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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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PLR-125408-21

Date:

June 14, 2022

Legend

Distributing =

Controlled 1 =

Controlled 2 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

New Sub 4 =

LLC 1 =

Exchange =

Distributing Common
Stock =

Business 1 =

Business 2 =

Property 1 =

Property 2 =

Controlled 1
Receivable =

Distributing
Receivable =

Continuing
Relationships =

Transitional Services
Agreement =

Distributing Bonds =

Equity Awards =

a =

b =

Date 1 =

Year 1 =

State A =

State B =

State C =

State D =

Dear :

This letter responds to the letter from your authorized representative dated December 14, 2021, as supplemented by subsequent information and documentation, submitted on behalf of Distributing, requesting rulings on certain U.S. federal income tax consequences under the Internal Revenue Code of 1986, as amended, of the proposed transactions described below (collectively, the “Proposed Transaction”). The material information submitted in that request and in 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 penalties 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. 2021-1, 2021-1 I.R.B. 1, and Rev. Proc. 2017-52, 2017-41 I.R.B. 283, regarding a Transactional Ruling for a Covered Transaction. This office expresses no opinion as to the overall tax consequences of the Proposed Transaction or as to any issue not specifically addressed by the rulings below.

This office has made no determination regarding whether any of the Distributions (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 § 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 corporation or the controlled corporation, or any predecessor or successor of the distributing corporation or the controlled corporation, within the meaning of Treas. Reg. § 1.355-8 (see § 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

Summary of Facts

Distributing is the common parent of an affiliated group of corporations that join in filing a consolidated U.S. federal income tax return on a calendar year basis (the “Distributing Group”). Each member of the Distributing Group uses the accrual method of accounting. The outstanding capital stock of Distributing consists solely of Distributing Common Stock, which is publicly traded on Exchange.

Distributing wholly owns LLC 1, which is disregarded as an entity separate from Distributing for U.S. federal income tax purposes, and Controlled 1. Controlled 1 wholly owns Sub 1 and New Sub 4. Sub 1 wholly owns Sub 2. Sub 2 wholly owns Sub 3. Sub 3 wholly owns Sub 4. New Sub 4 wholly owns Controlled 2. Controlled 1, Sub 1, Sub 2, Sub 3, and Sub 4 each is a member of the Distributing Group. New Sub 4 and Controlled 2 each is disregarded as an entity separate from its owner for U.S. federal income tax purposes.

The separate affiliated group, within the meaning of § 355(b), of Distributing (the “DSAG”) is engaged in Business 1 through various subsidiaries other than Controlled 1 and its subsidiaries. LLC 1 is engaged in Business 1 in State B, State C, and State D (such business, “Business 1a”). The separate affiliated group, within the meaning of § 355(b), of Controlled 1 is engaged in Business 2 through Sub 4 and various subsidiaries of Sub 4.

Financial information has been submitted in accordance with Rev. Proc. 2017-52 indicating that Business 1, Business 1a, and Business 2 each has had gross receipts

and operating expenses representing the active conduct of a trade or business for each of the past five years.

In Year 1, Sub 4 transferred Property 1 to Distributing in a transaction pursuant to which Sub 4 recognized gain (the “Intercompany Gain”). The Intercompany Gain constitutes an “intercompany item,” within the meaning of Treas. Reg. § 1.1502-13(b)(2), and was, and continues to be, deferred under Treas. Reg. § 1.1502-13(c).

Proposed Transaction

For what are represented to be valid business purposes, Distributing and its affiliates propose to undertake the Proposed Transaction through the following steps (each a “Step”).

1. Pursuant to a consent solicitation that commenced on Date 1, Distributing solicited and received the consent of the holders of Distributing Bonds to eliminate or modify certain financial and non-financial covenants of such bonds to permit Distributing to distribute the stock of Controlled 1 pursuant to Distribution 4, as defined in Step 18 below, and made (and will make) certain payments to the holders who agreed to such amendments.
2. New Sub 4 will distribute all of the issued and outstanding membership interests of Controlled 2 to Controlled 1.
3. Sub 2 will merge upstream into Sub 1 pursuant to State A law, with Sub 1 surviving (the “Sub 2 Liquidation”).
4. Sub 1 will merge upstream into Controlled 1 pursuant to State A law, with Controlled 1 surviving (the “Sub 1 Liquidation,” and, together with the Sub 2 Liquidation, the “Liquidations”).
5. Controlled 1 will contribute all of the issued and outstanding membership interests in New Sub 4 to Sub 3.
6. Sub 3 will transfer all of the issued and outstanding stock of Sub 4 to New Sub 4, and New Sub 4 will convert from a limited liability company to a corporation pursuant to State A law (together, “Contribution 1”).
7. Sub 4 will convert, pursuant to State A law, to a limited liability company that is disregarded as an entity separate from New Sub 4 for U.S. federal income tax purposes (the “Conversion,” and Sub 4 after the Conversion, “Sub 4 LLC”).
8. Controlled 1 will transfer all of the issued and outstanding membership interests in Controlled 2 to Sub 3, and Sub 3 will transfer all of the issued and outstanding membership interests in Controlled 2 to New Sub 4.

9. Sub 4 LLC will distribute Property 2 and the Controlled 1 Receivable to New Sub 4.
10. Controlled 1 will repay a portion of the Controlled 1 Receivable with the Distributing Receivable.
11. Distributing will transfer all of the issued and outstanding membership interests in LLC 1 to New Sub 4 in exchange for the Distributing Receivable and, to the extent the fair market value of LLC 1 exceeds the fair market value of the Distributing Receivable, a note payable of New Sub 4 (the “LLC 1 Transfer”).
12. New Sub 4 will transfer all of the issued and outstanding membership interests in Sub 4 LLC to Controlled 2, and Controlled 2 will convert from a limited liability company to a corporation pursuant to State A law (together, “Contribution 2”).
13. New Sub 4 will distribute all of the issued and outstanding stock of Controlled 2 to Sub 3 (“Distribution 1”).
14. Sub 3 will distribute all of the issued and outstanding stock of Controlled 2 to Controlled 1 (“Distribution 2”).
15. Controlled 1 will distribute all of the issued and outstanding stock of Sub 3 to Distributing (“Distribution 3”).
16. Controlled 1 will enter into new revolving and term loan facilities with third-party lenders and will declare and pay a dividend of the proceeds thereof to Distributing in an amount not in excess of Distributing’s basis in the stock of Controlled 1 (the “Controlled 1 Cash Distribution”).
17. Controlled 1 will recapitalize its issued and outstanding common stock through a forward or reverse stock split or a common stock dividend into the number of shares of common stock necessary to effect Distribution 4, as defined in Step 18 below, as recommended by Distributing’s financial advisors.
18. Distributing will distribute pro rata to its shareholders all of the issued and outstanding stock of Controlled 1 (“Distribution 4,” and, collectively with Distribution 1, Distribution 2, and Distribution 3, the “Distributions”).

In connection with Distribution 4, Equity Awards held by employees of Distributing who become employees of Controlled 1 will be converted into equivalent awards relating to stock of Controlled 1.

Representations

Except as set forth below, Distributing makes all of the representations in section 3 of the Appendix to Revenue Procedure 2017-52 with respect to each Distribution.

1. Distributing does not make the following representations, which are inapplicable to the Distributions: Representations 7, 20, and 25.
2. Distributing makes the following representations only with respect to Distribution 1: Representations 17, 18, and 19.
3. Distributing makes the following representations with respect to Distribution 1, Distribution 2, and Distribution 3: Representations 13, 32, and 33.
4. Distributing makes the following modified representations with respect to Distribution 4:
 - a. Representation 13: With respect to Distribution 4, Distributing has acquired approximately a percent of the stock of Controlled 1 over the past five years in transactions that were taxable in whole or in part; however, Controlled 1 has been a member of the DSAG at all times for at least five years.
 - b. Representation 32: No intercorporate debt will exist between Distributing and Controlled 1 at the time of, or subsequent to, Distribution 4, except for payables and receivables arising in connection with the Continuing Relationships or in the ordinary course of business.
 - c. Representation 33: Payments made in connection with all continuing transactions, if any, between Distributing and Controlled 1 after Distribution 4, will be for fair market value based on arm's length terms, other than payments for services under the Transitional Services Agreement, which may be provided at cost or cost-plus for a period of up to b years following Distribution 4.
5. Distributing makes the following modified representations with respect to each Distribution:
 - a. Representation 24: Distributing, Controlled 1, Sub 3, and Sub 4 each uses, and Controlled 2 and New Sub 4 each will use, the accrual method of accounting.
 - b. Representation 34: Distributing, Controlled 1, Controlled 2, Sub 3, and New Sub 4 will each pay its own expenses, if any, incurred in connection

with the Proposed Transaction, except for legal and accounting expenses, appraisal fees, administrative costs of Controlled 1 (such as those incurred for printing and clerical work), security underwriting and registration fees and expenses, transfer taxes, and transfer agents' fees, in each instance only to the extent that they are solely and directly related to the Proposed Transaction, all of which will be paid by Distributing.

6. Distributing makes the following alternative representations:
 - a. With respect to each Distribution: Representations 3(a), 11(a), 15(a), 22(a), 31(a), and 41(a).
 - b. With respect to Distribution 1, Distribution 2, and Distribution 3: Representation 8(a).
 - c. With respect to Distribution 4: Representation 8(b).

Additional Representations

Distributing also makes the following additional representations:

7. There is no plan or intention for New Sub 4 or Controlled 2 to divest of any of the historic business assets of New Sub 4 before or after Distribution 1, except dispositions of assets in the ordinary course of business.
8. Each Liquidation will qualify for nonrecognition treatment to the applicable transferee and transferor under §§ 332 and 337, respectively.
9. The Controlled 1 Receivable and the Distributing Receivable each constitutes debt for U.S. federal income tax purposes.

Rulings

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

1. Distribution 4 will not accelerate the remaining Intercompany Gain under Treas. Reg. § 1.1502-13(d), and such gain will continue to be taken into account by the Distributing Group under Treas. Reg. § 1.1502-13(c).
2. Contribution 2 and Distribution 1, together, will constitute a reorganization within the meaning of § 368(a)(1)(D). New Sub 4 and Controlled 2 each will be a "party to a reorganization" within the meaning of § 368(b).
3. No gain or loss will be recognized by New Sub 4 on Contribution 2. Sections 357(a) and 361(a), (b).

4. No gain or loss will be recognized by Controlled 2 on Contribution 2. Section 1032(a).
5. Controlled 2's basis in each asset received in Contribution 2 will be the same as the basis of that asset in the hands of New Sub 4 immediately before its transfer, increased by the amount of gain, if any, recognized by New Sub 4 pursuant to § 357(c) on the transfer. Section 362(b).
6. Controlled 2's holding period in each asset received in Contribution 2 will include the period during which New Sub 4 held the asset. Section 1223(2).
7. No gain or loss will be recognized by New Sub 4 on Distribution 1. Section 361(c).
8. No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Sub 3 on its receipt of the stock of Controlled 2 in Distribution 1. Section 355(a).
9. Sub 3's basis in its New Sub 4 common stock (as adjusted under Treas. Reg. § 1.358-1) will be allocated between the New Sub 4 common stock with respect to which Distribution 1 is made and the Controlled 2 common stock received in Distribution 1 with respect to the New Sub 4 common stock in proportion to their fair market values. Section 358(b) and (c); Treas. Reg. § 1.358-2.
10. Sub 3's holding period in the Controlled 2 common stock received in Distribution 1 will include the holding period of the New Sub 4 common stock with respect to which the distribution of the Controlled 2 common stock is made, provided that the New Sub 4 common stock is held as a capital asset on the date of Distribution 1. Section 1223(1).
11. Earnings and profits (if any) will be allocated between Controlled 2 and New Sub 4 in accordance with § 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33(e)(3).
12. No gain or loss will be recognized by Sub 3 on Distribution 2. Section 355(c).
13. No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Controlled 1 on its receipt of the stock of Controlled 2 in Distribution 2. Section 355(a).
14. Controlled 1's basis in its Sub 3 common stock (as adjusted under Treas. Reg. § 1.358-1) will be allocated between the Sub 3 common stock with respect to which Distribution 2 is made and the Controlled 2 common stock received in Distribution 2 with respect to the Sub 3 common stock in

- proportion to their fair market values. Section 358(b) and (c); Treas. Reg. § 1.358-2.
15. Controlled 1's holding period in the Controlled 2 common stock received in Distribution 2 will include the holding period of the Sub 3 common stock with respect to which the distribution of the Controlled 2 common stock is made, provided that the Sub 3 common stock is held as a capital asset on the date of Distribution 2. Section 1223(1).
 16. Earnings and profits (if any) will be allocated between Controlled 2 and Sub 3 in accordance with § 312(h) and Treas. Reg. §§ 1.312-10(b) and 1.1502-33(e)(3).
 17. No gain or loss will be recognized by Controlled 1 on Distribution 3. Section 355(c).
 18. No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing on its receipt of the stock of Sub 3 in Distribution 3. Section 355(a).
 19. Distributing's basis in its Controlled 1 common stock (as adjusted under Treas. Reg. § 1.358-1) will be allocated between the Controlled 1 common stock with respect to which Distribution 3 is made and the Sub 3 common stock received in Distribution 3 with respect to the Controlled 1 common stock in proportion to their fair market values. Section 358(b) and (c); Treas. Reg. § 1.358-2.
 20. Distributing's holding period in the Sub 3 common stock received in Distribution 3 will include the holding period of the Controlled 1 common stock with respect to which the distribution of the Sub 3 common stock is made, provided that the Controlled 1 common stock is held as a capital asset on the date of Distribution 3. Section 1223(1).
 21. Earnings and profits (if any) will be allocated between Sub 3 and Controlled 1 in accordance with § 312(h) and Treas. Reg. §§ 1.312-10(b) and 1.1502-33(e)(3).
 22. The Controlled 1 Cash Distribution will be treated, for U.S. federal income tax purposes, as a distribution of property under section 301, and will be treated as having been made immediately prior to Distribution 3.
 23. No gain or loss will be recognized by Distributing on Distribution 4. Section 355(c).

24. No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing's shareholders upon their receipt of Controlled 1 stock in Distribution 4. Section 355(a).
25. Each Distributing shareholder's basis in its Distributing Common Stock (as adjusted under Treas. Reg. § 1.358-1) will be allocated between the Distributing Common Stock with respect to which Distribution 4 is made and the Controlled 1 stock (or allocable portions thereof) received in Distribution 4 with respect to such Distributing Common Stock in proportion to their fair market values. Section 358(b) and (c); Treas. Reg. § 1.358-2.
26. Each Distributing shareholder's holding period in the Controlled 1 common stock received in Distribution 4 will include the holding period of the Distributing Common Stock with respect to which the distribution of Controlled 1 common stock is made, provided that the Distributing Common Stock is held as a capital asset on the date of Distribution 4. Section 1223(1).
27. Earnings and profits (if any) will be allocated between Distributing and Controlled 1 in accordance with § 312(h) and Treas. Reg. §§ 1.312-10(b) and 1.1502-33(e)(3).
28. A Distributing shareholder that receives cash in lieu of a fractional share of Controlled 1 common stock will recognize gain or loss measured by the difference between the basis of the fractional share received and the amount of cash received. Section 1001. Any gain or loss will be treated as capital gain or loss, provided the fractional share of stock is held as a capital asset on the date of Distribution 4. Sections 1221 and 1222.
29. Except for purposes of § 355(g), any post-Distribution 4 payments made by Distributing or any of its affiliates to Controlled 1 or any of its affiliates, or vice versa, that (i) have arisen or will arise with respect to a taxable period ending on or before Distribution 4 or for a taxable period beginning on or before and ending after Distribution 4 and (ii) will not have become fixed and ascertainable until after Distribution 4 will be treated as occurring immediately before Distribution 4. See Arrowsmith v. Comm'r, 344 U.S. 6, 73 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.

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, 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,

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

cc: