

Internal Revenue Service

Number: **202224012**

Release Date: 6/17/2022

Index Number: 355.00-00, 355.01-00,
361.00-00, 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:B2

PLR-119264-19

Date:

February 14, 2020

Legend

Distributing =

Controlled =

Business A =

Business B =

Business C =

DRE 1 =

DRE 2 =

DRE 3 =

DRE 4 =

DRE 5 =

DRE 6 =

DRE 7 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Specified Date =

Revolver =

Distributing
Debt A =

Distributing
Debt B =

Distributing
Debt C =

Distributing
Debt D =

Distributing
Debt E =

Distributing
Debt =

a =

b =

c =

d =

e =

f =

State A =

State B =

Business A
Acquisitions =

Business A
Purchase =

Business B
Investment =

Business C =
Sale

Post- =
Separation
Payments

Dear :

This letter responds to your letter dated August 19, 2019, requesting rulings on certain federal tax consequences of a series of transactions (the “Proposed Transaction”). The material information submitted in that request and subsequent correspondence is summarized below.

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. 2019-1, 2019-01 I.R.B. 1, regarding one or more significant issues under section 355 of the Code that only address one or more discrete legal issues involved in the transaction.

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 Office expresses no opinion as to the overall tax consequences of any issue not specifically addressed by the rulings below.

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). In addition, no opinion is expressed regarding the consequences to any person under section 897 as a result of the transactions described below, including but not limited to (i) whether any gain is recognized under section 897 and (ii) whether Distributing was at any time a United States real property holding corporation during the five-year period immediately preceding the date of the Distribution.

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 U.S. federal income tax return. The authorized and outstanding capital stock of Distributing consists of one class of common stock.

Distributing owns all the interests in DRE 1, DRE 2, DRE 3, and DRE 4, each a State A limited liability company. Distributing also owns all of the interests in DRE 5, a State B limited liability company. DRE 5 owns all of the interests in DRE 6, a State A limited liability company. As part of the Proposed Transaction, DRE 1 will form DRE 7, a State A limited liability company. Each of DRE 1, DRE 2, DRE 3, DRE 4, DRE 5, DRE 6, and DRE 7 is treated as a disregarded entity for federal income tax purposes (a “DRE”).

Distributing directly and indirectly is engaged in Business A, Business B, and Business C. DRE 2, DRE 5, DRE 6, and DRE 7 (collectively, the “Business A Entities”) hold (or in the case of DRE 6 and DRE 7, will hold) assets used in Business A. DRE 3 and DRE 4 (collectively, the “Business C Entities”) hold assets used in Business C. If the Business C Sale is not completed prior to the Distribution, then DRE 7 will also hold some assets used in Business C. Financial information has been submitted indicating that each of Business A and Business B has had gross receipts and operating expense representing the active conduct of a trade or business for each of the past five years.

On Date 1, Distributing’s board of directors approved a plan to repurchase up to a shares of Distributing’s outstanding stock (the “Stock Buyback Plan”). On Date 2 and in connection with the Stock Buyback Plan, Distributing increased its borrowing capacity under the Revolver. On Date 3, Distributing’s board of directors approved its intention to pursue the separation of Business A and Business B (the “Separation”). On Date 4, the Stock Buyback Plan was completed.

Subsequent to Date 3 and independent of the Separation, Distributing entered into negotiations for the Business A Purchase, which is expected to be completed prior to the Distribution. Also subsequent to Date 3 and independent of the Separation, Distributing entered into negotiations for the Business C Sale, which is expected to be completed prior to the Distribution.

As of the Specified Date, Distributing had amounts outstanding under: (i) Distributing Debt A, (ii) Distributing Debt B (borrowed under the Revolver), and (iii) Distributing Debt E. After the Specified Date, Distributing incurred Distributing Debt C by increasing its borrowing under the Revolver to fund share repurchases pursuant to the Stock Buyback Plan, and Distributing will incur Distributing Debt D to fund the Business A Purchase. The assets acquired in the Business A Purchase will be used in Business A.

Prior to the completion of the Contribution (defined below), Distributing anticipates repaying up to \$b of the sum of the amounts outstanding under Distributing Debt B and Distributing Debt C.

After the Distribution, Distributing and/or certain of its subsidiaries, on the one hand, and Controlled and/or certain of its subsidiaries, on the other hand, will have continuing relationships (any continuing, planned, or intended transaction, a "Continuing Transaction"). Payments made in connection with a Continuing Transaction, if any, will be for fair market value based on arm's length terms (or possibly based on cost or cost-plus for certain transitional services or other transitional arrangements for a period not to exceed c years), and will not be inconsistent with the overall separation of Business A and Business B.

Distributing has engaged in open market repurchases of its common stock for several years. Distributing and/or Controlled may engage in open market repurchases or accelerated share repurchases of its respective common stock after the Distribution.

Proposed Transaction

For what are represented to be valid business purposes, Distributing proposes to engage in the following steps, which comprise the Proposed Transaction. The steps (and certain portions of the steps) may occur in a different order than described below:

- (1) Distributing will form Controlled.
- (2a) DRE 1 will form DRE 7 and contribute to DRE 7 certain assets related to Business A (and, if the Business C Sale is not completed prior to the Distribution, certain assets related to Business C) in exchange for the membership interests in DRE 7.
- (2b) DRE 1 will distribute all of the membership interests of DRE 7 to Distributing.
- (3) Intercompany payables and receivables between Distributing and entities that will continue as subsidiaries of Distributing following the Distribution, on the one hand, and Controlled and entities that will be subsidiaries of Controlled following the Distribution, on the other hand, will be satisfied or extinguished by cash payment, contributions, and/or distributions.
- (4) Distributing will contribute the Business A Entities (which hold the assets acquired in the Business A Purchase, among other assets) to Controlled in exchange for (i) Controlled stock, (ii) the assumption of liabilities (which liabilities will be transferred to Controlled on or before the date of the Distribution (Step 8)), and (iii) cash (the "Controlled Cash") (the "Contribution"). If the Business C Sale is not completed prior to the Distribution, then Distributing will also contribute the Business C Entities to Controlled as part of the Contribution. Distributing will not segregate or otherwise trace the cash exchanged.

- (5) No later than the date of the Distribution (Step 8), Controlled will incur third party indebtedness. Some or all of the net proceeds received by Controlled from the incurrence of such indebtedness may be held in escrow until Step 6.
- (6) No later than the date of the Distribution (Step 8), Controlled will transfer the Controlled Cash to Distributing. Distributing will transfer (or cause to be transferred) an amount of money at least equal to the amount of the Controlled Cash (the "Purge Cash Amount") to creditors of Distributing to repay, redeem, satisfy, discharge, or otherwise retire one or more of the following (each, a "Purging Distribution" and collectively the "Purging Distributions"): (i) Distributing Debt A, plus any accrued and unpaid interest and any redemption premium or "make-whole" payment in respect thereof (the "Make-Whole Obligation"); (ii) all or a portion of the sum of the amounts outstanding under (a) Distributing Debt B and (b) Distributing Debt C, plus in each case, accrued and unpaid interest in respect thereof; (iii) all or a portion of Distributing Debt D, plus any accrued and unpaid interest in respect thereof; and/or (iv) Distributing Debt E.
- (7) No later than the date of the Distribution (Step 8), Distributing will (i) incur third party indebtedness, and (ii) use proceeds from such indebtedness to refinance the balance, if any, of the Revolver and Distributing Debt D that remains outstanding following Step 6, and for ordinary course business needs.
- (8) Distributing will distribute all of the issued and outstanding stock of Controlled pro rata to its shareholders (the "Distribution").

The effective division of outstanding Distributing debt and the resulting capital structure for each of Distributing and Controlled immediately after the Distribution will be determined in a manner that Distributing's management and board of directors believe is appropriate for Distributing and Controlled, respectively, taking into account each corporation's business, industry, projected income and cash flow, and certain other factors.

It is anticipated that Distributing's board of directors will consist of at least d members and that Controlled's board of directors will consist of at least e members following the Distribution. No more than f individuals will serve as members of the boards of both Distributing and Controlled.

Representations

With respect to the Proposed Transaction, Distributing has made all of the representations in section 3 of the Appendix to Rev. Proc. 2017-52, 2017-41 I.R.B. 283, except as set forth below.

Distributing has made the following alternative representations:

Representations 3(a), 15(a), 22(a), 31(a), and 41(a).

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

Representations 7, 20, 24, 25, 39, 40, and 42.

Distributing has made the following modified representations:

Representation 2: In the Distribution, Distributing will distribute on the same day all the stock of Controlled that it holds immediately before the Distribution.

Representation 5: None of the Controlled stock to be distributed in the Distribution will be received in any capacity other than that of a shareholder of Distributing.

Representation 8(b): Distributing has securities outstanding, but other than as described in the steps of the Separation (e.g., portion of the Purge Cash Amount transferred to repay Distributing Debt A, Distributing Debt B, Distributing Debt C, or Distributing Debt D), it will not distribute Controlled stock, Controlled securities, or Other Property to any holder of such securities in the Distribution, in satisfaction thereof.

Representation 10: Other than with respect to the Business A Acquisitions and the Business B Investment, with respect to the business relied on by each of Distributing or the DSAG and Controlled or the CSAG to meet the active trade or business requirement of section 355(b), there have been no substantial operational changes since the end of the taxpayer's most recent taxable year.

Representation 11(a): Other than the services (and potential lease or sub-lease of office space) provided as part of the Continuing Transactions or by independent contractors, following the Distribution, Distributing or the DSAG and Controlled or the CSAG 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 section 355(b).

Representation 23: Except for services (and potential lease or sub-lease of office space) provided as part of the Continuing Transactions, the transaction does not involve and will not result in a situation in which one party recognizes income but another party

recognizes the deductions associated with such income or a situation in which one party owns Property but another party recognizes income associated with such Property.

Representation 32: Other than potentially as a result of the Continuing Transactions, no intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution of Controlled stock.

Representation 46: Controlled will not issue securities (other than potentially indebtedness issued in Step 5) or stock to a person other than Distributing in anticipation of the Distribution.

In addition, except as set forth below, Distributing has made all of the representations in Section 3.04 of Rev. Proc. 2018-53, 2018-43 I.R.B. 667.

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

Representation 6.

Distributing has made the following modified representations:

Representation 4: Except with respect to Distributing Debt C, Distributing Debt D, Distributing Debt E, and the Make-Whole Obligation, Distributing incurred the Distributing Debt that will be assumed or satisfied (a) before the request for any relevant ruling was submitted and (b) no later than 60 days before the earliest of the following dates: (i) the date of the first public announcement (as defined in Treas. Reg. § 1.355-7(h)(10)) of the Divisive Reorganization (as defined in section 1 of Rev. Proc. 2018-53, 2018-43 I.R.B. 667) or a similar transaction, (ii) the date of the entry by Distributing into a binding agreement to engage in the Divisive Reorganization or a similar transaction, and (iii) the date of approval of the Divisive Reorganization or a similar transaction by the board of directors of Distributing.

Representation 5: The total adjusted issue price (determined under Treas. Reg. § 1.1275-1(b)) of Distributing Debt that will be assumed or satisfied (less the total adjusted issue price (determined under Treas. Reg. § 1.1275-1(b)) of Distributing Debt D) does not exceed the historic average of the total adjusted issue price of (a) Distributing Debt (as such term is defined in section 3.01 of Rev. Proc. 2018-53) owed to persons other than Related Persons and (b) obligations that are evidenced by debt instruments (defined in Treas. Reg. § 1.1275-1(d)) that are not contingent payment debt instruments subject to Treas. Reg. § 1.1275-4 and are owed by other members of Distributing's separate affiliated group (within the meaning of section 355(b)(3)(B)) to persons other than Related Persons.

Representation 7: Distributing will not replace any Distributing Debt that will be assumed or satisfied with previously committed borrowing, other than borrowing in the ordinary course of business pursuant to a revolving credit agreement or similar arrangement, or

a borrowing pursuant to the Revolver to fund an acquisition of assets to be used in Business B.

Additionally, Distributing has made the following representations.

- (1) The amount equal to the adjusted basis of the assets contributed by Distributing to Controlled in the Contribution reduced by the amount of liabilities assumed (within the meaning of section 357(c)) will exceed the Controlled Cash.
- (2) Distributing Debt C would not have been incurred absent share repurchases pursuant to the Stock Buyback Plan.
- (3) Any increase in Distributing Debt subsequent to the Specified Date resulted (or will result) from Distributing Debt C, ordinary course business needs, Distributing Debt D, and expenses incurred to effectuate the Distribution.
- (4) All redemptions undertaken pursuant to the Stock Buyback Plan were motivated, in whole or in significant part, by a belief that share price was undervalued and an expectation that the share value of Distributing stock or Controlled stock, as applicable, would be favorably impacted and, in turn, such favorable impact would among other things, facilitate the growth of both Business A and Business B. Such redemptions were not motivated by a desire to increase or decrease the ownership percentage of any particular shareholder or group of less than all of the shareholders. All other redemptions, either by Distributing or Controlled, will be motivated by a corporate business purpose and will not be motivated by a desire to increase or decrease the ownership percentage of any particular shareholder or group of less than all of the shareholders.

Rulings

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

- (1) The Contribution and the Distribution, together, will be 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).
- (2) Except to the extent that the amount of the Purging Distributions is less than the Purge Cash Amount, Distributing will not recognize gain or loss on the Contribution. Section 361.
- (3) Controlled will not recognize gain or loss on the Contribution. Section 1032(a).
- (4) Controlled's basis in the assets received in the Contribution will be the same as the basis of such assets in the hands of Distributing immediately before its

transfer, increased by the amount of gain, if any, recognized by Distributing on the transfer. Section 362(b).

- (5) Controlled's holding period in each asset received in the Contribution will include the period during which Distributing held the asset. Section 1223(2).
- (6) Distributing will not recognize gain or loss on the Distribution. Section 361(c).
- (7) Except to the extent required under section 897, no gain or loss will be recognized by (and no amount will otherwise be included in the income of) the Distributing shareholders upon the receipt of the Controlled stock in the Distribution. Section 355(a).
- (8) Except to the extent required as a result of section 897, the aggregate basis of the Distributing stock and the Controlled stock in the hands of each Distributing shareholder immediately after the Distribution will be the same as such Distributing shareholder's basis in the Distributing stock immediately before the Distribution, allocated between the Distributing stock and the 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)(iv). Section 358(b)(2) and (c).
- (9) Except to the extent required as a result of section 897, each Distributing shareholder's holding period in the Controlled stock received will include the holding period of the Distributing common stock with respect to which the Distribution is made, provided that the Distributing common stock is held as a capital asset on the date of the Distribution. Section 1223(1).
- (10) Earnings and profits (if any) will be allocated between Distributing and Controlled in accordance with section 312(h) and Treas. Reg. § 1.312-10(a) and 1.1502-33(e)(3).
- (11) A Distributing shareholder that received cash in lieu of a fractional share of Controlled 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. Except to the extent required as a result of section 897, any gain or loss will be treated as capital gain or loss, provided the fractional share of stock was held as a capital asset on the date of the Distribution. Section 1221 and 1222.
- (12) Except for purposes of section 355(g), any Post-Separation Payments made by Distributing or any of its affiliates to Controlled or any of its affiliates, or vice versa, with respect to obligations that (i) have arisen or will arise with respect to a taxable period ending on or before the Distribution or for a taxable period beginning on or before and ending after the Distribution and (ii) will not have become fixed and ascertainable until after the Distribution will be treated as

occurring immediately before the Distribution. See *Arrowsmith v. Comm’r*, 344 U.S. 6, 73 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.

- (13) To the extent open market share repurchases or accelerated share repurchases of (i) Distributing common stock from shareholders who are not “controlling shareholders” or “ten-percent shareholders” within the meaning of Treas. Reg. § 1.355-7(h)(3) and (14) (shareholders that are not controlling shareholders or ten-percent shareholders, “Public Shareholders”) before the Distribution or (ii) Distributing or Controlled common stock from Public Shareholders after the Distribution are treated as part of a plan (or series of related transactions) with the Distribution for purposes of section 355(e) (“Share Repurchases”), such Share Repurchases will be treated as being made from all Public Shareholders of Distributing or Controlled common stock, as applicable, on a pro rata basis for the purpose of testing the effect of such redemptions on the Distribution under section 355(e). For purposes of this ruling, each shareholder will be treated as a Public Shareholder until five business days after the first to occur of (i) Actual Knowledge (defined below) or (ii) the filing of a Schedule 13D, Schedule 13G, Form 3, or Form 4 indicating it holds enough shares to be considered a “five-percent shareholder” within the meaning of Treas. Reg. § 1.355-7(h)(8) (and it actively participates in the management or operation of Distributing or Controlled, as applicable, as described in Treas. Reg. § 1.355-7(h)(3)) or a “ten-percent shareholder” within the meaning of Treas. Reg. § 1.355-7(h)(14). For purposes of determining whether a five-percent shareholder or ten-percent shareholder exists, Distributing or Controlled may disregard a Schedule 13G unless Item 6 reports such a shareholder or is left blank, or the filer discloses its status as a ten-percent shareholder on Form 3 or Form 4. Actual Knowledge means the actual knowledge of the Chief Financial Officer, the General Counsel, or a successor position at Distributing, or in the case of redemptions by Controlled, at Controlled.
- (14) Following the Distribution, Controlled will not be a successor of Distributing for purposes of section 1504(a)(3). Therefore, Controlled and its direct and indirect subsidiaries that are “includable corporations” under section 1504(b) and satisfy the ownership requirements of section 1504(a)(4) will be members of an affiliated group of corporations eligible to file a consolidated U.S. federal income tax return with Controlled as the common parent.

Caveats

No opinion is expressed or implied concerning the tax consequences of any other aspect of any transaction or item discussed or referenced in this letter.

Procedural Statements

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter must be attached to the federal income tax return of each taxpayer involved for the taxable year in which the transactions described herein are completed. Alternatively, a taxpayer filing its return electronically may satisfy this requirement by attaching a statement to its federal income tax return that sets forth the date and control number of this ruling letter.

Under a power of attorney on file with this Office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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

cc: