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PLR-119360-20

Date:

January 12, 2021

TY:

Distributing =

Combination
Partner =

Internal
Distributing =

Internal
Controlled =

Controlled =

Merger Sub I =

Merger Sub II =

Subsidiary A

PRS 1 =

Business A =

Retained
Business =

Term Loan =

Year A Notes =

External
Refinancing Debt =

Historic
Commercial
Paper =

Internal
Refinancing
Debts =

Qualifying
Distributing Debt =

State A =

State B =

Specified Date =

Date 1 =

Date 2 =

Date 3 =

Month 1 =

Month 2 =

Transition
Services
Agreement =

Lease
Agreements =

Supply
Agreements =

Site Services
Agreements =

IP Arrangements =

Merger
Agreement =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

Dear :

This letter responds to your representative's letter dated May 22, 2020, on behalf of Distributing, its affiliates and its shareholders, as supplemented by subsequent information and documentation, requesting rulings on certain federal income tax consequences of a series of partially completed transactions (the "Proposed Transaction"). The material information provided in that letter and subsequent 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 Rev. Proc. 2017-52, 2017-41 I.R.B. 283, as amplified and modified by Rev. Proc. 2018-53, 2018-43 I.R.B. 667, regarding one or more "Covered Transactions" under Sections 355 and 368 of the Internal Revenue Code (the "Code") and pursuant to section 6.03(2) of Rev. Proc. 2020-1, 2020-01 I.R.B. 1, regarding one or more significant issues under Sections 332, 351, 355 or 368 of the Code. An additional ruling is issued pursuant to section 6.03(2) of Rev. Proc. 2020-1, 2020-01 I.R.B. 1, and only addresses one or more discrete legal issues involved in a related transaction.

This office has made no determination regarding the overall tax consequences of the Internal Transactions (as defined below), except as specifically addressed by the rulings

below, on whether the Internal Distribution or the Distribution (each as defined below): (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is 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 (iii) is part of a plan (or a 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 relevant distributing corporation or the controlled corporation, or any predecessor or successor of such distributing corporation or controlled corporation, within the meaning of Treas. Reg. § 1.355-8 (see Section 355(e) and Treas. Reg. § 1.355-7).

Summary of Facts

Distributing is a publicly traded State A corporation that is the common parent of an affiliated group of corporations whose includible corporations join in the filing of a consolidated group for U.S. federal income tax return purposes, and the parent of a worldwide group of foreign and domestic entities. Distributing directly and indirectly is engaged in both the Retained Business and Business A.

Immediately prior to step 1 of the Proposed Transaction, Distributing will (i) directly and indirectly, own the outstanding equity interests of certain entities which will conduct Distributing's Business A (the "Business A Entities"), and (ii) directly own the outstanding equity interests of Internal Distributing, a State A limited liability company that is classified as a corporation for U.S. federal income tax purposes.

Members of the Distributing consolidated group also fully own the interests in PRS 1, a partnership that is an operating company and the cash pool header for Distributing's domestic operating entities.

Combination Partner is a publicly traded State B corporation that is unrelated to Distributing that is engaged in a business portfolio complementary to Business A.

Distributing has completed certain steps, and proposes to complete the remainder, of a series of transactions in order to separate and combine its Business A with Combination Partner's business.

Financial information has been submitted with respect to certain portions of Business A and the Retained Business in accordance with Rev. Proc. 2017-52 representing the active conduct of a trade or business for each of the past five years.

As of the Specified Date, Distributing had amounts outstanding under the (i) Term Loan, and the (ii) Year A Notes. After the Specified Date, Distributing incurred External Refinancing Debt to finance the repayment of the Year A Notes. Distributing also incurred the Internal Refinancing Debts in order to pay down its Historic Commercial Paper Balance.

Proposed Transaction

For what are represented to be valid business purposes, Distributing proposes to engage in the following steps which have been partially consummated, the Proposed Transaction.

1. On Date 1, Distributing formed Controlled, a State A corporation. On Date 2, Combination Partner formed (a) Merger Sub I, a wholly owned subsidiary corporation of Combination Partner and (b) Merger Sub II, a limited liability company wholly owned by Combination Partner that is disregarded as separate from Combination Partner for U.S. federal income tax purposes.
2. Prior to making the Special Cash Distribution, as defined below, Controlled has borrowed or will borrow approximately \$a from third-party lenders ("Controlled Financing").
3. On Date 3, Subsidiary A, a subsidiary of Internal Distributing, will form Internal Controlled, a U.S. corporation. Subsidiary A will then distribute Internal Controlled to Internal Distributing.
4. Internal Distributing will contribute all assets relating to Business A (other than the stock of Internal Controlled itself) to Internal Controlled in exchange for Internal Controlled stock and the assumption of liabilities associated with Business A (the "Internal Contribution").
5. Internal Distributing will distribute all of the issued and outstanding stock of Internal Controlled to Distributing (the "Internal Distribution").
6. On the same day as the Internal Distribution, Internal Controlled will merge with and into Controlled, with Controlled surviving. Distributing will receive stock of Controlled as consideration for the merger (the "Internal Merger" and, together with the Internal Contribution and the Internal Distribution, the "Internal Transactions").
7. Pursuant to a plan of reorganization adopted by Distributing and Controlled (the "Plan of Reorganization"), Distributing has contributed or will contribute approximately \$b in order to fund certain costs of Controlled (e.g., borrowing fees associated with external borrowings), the Business A Entities directly owned by Distributing, and other related assets to Controlled in exchange for (i) shares of Controlled stock, (ii) the assumption of related liabilities, and (iii) approximately \$c of the proceeds of the Controlled Financing, subject to certain adjustments (the "Special Cash Distribution" and such exchange, the "Contribution"). Following the issuance of Controlled stock, Distributing will own 100 percent of the issued and outstanding Controlled stock.

8. Pursuant to the Plan of Reorganization, on the Distribution Date, Distributing will distribute all of the issued and outstanding stock of Controlled to Distributing shareholders either via a pro rata distribution (the “Spin-off Distribution”) or a non-pro rata exchange offer of a certain percentage of the Controlled stock (the “Exchange Offer”), followed by a pro rata distribution of the remaining Controlled stock (the “Clean-up Spin” and, together with the Exchange Offer, the “Split-off Distribution”). The Spin-off Distribution and the Split-off Distribution are referred to, in the alternative, as the “Distribution”).
9. Immediately after the Distribution, Merger Sub I will merge with and into Controlled, with Controlled surviving (the “First Merger”). Each outstanding share of Controlled stock (except for shares of Controlled stock held as treasury stock by Distributing, which will be cancelled) will be converted into the right to receive a number of shares of Combination Partner common stock (except for cash paid in lieu of fractional Combination Partner shares) equal to the exchange ratio set forth in the Merger Agreement. Immediately after the First Merger, approximately d percent of the outstanding shares of Combination Partner common stock is expected to be held by pre-Combination holders of shares of Controlled stock and approximately e percent of the outstanding shares of Combination Partner common stock are expected to be held by pre-Combination Combination Partner stockholders. Following the First Merger, all obligations of Controlled, including those under the Controlled Financing, will be guaranteed by the Combination Partner.
10. No fewer than f (or, in some circumstances, g) days after the First Merger (unless otherwise agreed by the parties), Controlled, now a wholly owned subsidiary of Combination Partner, will merge with and into Merger Sub II, with Merger Sub II surviving as an entity disregarded for U.S. federal income tax purposes from its sole owner, Combination Partner (“Second Merger” and together with the First Merger, the “Combination”).
11. Distributing will use the proceeds of the Special Cash Distribution to make payments to various creditors and shareholders; the material payments are:
 - a. Repayment of the Term Loan.
 - b. Repayment of the External Refinancing Debt.
 - c. Repayment of the Internal Refinancing Debts.
 - d. Interest due no later than h months after the Distribution on the Qualifying Distributing Debt (“Interest Payments”).
 - e. The next i regular quarterly dividends ending no later than h months after the Distribution, expected to be approximately j in the aggregate.
 - f. Open market repurchases of Distributing shares through a previously established or newly authorized share repurchase program and may engage in an accelerated share repurchase program for the period ending no later than h months after the Distribution.

In connection with the Proposed Transaction, Distributing, Combination Partner and Controlled have entered into and will enter into agreements (the “**Post-Separation Agreements**”) intended to govern their relationship (and that of their respective subsidiaries) following the consummation of the Combination. The specific agreements include the **Transition Services Agreement**, the **Lease Agreements**, the **Site Services Agreements**, the **Supply Agreements**, and certain additional agreements implementing the **IP Arrangements**.

Following the Combination, Combination Partner’s initial board of directors is expected to be comprised of k current directors from Combination Partner and l Distributing director appointees. At Combination Partner’s annual meeting in the year following the year in which the Combination occurs, all l of Distributing’s director appointees and l of Combination Partner’s current directors will stand for election and Combination Partner’s board of directors will take all necessary actions to set the size of the board at m members. Pursuant to Combination Partner’s governing documents, the Combination Partner board of directors is empowered to manage the corporation’s business, except with respect to certain matters traditionally reserved to shareholders.

Representations

Except with respect to representations 20, 24, 25, 35, 40, which are inapplicable, and those representations modified below, Distributing has made all of the representations provided in section of the appendix to Rev. Proc. 2017-52. With respect to the representations that allow for alternative representations to be made and are not otherwise modified below, Distributing makes representations 3(a), 8(b), 11(a), 15(a), 22(a), 31(a), and 41(a).

1. Distributing has made Representation 2 except that Distributing will either (1) distribute 100 percent of outstanding shares of Controlled stock pro rata to its shareholders pursuant to the Spin-off Distribution or (2) transfer a certain percentage of the outstanding shares of Controlled stock to its shareholders in exchange for shares of Distributing stock, followed by a pro-rata distribution of the remaining shares pursuant to the Split-off Distribution.
2. Distributing has made Representations 5 and 6 as applied to the Spin-off Distribution and Clean-up Spin but such representations are inapplicable to the Exchange Offer.
3. Distributing has made Representation 7 as applied to the Exchange Offer but such representation is inapplicable to the Spin-off Distribution or the Back-End Distribution.
4. Distributing has made Representation 19 provided that the rulings sought below are otherwise obtained.

5. Distributing has made Representation 32 except for (i) amounts payable under the Post-Separation Agreements and (ii) trade payables arising in the ordinary course of business.
6. Distributing has made Representation 33, except with respect to certain payments pursuant to the Post-Separation Agreements.
7. Distributing has made Representation 46 with respect to the Controlled stock, but not with respect to securities of Controlled, if any, as Controlled will borrow to fund the payment of the Special Cash Distribution through a third-party borrowing and/or certain senior secured credit facilities.

Except as otherwise provided below, Distributing has made all of the representations provided in section 3 of Rev. Proc. 2018-53:

1. With respect to Representation 2:
 - (a) Distributing has made Representation 2 with respect to the Term Loan, the External Refinancing Debt, and the Qualifying Distributing Debt;
 - (b) With respect to the Internal Refinancing Debts, Distributing has made the following modified representation: The proceeds from the borrowing of the Internal Refinancing Debts were used by Distributing to satisfy the Historic Commercial Paper Balance. The Historic Commercial Paper Balance was not held by a Related Person within the meaning set forth in Rev. Proc. 2018-53.
2. With respect to Representation 3 and the additional representation described therein:
 - (a) Distributing has made Representation 3 and the additional representation described therein is not relevant with respect to the Term Loan, the External Refinancing Debt, and the Qualifying Distributing Debt.
 - (b) With respect to the Internal Refinancing Debts, Distributing has made the following modified representation: The holder of the Internal Refinancing Debts is a Related Person to Distributing. The holders of the Historic Commercial Paper Balance did not hold the debt for the benefit of Distributing, Controlled or any Related Person. Neither Distributing, Controlled, nor any Related Person participated in the profit gained by the holders of the Historic Commercial Paper Balances upon the repayment of the Historic Commercial Paper Balances.
3. With respect to Representation 4:
 - (a) Distributing has made Representation 4 with respect to the Term Loan and the Qualifying Distributing Debt.

- (b) With respect to the External Refinancing Debt, Distributing has made the following modified representation: The proceeds of the External Refinancing Debt were used to satisfy the Year A Notes, which were incurred more than 60 days before the Specified Date.
 - (c) With respect to the Internal Refinancing Debts, Distributing has made the following modified representation: The proceeds of the Internal Refinancing Debts were used to satisfy the Historic Commercial Paper Balances. The amounts outstanding under the Historic Commercial Paper Balances will not exceed the aggregate Historic Commercial Paper Balances outstanding under Distributing's commercial paper program as of the submission of this Ruling Request or the dates referred to in such representation.
- 4. Distributing has made Representation 5. For purposes of this Representation, Distributing has included as members of Distributing's SAG for each relevant fiscal quarter those entities which were members of Distributing's SAG as of the end of such fiscal quarter.
- 5. With respect to Representation 6:
 - (a) Distributing has not made Representation 6 with respect to the Term Loan Repayment or the repayment of the Internal Refinancing Debts, as it is not applicable.
 - (b) With respect to the Interest Payments, Distributing has made the following, modified representation: Distributing will identify the amount of Interest Payments (within a reasonable range) to be made with the proceeds of the Special Cash Distribution pursuant to the Plan of Reorganization. Such Interest Payments will be made within h months of the Distribution.

The following additional representations have been made with respect to the Post-Distribution Share Repurchases and the Combination:

- 1. The Post-Distribution Share Repurchases will be motivated by a corporate business purpose, will be made with respect to widely held shares and will not be motivated by a desire to increase or decrease the ownership percentage of any particular shareholder or group of shareholders.
- 2. The payment of cash in lieu of fractional shares of Combination Partner common stock is solely for the purpose of avoiding the expense and inconvenience of issuing fractional shares and does not represent separately bargained-for consideration. No Distributing shareholder will receive cash in an amount equal to or greater than the value of one full share of Combination Partner common stock.

3. The Combination will qualify as a reorganization under Section 368(a)(1)(A).

The following additional representations have been made with respect to the Internal Contribution, Internal Distribution, and Internal Merger:

1. The Internal Contribution and the Internal Distribution will qualify as a transaction in which no gain or loss is recognized to Internal Distributing, Internal Controlled, or Distributing, and no amount is included in the income of Distributing, under Section 368(a)(1)(D) and Section 355.
2. Provided that the Internal Merger will be treated as a merger of Internal Controlled into Controlled, the Internal Merger will qualify as a reorganization under Section 368(a)(1)(A).

Rulings

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

1. The Contribution, together with the Distribution, will be a reorganization within the meaning of Section 368(a)(1)(D). Distributing and Controlled will each be “a party to a reorganization” within the meaning of Section 368(b).
2. Section 355(a)(3)(B) will not treat as “other property” any part of the Controlled stock actually or deemed issued by Controlled to Distributing pursuant to the Contribution in exchange for intellectual property rights pursuant to the IP Arrangements.
3. No gain or loss will be recognized by Distributing on the Contribution (including with respect to the Special Cash Distribution). Section 361(a); Section 361(b); Section 357(a).
4. No gain or loss will be recognized by Controlled on the Contribution. Section 1032(a).
5. The basis in each asset received by Controlled in the Contribution will equal the basis of that asset in the hands of Distributing immediately before the transfer. 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. No gain or loss will be recognized by Distributing upon the distribution of the Controlled stock in the Distribution. Section 355(c); Section 361(c).
8. No gain or loss will be recognized by holders of Distributing stock upon the receipt of Controlled stock in the Distribution. Section 355(a).

9. If a Split-off Distribution is undertaken, the basis of the Controlled stock in the hands of a holder of Distributing stock who exchanges Distributing stock for Controlled stock in the Exchange Offer immediately after the Distribution will be the same as the basis of the Distributing stock exchanged therefor. Section 358(a).
10. To the extent that Controlled stock is distributed to holders of Distributing stock on a pro rata basis pursuant to the Spin-off Distribution or the Clean-up Spin, the aggregate basis of the Distributing stock and the Controlled stock in the hands of such holders immediately after the Spin-off Distribution or the Clean-up Spin will be the same as the basis of the Distributing stock immediately before the Spin-off Distribution or the Clean-up Spin on which such distribution was made, allocated in proportion to the fair market values of the Distributing stock and the Controlled stock. Section 358(a).
11. If a holder of Distributing stock that purchased or acquired shares on different dates or at different prices is not able to identify which particular share of Controlled stock is received in exchange for, or as a distribution with respect to, a particular share of Distributing stock, the holder may designate which particular share of Controlled stock is received in exchange for, or as a distribution with respect to, a particular share of Distributing stock, provided the designation is consistent with the terms of the Distribution. Treas. Reg. § 1.358-2(a)(2).
12. The holding period of each holder of Distributing stock in the Controlled stock received in the Distribution will include the holding period of the Distributing stock exchanged therefor (if a Split-off Distribution is undertaken) or with respect to which the distribution of the Controlled stock is made, provided that such Distributing stock is held as a capital asset on the date of such Distribution. Section 1223(1).
13. Earnings and profits of Distributing, if any, will be allocated between Distributing and Controlled in accordance with Section 312(h). Treas. Reg. § 1.312-10(a) and Treas. Reg. § 1.1502-33(e)(3).
14. The initial designations of the post-Combination members of the Combination Partner board of directors will not affect the determination of the total voting power or value of the stock of Controlled acquired within the meaning of Section 355(e).
15. The Internal Merger will be treated as a merger of Internal Controlled into Controlled that will qualify as a reorganization under Section 368(a)(1)(A), notwithstanding the Combination.

Caveats

No opinion is expressed or implied about the tax treatment of the Proposed Transactions under any other provisions of the Code or regulations, or effects resulting from the Proposed Transaction that are not specifically covered by the above rulings. In

particular, this office has made no determination whether the transfer of intellectual property pursuant to the IP Arrangements constitutes a transfer of property. See Rev. Rul. 69-156, 1969-1 C.B. 101.

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 of the 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,

Mark J. Weiss
Chief, Branch 2
Office of Associate Chief Counsel (Corporate)

cc: