

Internal Revenue Service

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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:1

PLR-103960-18

Date:

August 09, 2018

In Re:

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

DRE1 =

DRE2 =

DRE3 =

DRE4 =

DRE5 =

DRE6 =

DRE7 =

DRE8 =

FSub =

FDRE1 =

FDRE2 =

FDRE3 =

PRS1 =

PRS2 =

State X =

Country 1 =

Country 2 =

Business Group A =

Business Group B =`

Business 1 =

Business 2 =

Business 3 =

Business 4 =

Business 5 =

Business 6 =

Business 7 =

Business 8 =

Property 1 =

Property 2 =

Property 3 =

Property 4 =

Property 5 =

Property 6 =

Property 7 =

Property 8 =

Products =

Services =

Dear :

This letter responds to your letter dated February 12, 2018, as supplemented by subsequent submissions, submitted by your authorized representatives, requesting rulings on certain federal income tax consequences of a proposed transaction. The information submitted 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 section 355 and/or section 368 of the Internal Revenue Code (the “Code”). This Office expresses no opinion as to any issue not specifically addressed by the rulings below.

The rulings contained in this letter are based on 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 as part of the audit process.

This office has made no determination regarding whether the Distribution (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 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. § 1.355-8T (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

Summary of the Facts

Distributing is a State X publicly traded corporation and the common parent of an affiliated group filing a consolidated return. Distributing and entities that it owns directly or indirectly conduct the businesses of Business Group A and Business Group B. Business Group A includes Business 1, Business 2, and Business 4. Business Group B includes Business 3, Business 5, Business 6, Business 7, and Business 8. Distributing is relying on Businesses 1 and 2 to meet the “active business” requirement of Section 355(b) for Distributing, and Business 3 to meet the “active business” requirement for Controlled. Distributing conducts these businesses through domestic corporate subsidiaries (referred to as Subs), domestic entities that are disregarded as separate from their owners for federal income tax purposes (referred to as DREs); one foreign corporation (FSub), and foreign entities disregarded as separate from their owners for United States income tax purposes (referred to as FDREs).

Distributing conducts Business 1 through, among other entities, DRE1, which is owned by Distributing; Sub 9, which is owned by DRE1; FDRE3, which is owned by DRE1 directly and through another disregarded entity owned by DRE1; and DRE5, which is owned by DRE1. Sub 9 owns Property 1.

Distributing conducts Business 2 through Sub 1, which is owned by Distributing, and entities owned by Sub 1. Sub 1 also owns a minority interest in two partnerships, PRS 1 and PRS 2; unrelated parties own the remaining interests in those partnerships.

Distributing conducts Business 3 through, among other entities, Sub 2, Sub 3, Sub 4, FSub (a Country 1 corporation), DRE2, DRE3, and DRE4, which are owned by Distributing; FDRE1, a Country 2 entity owned by FSub directly and through disregarded entities owned by FSub, and FDRE2, a Country 2 entity owned by FDRE1. FDRE2 owns Property 2, Property 4, Property 5, Property 6, and Property 7.

Business 4 is conducted by Sub 8, which is owned by Distributing, and DRE8, which is owned by Sub 8. Sub 8 owns Property 8, and DRE8 owns Property 3, at which DRE6 maintains equipment.

Business 5 is conducted by DRE6 and DRE7, which are owned by DRE5. Business 6 is conducted by Sub 5, which is owned by Distributing. Business 7 is conducted by Sub 6 which is owned by Distributing. Business 8 is conducted by Sub 7, which is owned by Distributing.

Controlled is a domestic corporation that has been formed for purposes of the proposed transaction.

Financial information has been received indicating that Business 1, Business 2, and Business 3, as conducted by Distributing's separate affiliated group (DSAG), as defined in section 355(3)(B), have had gross receipts and operating expenses representing the active conduct of a trade or business for at least the past five years. After the proposed transaction, the DSAG will continue to operate Business Group A, including Business 1 and Business 2, and members of Controlled's separate affiliated group (CSAG), as defined in section 355(b)(3)(B), will continue to operate Business Group B, including Business 3.

Proposed Transactions

For what are represented to be valid business purposes, Distributing proposes to separate Business Group B from Business Group A by the following transactions (the "Proposed Transactions"):

- (i) DRE6 will sell the equipment located at Property 3 to DRE8.
- (ii) DRE5 will distribute the membership interests in DRE6 and DRE7 to DRE1.
- (iii) DRE1 will distribute the membership interests of DRE6 and DRE7 to Distributing.

(iv) FDRE3 will purchase a portion of Property 4, all of Property 5, all of Property 6, and part of Property 7 from FDRE2.

(v) Sub 8 will sell Property 8 to DRE3.

(vi) Distributing will contribute the stock or interests in the following entities to Controlled, which contribution will include all other entities owned directly or indirectly by these entities (the "Contribution"):

(a) DRE6 and DRE7;

(b) Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, and Sub 7;

(c) FSub, and

(d) DRE2, DRE3, and DRE4.

(vii) Distributing will distribute all the stock of Controlled to its shareholders (the "Distribution"). Any Distributing shareholder that would otherwise be entitled to a fractional share of Controlled stock is expected to receive cash in lieu of a fractional share.

After the Contribution and the Distribution, Distributing will provide transition services to Controlled pursuant to a Transition Services Agreement. These services may include administrative, tax, treasury, human resources, financial reporting, cash management, payroll, information technology services, and other services relating to Business Group B. The Transition Service Agreement will last for no more than two years, but any of these services can be provided beyond that period only if the parties mutually agree and the services are provided at prices determined by arms-length negotiations. There will also be a Tax Matters Agreement between Distributing and Controlled relating to the tax treatment of the Distribution.

In addition, after the Contribution and the Distribution, the following transactions will occur between Distributing or entities under Distributing and Controlled or entities under Controlled:

(a) Entities engaged in Business 5 will sell Products to Distributing or entities under Distributing.

(b) Business 4 under Distributing may continue to provide Services to entities under Controlled.

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(c) DRE7 will continue to lease part of Property 1 from Sub 9.

- (d) FDRE2 will lease Property 2 to FDRE3.

Representations

Except as set forth below, Distributing makes all of the representations set forth in section 3 of the Appendix to Rev. Proc. 2017-52, 2017-41 I.R.B. 283, in the form set forth therein.

Distributing does not make representations 7, 24, and 25 because they do not apply to the proposed transaction.

Regarding the representations in which Rev. Proc. 2017-52 provides alternative representations, Distributing makes the following alternative representations:

- (a) Representation 3: Alternative (a).
- (b) Representation 8: Alternative (b).
- (c) Representation 11: Alternative (a).
- (d) Representation 15: Alternative (a)
- (e) Representation 22: Alternative (a)
- (f) Representation 31: Alternative (a).
- (g) Representation 41: Alternative (a).

Rulings

Based solely on the information submitted and the representations referred to above, we rule as follows:

1. The Contribution, followed by the Distribution, will be a reorganization under section 368(a)(1)(D). Distributing and Controlled each will be a “party to a reorganization” within the meaning of section 368(b).
2. No gain or loss will be recognized by Distributing on the Contribution (sections 357(a) and 361(b)).
3. No gain or loss will be recognized by Controlled on the Contribution (section 1032(a)).

4. The basis in each asset received by Controlled in the Contribution will be the same as the basis of that asset in the hands of Distributing immediately before the Contribution (section 362(b)).

5. The holding period in each asset received by Controlled in the Contribution will include the period during which Distributing held that asset (section 1223(2)).

6. No gain or loss will be recognized by Distributing on the distribution of Controlled stock to its shareholders in the Distribution (section 361(c)).

7. No gain or loss will be recognized by (and no amount will be included in the income of) the Distributing shareholders on the receipt of Controlled stock in the Distribution (section 355(a)(1)).

8. The basis of the Distributing shares and the Controlled shares (including any fractional share interest) in the hands of each distributee Distributing shareholder will be the same as the shareholder's basis in the Distributing stock immediately before the Distribution, allocated between the Distributing shares and the Controlled shares in proportion to the fair market value of each in accordance with section 358(a)(1) and Treas. Reg. § 1.358-2(a)(2) (section 358(b)(2) and (c)).

9. The holding period of the Controlled shares received by each Distributing shareholder in the Distribution (including any fractional share interest) will include the holding period of the Distributing shares with respect to which the Distribution will be made, provided that such shareholder holds the Distributing shares as a capital asset on the date of the Distribution (section 1223(1)).

10. The receipt by a Distributing shareholder of cash in lieu of fractional shares of Controlled stock will be treated for federal income tax purposes as if the fractional shares had been distributed to the shareholder and then sold for that amount of cash in a sale or exchange. The gain or loss recognized (determined by the basis of shares determined under ruling (8) allocated to the fractional shares) will be treated as a capital gain or loss to the selling shareholder (section 1001). Such gain or loss will be short-term or long-term capital gain or loss or loss determined under the holding period provided under ruling (9).

11. As provided in section 312(h), proper allocation of earnings and profits between Distributing and Controlled will be made under Treas. Regs. §§ 1.312-10(a) and 1.1502-33.

12. 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 "includible corporations" under section 1504(b) and satisfy the ownership requirements of section 1504(a)(4) will be members of an affiliated group of

corporations entitled to file a consolidated federal income tax return with Controlled as the common parent.

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transactions 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 Transactions that is not specifically addressed by this letter.

Procedural Statements

This ruling is directed only to the taxpayer(s) who requested 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 (PLR-116160-16) of this letter ruling.

Pursuant to the Power of Attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Mark S. Jennings
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel
(Corporate)

cc: