

Internal Revenue Service

Number: **202310007**

Release Date: 3/10/2023

Index Number: 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:B01

PLR-116094-22

Date:

December 13, 2022

Legend

Distributing =

Controlled =

DRE 1 =

DRE 2 =

DRE 3 =

DRE 4 =

PRS 1 =

PRS 2 =

PRS 3 =

PRS 4 =

Entity 1 =

Entity 2 =

State A =

State B =

State C =

State D =

Business A =

Business B =

Services
Agreement =

Overlapping
Board Members =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

Dear :

This letter responds to your letter dated August 22, 2022, as supplemented by subsequent information and documentation, requesting rulings on certain federal income tax consequences of a series of transactions (the “Proposed Transaction”). The material information submitted in that request and in subsequent correspondence is summarized below.

This letter is issued pursuant to Rev. Proc. 2017-52, 2017-41 I.R.B. 283, regarding one or more “Covered Transactions” under sections 355 and 368 of the Internal Revenue Code (the “Code”) and pursuant to Rev. Proc. 2022-10, 2022-6 I.R.B. 473. This Office expresses no opinion as to any issue not specifically addressed by the rulings below.

The rulings contained in this letter are based upon 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 on examination.

This Office has made no determination regarding whether the Distribution (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 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 section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

Summary of Facts

Distributing, a publicly traded State A corporation, is the parent of a worldwide group that includes both domestic and foreign entities (the “Distributing Group”). Distributing has shares of common stock and convertible preferred stock outstanding. As part of its share-based compensation plan, Distributing also has outstanding restricted stock units (“RSUs”), stock options, and restricted stock.

Distributing owns all of the outstanding equity interests in (i) DRE 1, a State B limited liability company that is disregarded as an entity separate from Distributing for federal income tax purposes (a “disregarded entity”); and (ii) DRE 2, a State C limited liability company that is a disregarded entity.

DRE 2 directly owns all of the outstanding equity interests in DRE 3, a State D limited liability company that is a disregarded entity. DRE 3 directly owns all of the outstanding equity interests in DRE 4, a State B limited liability company that is a disregarded entity. DRE 4 directly owns a percent (a “significant interest” within the meaning of Rev. Rul. 2007-42, 2007-2 C.B. 44) of the outstanding equity interest in PRS 1, a State B limited liability company that is classified as a partnership for federal income tax purposes. The remaining b percent interest in PRS 1 is owned by Entity 1, an unaffiliated limited liability company. In addition, certain employees of Business B hold management incentive units structured as profits interests for federal income tax purposes (the “PRS 1 MIUs”), reflecting an equity interest in PRS 1 of less than c percent of the total outstanding equity interest in PRS 1, which dilute proportionately the ownership interest in PRS 1 held by DRE 4 and Entity 1.

DRE 1 owns approximately d percent and e percent, respectively, of the outstanding equity interests in PRS 2 and PRS 3, each a State B limited partnership that is classified as a partnership for federal income tax purposes. The remaining equity interests in PRS 2 and PRS 3 are owned by unaffiliated persons. PRS 2 and PRS 3 own f and g percent, respectively, of the outstanding equity interests in PRS 4, a State B limited

liability company that is classified as a partnership for federal income tax purposes. The remaining equity interests in PRS 4 are owned by Entity 2, an unaffiliated limited liability company, and certain employees of PRS 4 that hold management incentive units structured as profits interests for federal income tax purposes (the “PRS 4 MIUs”), reflecting an ownership interest in PRS 4 of less than c percent of the total outstanding equity interest in PRS 4, which dilute proportionately the ownership interest in PRS 4 held by PRS 2, PRS 3, and Entity 2.

The Distributing Group is engaged in Business A and Business B. For purposes of satisfying the active trade or business requirement of section 355(b) with respect to the Distribution (defined below), Distributing will rely on Business A conducted by Distributing and members of its “separate affiliated group” as defined in section 355(b)(3)(B), and Controlled will rely on Business B conducted by Controlled through PRS 1. Financial information has been submitted in accordance with Rev. Proc. 2017-52 indicating that each of Business A and Business B has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Prior to the Proposed Transaction, DRE 1 will merge with and into Distributing, with DRE 1 ceasing to exist and Distributing as the surviving legal entity.

Proposed Transaction

For what are represented to be valid business reasons, Distributing will undertake the following steps (the Proposed Transaction) to separate Business B from Business A:

1. Entity 1 will transfer its entire interest in PRS 1 to DRE 4 in repayment of loans owing by Entity 1 to DRE 4.
2. Certain holders of the PRS 1 MIUs will transfer all or a portion of their interests in PRS 1 to DRE 4 in repayment of loans owing by such holders to Distributing or a subsidiary of Distributing.
3. DRE 4 will contribute its entire interest in PRS 1 (approximately h percent of the issued and outstanding equity interests in PRS 1) to Controlled, a newly formed State B corporation, solely in exchange for Controlled stock (the “First Contribution”).
4. The remaining holders of the PRS 1 MIUs will contribute their entire interest in PRS 1 (hereafter, “DRE 5”) to Controlled solely in exchange for approximately i percent of the Controlled stock (the “Second Contribution”).
5. DRE 4 will distribute all of the Controlled stock received in the First Contribution to DRE 3.
6. DRE 3 will distribute all of the Controlled stock received from DRE 4 to DRE 2.

7. DRE 2 will distribute all of the Controlled stock received from DRE 3 to Distributing.
8. Each of PRS 2, PRS 3, Entity 2 and the holders of the PRS 4 MIUs will transfer their entire interest in PRS 4 (hereafter, "DRE 6") to Controlled solely in exchange for shares of Controlled stock (the "Third Contribution").
9. Each of PRS 2 and PRS 3 will distribute all of the Controlled stock received in the Third Contribution to their partners, including Distributing, on a pro rata basis.
10. Controlled will enter into a new revolving credit facility, the proceeds of which will be used by Controlled to repay the existing credit facilities of DRE 5 and DRE 6.
11. Distributing will distribute its entire interest in Controlled (constituting at least j percent of the outstanding stock of Controlled) to the holders of Distributing common stock (the "Public Shareholders") (the "Distribution").

In connection with the Distribution, certain employees and/or non-employee directors of Controlled will receive Controlled RSUs (the "Controlled RSU Grant"), and certain holders of Distributing RSUs, Distributing stock options, and Distributing restricted stock will receive Controlled RSUs, Controlled stock options, and shares of Controlled restricted stock (collectively, the "Equity Award Adjustment").

Following the Distribution, certain individuals will serve as members of the boards of each of Distributing and Controlled (the "Overlapping Board Members"). The Overlapping Board Members will constitute a minority of the boards of each of Controlled and Distributing and will be subject to reelection under normal board election procedures. The Overlapping Board Members will at all times have a minority voting power with respect to each of the boards of Distributing and Controlled.

Other than services performed by certain employees of Business B on behalf of a majority owned subsidiary of Distributing pursuant to the Services Agreement, there will be no other continuing relationships between Distributing and Controlled after the Distribution. The Services Agreement will be based on arm's length terms and conditions.

Representations

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.

1. Distributing has made the following alternative representations: 3(a), 8(b), 11(a), 15(b), 22(a), 31(a) and 41(a).
2. Distributing has not made the following representations, which do not apply to the Proposed Transaction: 7, 19, 20, 24, 25 and 40.

3. Distributing has made the following modified representations and provided the required explanation:

Representation 35: The payment of cash in lieu of fractional shares of Controlled stock will be solely for the purpose of avoiding the expense and inconvenience of issuing fractional shares and will not represent separately bargained-for consideration. The fractional share interests of each of the Public Shareholders will be aggregated, and none of the Public Shareholders will receive cash in an amount equal to or greater than the value of one full share of Controlled stock (with the possible exception of shareholders who hold Controlled stock in multiple accounts or with multiple brokers).

Representation 42: Distributing will not have been a U.S. real property holding corporation (as defined in section 897(c)(2)) at any time during the five-year period preceding the Distribution, and Distributing will not be a U.S. real property holding corporation immediately after the Distribution.

Representation 46: Other than shares of Controlled stock issued in the Second Contribution and Third Contribution, pursuant to which transferors other than Distributing will receive, in the aggregate, shares of Controlled common stock constituting no more than k percent of the total issued and outstanding stock of Controlled, Controlled will not issue stock or securities to a person other than Distributing in anticipation of the Distribution.

Rulings

Based solely on the information submitted and the representations made, we rule as follows with respect to the Proposed Transaction:

1. The First 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. Distributing will recognize no gain or loss on the First Contribution except that gain will be recognized to the extent that liabilities of Distributing assumed by Controlled exceed Distributing’s basis in the property transferred. Sections 361(a) and 357(a) and (c). Rev. Rul. 80-323, 1980-2 C.B. 124.
3. Controlled will recognize no gain or loss on the First Contribution. Section 1032(a).
4. Controlled’s basis in the h percent undivided interest in the assets of PRS 1 received by Controlled attributable to Distributing’s interest in PRS 1 will equal the basis of Distributing in its PRS 1 interest allocated in accordance with section 732(c). Rev. Rul. 84-111 Situation 3, 1984-2 C.B. 88 and section 362(b).
5. Controlled’s holding period for the h percent undivided interest in the assets of PRS 1 received by Controlled attributable to Distributing’s interest in PRS 1 will include the

period during which PRS 1 held the assets. Rev. Rul. 84-111 Situation 3 and section 1223(2).

6. Distributing will recognize no gain or loss upon the Distribution. Section 361(c).

7. The Public Shareholders will recognize no gain or loss (and no amount will be included in income) upon the receipt of Controlled stock in the Distribution. Section 355(a).

8. The aggregate basis of the Distributing stock and the Controlled stock in the hands of the Public Shareholders immediately after the Distribution (including any fractional share interest in Controlled stock to which the shareholder may be entitled) will equal the aggregate basis of the Distributing stock held by the Public Shareholders immediately before the Distribution, allocated between the Distributing stock and Controlled stock in proportion to the fair market value of each immediately following the Distribution in accordance with Treas. Reg. § 1.358-2(a)(2). Section 358(a) through (c).

9. The holding period of the Controlled stock received by the Public Shareholders in the Distribution (including any fractional share interest in Controlled stock to which the Public Shareholders may be entitled) will equal the holding period of the Distributing stock with respect to which the distribution of the Controlled stock will be made, provided that the Distributing stock is held as a capital asset on the date of the Distribution. Section 1223(1).

10. Earnings and profits will be allocated between Distributing and Controlled in accordance with section 312(h) and Treas. Reg. § 1.312-10(a).

11. The receipt by the Public Shareholders of cash in lieu of fractional shares, if any, of Controlled stock will be treated for federal income tax purposes as if the fractional shares had been distributed to the Public Shareholders as part of the Distribution and then had been disposed of by such shareholders for the amount of such cash in a sale or exchange. Gain (or loss) recognized (determined using the basis allocated to the fractional shares in Ruling 8), if any, will be treated as capital gain (or loss) under section 1001, provided the stock was held as a capital asset by the selling Public Shareholder. Such gain (or loss) will be short-term or long-term capital gain (or loss) determined using the holding period provided in Ruling 9.

12. The Controlled stock options and Controlled RSUs issued as part of the Equity Award Adjustment and Controlled RSU Grant (and any Controlled shares underlying or issued pursuant to any such rights) are not taken into account for purposes of determining whether Distributing distributed an amount of Controlled stock constituting control under section 368(c) in the Distribution.

Caveats

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

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 ruling letter is 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 this ruling letter.

Sincerely,

Kelly E. Madigan

Kelly E. Madigan
Senior Counsel, Branch 1
Office of Chief Counsel (Corporate)

cc: