controlled 2 to its shareholders on a pro rata basis (the “Distribution” and, together with the Newco TRS Distribution and the Controlled 1 Distribution, the “Distributions”).
14. Distributing will use the section 361(b) Proceeds to repay its debt, to pay dividends (including regular quarterly dividends) to its shareholders, or to repurchase its shares, in each case no later than e months following the Distribution, which will occur pursuant to a plan that includes the Controlled 2 Contribution and the Distribution, and will be evidenced by a Distributing board resolution adopted in connection with the Controlled 2 Contribution and the Distribution.

The section 361(b) Proceeds received by Distributing in the Controlled 2 Contribution will not exceed Distributing’s net basis in the property transferred (*i.e.*, the aggregate basis of such assets less liabilities assumed within the meaning of section 357(d), other than liabilities to which section 357(c)(3) applies).

In connection with the Distribution, Distributing and Controlled 2 (and their respective affiliates, as applicable) will enter into certain post-separation agreements and arrangements which will include: a separation and distribution agreement, a transition services agreement for a period not to exceed two years, a tax matters agreement, an employee matters agreement, a commercial agreement governing the sourcing of product and trademark licensing between Distributing and Controlled 2 with regard to Business A (Business A will source branded merchandise from Business B at cost or from manufacturers, in each case paying a royalty to Business B), and a sub-leasing agreement for shared space (*e.g.*, a sub-lease with respect to the portion of the property owned by DRE 1 in which Business A operates).

REPRESENTATIONS

- a) Distributing's and Sub 1's basis in the Sub 2 stock distributed to them in the Partnership Distribution, in each case, will be determined, in whole, by reference to Partnership's basis in such stock.
- b) Distributing, Sub 1, and Partnership will not recognize any gain or loss on the distribution of the Sub 2 stock pursuant to the Partnership Distribution.
- c) In applying section 355(b)(2)(A) regarding the active conduct of a trade or business to the Distribution, Distributing will treat all members of its separate affiliated group, as defined in section 355(b)(3)(B) (the "Distributing SAG"), as one corporation.
- d) The five years of financial information submitted on behalf of Business A are representative of its present operations, and with regard to such operations, there have been no substantial changes since the date of the last financial statements submitted.
- e) Subject to Ruling 1 below, the separate affiliated groups respectively of Newco TRS, Controlled 1, and Distributing, as defined in section 355(b)(3)(B) (a "SAG"), will not have acquired Business A nor control of an entity conducting Business A during the five year period preceding the Newco TRS Distribution, the Controlled 1 Distribution, and the Distribution, in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
- f) Except for Sub 2's contribution of the Retained Sub 4 Assets to Controlled 1 in the Controlled 1 Contribution, the Sub 4 Merger will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation (Recipient) of any of the businesses or assets of Sub 4, if persons holding, directly or indirectly, more than 20 percent in value of the Sub 2 stock also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of section 318(a), as modified by section 304(c)(3).

RULINGS

1. Distributing's and Sub 1's receipt of the Sub 2 stock pursuant to the Partnership Distribution will not constitute a transaction in which gain or loss is recognized in whole or in part within the meaning of sections 355(b)(2)(C) or (D) and 355(b)(3)(C).
2. For U.S. federal income tax purposes, and provided that the Sub 1 Merger will otherwise qualify as a reorganization (within the meaning of section 368(a)(1)(A)) of Sub 1 into Distributing, the Sub 1 Contribution will be treated in accordance with

its form as occurring prior to the Sub 1 Merger.

3. Provided Business A otherwise satisfies the active trade or business requirements of section 355(b), the Size of Business A will not preclude Newco TRS, Controlled 1, and Distributing from satisfying the active trade or business requirements of section 355(b) with respect to the Distributions.
4. Provided Distributing's transfers of the section 361(b) Proceeds otherwise qualify as distributions in pursuance of the plan of reorganization within the meaning of section 361(b)(1)(A) (including by reason of section 361(b)(3)), Distributing's transfers of the section 361(b) Proceeds in the manner described in Step (14) above will not preclude such qualification.
5. Provided the Sub 4 Merger otherwise would qualify as a "complete liquidation" within the meaning of section 332, the contribution by Sub 2 of the Retained Sub 4 Assets to Controlled 1 in the Controlled 1 Contribution and the subsequent distribution of the stock of Controlled 1 by Sub 2 in the Controlled 1 Distribution will not preclude the Sub 4 Merger from qualifying as a "complete liquidation" within the meaning of section 332.

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 covered by the above rulings. In particular, no opinion is expressed with regard to whether Distributing or any other entity discussed herein qualifies as a REIT under subchapter M of Chapter 1, Subtitle A of the Code, or whether any subsidiary discussed herein qualifies as a TRS under section 856(l). Furthermore, this letter does not provide any rulings under sections 856 or 857.

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, a copy of this letter is being sent to your authorized representative.

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,

Maury Passman
Chief, Branch 4
Office of Associate Chief Counsel
(Corporate)