

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201644018**
Release Date: 10/28/2016

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 368.14-00, 368.08-06,
355.00-00, 355.07-00,
312.09-00, 1502.06-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B06
PLR-123917-14
Date:
July 28, 2016

Legend

Distributing =

Controlled =

Preferred Stock Entity =

Sub1 =

Sub2 =

Sub3 =

PLR-123917-14

LLC1 =

LLC2 =

LLC3 =

LLC4 =

LLC5 =

LLC6 =

LLC7 =

LLC8 =

PS1 =

Shareholder =

Business =

PLR-123917-14

Business 1 =

Business 2 =

Segment A =

Segment B =

Segment C =

Division A =

Expansion Assets =

Circumstances =

Adjust =

Bankruptcy Court =

Acquisition =

Swaps =

Agreement =

PLR-123917-14

Settlement Claim
Obligation =

State A =

State B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Month 1 =

Month 2 =

Month 3 =

Month 4 =

Year 1 =

a =

b =
c =
d =
e =
f =
g =
h =
i =
j =
k =
l =
m =
n =
o =
p =
q =

Dear _____ :

This letter responds to your request, submitted by your authorized representatives, for rulings on certain U.S. federal income tax consequences of a proposed transaction (the "Proposed Transaction," as described below). 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. 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 letter is issued pursuant to section 6.03 of Rev. Proc. 2016-1, 2016-1 I.R.B. 1 regarding one or more significant issues under sections 355 and 368. The rulings contained in this letter only address one or more discrete legal issues involved in the Proposed 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.

FACTS

Organizational Structure

Distributing, a privately held State A corporation, is the common parent of an affiliated group of corporations that join in the filing of a consolidated federal income tax return (the Distributing Group). Shareholder owns almost all (approximately a%) of Distributing's sole class of stock, and certain current and former directors and employees of Distributing (and its subsidiaries) own the remaining approximately b% (collectively, the "Distributing Shareholders").

Distributing owns all of the stock of Sub1 and Sub2, and all of the membership interests of LLC1. LLC1 owns all of the membership interests of LLC2, which, in turn, owns all of the membership interests of LLC3, LLC4, LLC5, and LLC6, and newly formed Controlled and Preferred Stock Entity (in addition, to indirect ownership of equity interests in other entities not relevant here). LLC6 owns all of the stock of Sub3. Each of LLC1, LLC2, LLC3, LLC4, LLC5, LLC6, Controlled, and Preferred Stock Entity is an entity disregarded as separate from Distributing for federal income tax purposes.

Distributing also owns all of the membership interests of LLC7, which owns all of the membership interests of LLC8. Each of LLC7 and LLC8 is an entity disregarded as separate from Distributing for federal income tax purposes. LLC8 owns c% (greater than one-third) of the interests of PS1, a limited liability company that is treated as a partnership for federal income tax purposes. The remaining d% of the interests of PS1 is owned by unrelated third parties.

Distributing, through its separate affiliated group (as defined in section 355(b)(3)(B)) (the "Distributing SAG"), is engaged in Business, which includes Business 1 and Business 2.

Business 1 has been actively conducted by the Distributing Group for a period in excess of five years, and consists of Segment A (which includes Division A), Segment B, and Segment C. Distributing conducts Business 1 through LLC1 and its lower-tier entities; in particular, LLC2 and its lower-tier entities are directly engaged in the operation of Business 1.

On Date 5, Distributing, through a disregarded subsidiary of LLC2 acquired the Expansion Assets in a transaction treated as a taxable asset purchase for federal income tax purposes. The Expansion Assets are in the same line of business as Business 1 and represent an expansion of Business 1 (within the meaning of §1.355-3(b)(3)(ii)).

Distributing's operation of Division A is under Circumstances. In light of these Circumstances, Distributing may Adjust a portion of its Division A operations before, or shortly after, the Proposed Transaction (the "Division A Partial Adjustment").

Business 2 has been actively conducted by the Distributing Group for a period in excess of five years. Distributing conducts Business 2 through LLC7 and its lower-tier entities; in particular, PS1 (and its lower-tier entities) are directly engaged in the operation of Business 2.

Bankruptcy Proceeding -- Restructuring of Distributing Group Debt

On Date 1, the predecessor to Distributing, then a publicly traded corporation, was acquired by a group of private investors (the "Investors") in the Acquisition, a transaction that is not part of the same plan as the Proposed Transaction. The Investors own, indirectly through Shareholder, nearly all of the stock of Distributing.

On Date 3, each of Distributing, LLC1, LLC2, and LLC7 (and certain of their respective subsidiaries, excluding LLC8 and PS1) (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code with the Bankruptcy Court (the "Bankruptcy Proceeding").

LLC2 Debt

On Date 3, LLC2 had approximately \$e of outstanding first lien debt (the "LLC2 First Lien Debt" and the creditors with respect to such debt, the "LLC2 First Lien Creditors"), after accounting for the acceleration of obligations under the Swaps. On Date 3, Distributing held less than f% of the LLC2 First Lien Debt, and such debt has since been cancelled in connection with an intercompany settlement agreement. Currently, LLC2 has approximately \$e of outstanding LLC2 First Lien Debt, taking into account the Swaps.

The LLC2 First Lien Debt consists of: (i) debt issued pursuant to a senior secured credit facility (the “LLC2 Credit Agreement” and such debt, “the LLC2 Credit Agreement Debt”); (ii) debt issued to the public (the “LLC2 First Lien Notes”); and (iii) obligations issued pursuant to the Swaps. The LLC2 First Lien Debt is secured (and has been secured since issuance) by substantially all of the assets of LLC2 (and its lower-tier entities). Substantially all of the LLC2 First Lien Debt outstanding as of Date 3 can be directly or indirectly traced to debt incurred in connection with the Acquisition.

The LLC2 Credit Agreement Debt further consists of: (a) initial term loans (the “Initial Term Loans”); (b) delayed draw term loans (the “Delayed Term Loans”); (c) deposit letter of credit term loans (the “Letter of Credit Term Loans”); (d) revolving credit facility loans; and (e) incremental term loans. The LLC2 Credit Agreement gives the holders of these various debts significant control over the conduct of LLC2 and its operation of Business 1.

The Initial Term Loans were issued on Date 1, and had a maturity date of Month 2, a portion of which was extended to Month 4 as part of a global debt restructuring in Year 1 (the “Year 1 Debt Restructuring”). The vast majority of the Initial Term Loans was issued to fund the Acquisition.

The first tranche of Delayed Term Loans was issued on Date 1, and had a maturity date of Month 2, a portion of which was extended to Month 4 as part of the Year 1 Debt Restructuring. This first tranche was issued for capital improvements to Business 1 facilities. The second tranche of Delayed Term Loans was issued between Date 1 and Month 1, and had a maturity date of Month 2, a portion of which was extended to Month 4 as part of the Year 1 Debt Restructuring. This second tranche was issued to construct Business 1 facilities.

The Letter of Credit Term Loans were issued on Date 1, and had a maturity date of Month 2, which was extended to Month 4 as part of the Year 1 Debt Restructuring. The Letter of Credit Term Loans were issued for general corporate purposes.

The LLC2 First Lien Notes are senior secured notes issued pursuant to an indenture (the “Indenture”) dated Date 2. The LLC2 First Lien Notes have a maturity date of Date 7, and were issued in conjunction with the Year 1 Debt Restructuring to effect certain repayments and pay certain associated transaction fees. The Indenture gives the holders of the LLC2 First Lien Notes significant control over the conduct of LLC2 and its operation of Business 1.

On Date 3, LLC2 also had approximately \$g of outstanding second lien debt and unsecured debt (collectively, the “LLC2 Junior Debt” and the creditors with respect to such debt, the “LLC2 Junior Creditors”). On Date 3, Distributing and LLC7 held a small amount of the LLC2 Junior Debt, and such debt has since been cancelled in connection

with an intercompany settlement agreement. LLC2 currently has approximately \$h of outstanding LLC2 Junior Debt.

LLC1 has unconditionally guaranteed all of the LLC2 First Lien Debt and LLC2 Junior Debt, with the exception of \$i of LLC2 Junior Debt consisting of certain unsecured revenue bonds.

Pursuant to an order of the Bankruptcy Court, on Date 4, LLC2 entered into a debtor-in-possession financing facility (“the LLC2 DIP Facility”). Currently, approximately \$j is outstanding under the LLC2 DIP Facility; however, it is expected that additional amounts may be drawn under the facility to fund the cash needs of Business 1. Repayment of the LLC2 DIP Facility is currently expected to occur prior to the LLC2 Effective Date (defined below) using all or a portion of the proceeds from a new debtor-in-possession financing facility to be entered into by LLC2 (the “New LLC2 DIP Facility”) on or about Month 3.

There also exist certain general unsecured claims (such as claims held by trade creditors and potential litigation claims) against LLC2 that are currently estimated to total approximately \$k (the “Trade Claims” and the holders of such claims, the “Trade Claimants”). LLC2 also has outstanding administrative and priority obligations (the “Administrative and Priority Claims” and the holders of such claims, the “Administrative and Priority Claimants”). Administrative Claims are claims against LLC2 that have arisen since Date 3 as part of the Bankruptcy Proceeding, as well as certain claims based on goods that were delivered a short period of time before Date 3 but are still treated as Administrative Claims under applicable bankruptcy law. Priority Claims are unsecured claims against LLC2 that arose prior to Date 3 and that are entitled, under applicable bankruptcy law, to priority over other types of unsecured claims against LLC2. The Priority Claims further consist of senior claims (the “Senior Priority Claims”) and junior claims in an undetermined, but likely very small, amount (if any) (the “Junior Priority Claims” and the holders of such claims, the “Junior Priority Claimants”).

Other Distributing Group Debt

On Date 3, LLC7 had approximately \$l of outstanding first lien, second lien, and unsecured debt, and Distributing had approximately \$m of outstanding unsecured debt (the “Distributing Debt”) (excluding \$n of Distributing Debt held by LLC7, which has since been cancelled in connection with an intercompany settlement agreement).

Other Bankruptcy Proceeding Matters

On Date 6, Distributing, on behalf of itself and its debtor subsidiaries, filed with the Bankruptcy Court, a joint plan of reorganization pursuant to Chapter 11 of the United States Bankruptcy Code and a related disclosure statement, setting forth the terms of a

proposed restructuring of the Distributing Group (the “Bankruptcy Plan of Reorganization”). The Bankruptcy Plan of Reorganization contemplates that Distributing may proceed with the Proposed Transaction, which will effect a separation of Distributing’s Business 1 and Business 2, without regard to the timing or precise nature of any transactions that Distributing and LLC7 may undertake with respect to their remaining assets and subsidiaries, including their indirect interest in PS1, and their remaining outstanding debt. The terms of any such subsequent transactions have not yet been determined. The Bankruptcy Plan of Reorganization has been modified from time to time since Date 6.

Prior to the Proposed Transaction, Distributing, certain of Distributing’s subsidiaries, Controlled, and certain of Controlled’s subsidiaries will enter into a tax matters agreement restricting the parties from engaging in transactions that would prevent the Proposed Transaction from qualifying as a reorganization under section 368(a)(1)(G) and a distribution under section 355. The Bankruptcy Plan of Reorganization contemplates that, until such time as Distributing and LLC7 have emerged from Bankruptcy Court protection, the tax matters agreement will be enforceable by court order, and neither Distributing nor LLC7 will be permitted to reject or terminate the tax matters agreement in the Bankruptcy Proceeding.

In addition, prior to the Proposed Transaction, Controlled (or a disregarded subsidiary thereof) may enter into the Agreement, under which Controlled (or a disregarded subsidiary thereof) will be obligated to make future cash payments (including interest on such payments) to the holders of rights under the Agreement. The Agreement is intended to be effective on the LLC2 Effective Date.

PROPOSED TRANSACTION

As part of the restructuring in the Bankruptcy Proceeding, Distributing has proposed the following transaction (the “Proposed Transaction”), which will be effected pursuant to the Bankruptcy Plan of Reorganization confirmed by the Bankruptcy Court. The steps of the Proposed Transaction will occur in the following order and, except as otherwise indicated, will occur on the effective date for this portion of the restructuring in the Bankruptcy Proceeding (the “LLC2 Effective Date”).

- (i) Prior to or on the LLC2 Effective Date, Distributing will contribute the stock of Sub1 and Sub2 to LLC1, which will contribute such stock to LLC2.
- (ii) Prior to or on the LLC2 Effective Date, Sub3 will convert into a State A limited liability company and LLC6 will dissolve. As a result, LLC2 will directly own all of the membership interests of Sub3, and Sub3 will be an entity disregarded as separate from Distributing.

- (iii) LLC2 will transfer to Controlled, the entities operating Business 1 (including, among others, LLC3, LLC4, LLC5, Sub1, Sub2, Sub3, and Preferred Stock Entity) in exchange for: (a) additional equity interests of Controlled, (b) the right to receive cash payments from Controlled under the Agreement, if any; (c) cash from the New LLC2 DIP Facility in excess of that used to repay the LLC2 DIP Facility (the “New DIP Facility Cash”), if any; and (d) the assumption by Controlled of the New LLC2 DIP Facility and the operating liabilities associated with Business 1. Controlled will not assume any of the LLC2 First Lien Debt or the LLC2 Junior Debt, and the assets transferred to Controlled will not be subject to such debt. Step (iii) is intended to be disregarded.
- (iv) Controlled will transfer to LLC3, the entities operating Business 1 (including, among others, LLC4, LLC5, Sub1, Sub2, Sub3, and Preferred Stock Entity). Step (iv) is intended to be disregarded.
- (v) LLC3 will transfer to LLC4, the entities operating Business 1 (including, among others, LLC5, Sub1, Sub2, Sub3, and Preferred Stock Entity). Step (v) is intended to be disregarded.
- (vi) LLC4 will transfer to LLC5, the entities operating Business 1 (including, among others, Sub3 and Preferred Stock Entity). Step (vi) is intended to be disregarded.
- (vii) Preferred Stock Entity will convert into a State B corporation, as a result of which LLC5 will own all of the outstanding common stock of Preferred Stock Entity.
- (viii) LLC5 will transfer to Preferred Stock Entity, certain entities engaged in Segment A and all entities engaged in Segment B (including Sub3, the value of the assets of which will compose an insignificant part (less than 5%) of the value of the assets of Preferred Stock Entity) (collectively, the “Preferred Stock Entity Assets”) in exchange for: (a) additional shares of common stock of Preferred Stock Entity, (b) all of the shares of a newly issued class of non-voting preferred stock of Preferred Stock Entity (the “Preferred Stock”); and (c) the assumption by Preferred Stock Entity of a portion of the operating liabilities associated with Segment A and all of the operating liabilities associated with Segment B (the “Preferred Stock Entity Liabilities,” and the exchange, the “Preferred Stock Entity Exchange”). Preferred Stock Entity will not assume any of the LLC2 First Lien Debt or the LLC2 Junior Debt, and the assets transferred to Preferred Stock Entity will not be subject to such debt. Step (viii) is intended to be treated as Distributing transferring the Preferred Stock Entity Assets to Preferred Stock Entity in exchange for Preferred Stock Entity common stock, the Preferred Stock, and the assumption by Preferred Stock Entity of the Preferred Stock Entity Liabilities.

- (ix) Pursuant to a preexisting binding agreement, LLC5 will sell all of the Preferred Stock to unrelated third parties (none of which will include any of the LLC2 First Lien Creditors) in exchange for cash (the “Preferred Stock Sale”, and the cash proceeds therefrom, the “Preferred Stock Proceeds”), and the Preferred Stock Proceeds will be distributed by LLC5 (through LLC4, LLC3, and Controlled) to LLC2. Based upon third-party valuations, the value of the Preferred Stock will represent at least o% of the equity value of Preferred Stock Entity on or about the LLC2 Effective Date. Step (ix) is intended to be treated as Distributing selling the Preferred Stock and retaining the Preferred Stock Proceeds.
- (x) Controlled will convert into a State B corporation (the “Controlled Conversion”). Step (x) is intended to be treated as Distributing contributing to Controlled, all entities engaged in Segment A (other than those Segment A entities contributed to Preferred Stock Entity in the Preferred Stock Entity Exchange) and in Segment C (collectively, the “Controlled Assets”), and all of the common stock of Preferred Stock Entity, in exchange for the following: (a) all of the stock of Controlled; (b) the right to receive cash payments from Controlled under the Agreement, if any; and (c) the assumption by Controlled of the New LLC2 DIP Facility and the operating liabilities associated with the Controlled Assets (the deemed exchange, the “Contribution”).
- (xi) LLC2 will transfer to the LLC2 First Lien Creditors in exchange for their LLC2 First Lien Debt (with each claim being exchanged for the same ratio of stock to non-stock consideration), all of the stock of Controlled, the Preferred Stock Proceeds, additional cash on hand (if any), the right to receive cash payments from Controlled under the Agreement (if any), and the right to receive recoveries under the Settlement Claim Obligation. Step (xi) is intended to be treated as a transfer by Distributing to the LLC2 First Lien Creditors in exchange for their LLC2 First Lien Debt.
- (xii) On and/or after the LLC2 Effective Date, depending on when the Trade Claims, Administrative Claims, Priority Claims are finally determined in accordance with the bankruptcy claims resolution process, LLC2 will transfer any remaining New DIP Facility Cash and additional cash (if necessary) to: (a) the LLC2 Junior Creditors in exchange for their LLC2 Junior Debt; (b) the Trade Creditors in exchange for their Trade Claims; and (c) the Administrative and Priority Claimants in exchange for their Administrative and Priority Claims. The aggregate amount of cash received by the LLC2 Junior Creditors, the Trade Claimants, and the Junior Priority Claimants will be \$p (less certain specified settlement deductions and fees). Step (xii) is intended to be treated as a transfer by Distributing to the LLC2 Junior Creditors, the Trade Creditors, and the Administrative and Priority Claimants in exchange for their respective debts or claims (such transfers, together with the transfer in step (xi), collectively, the

“Distribution,” and the Distribution, together with the Contribution, the “Reorganization”).

Following the Proposed Transaction, all of the stock of Controlled will be owned by the LLC2 First Lien Creditors, and all of the stock of Distributing will continue to be owned by the Distributing Shareholders.

It is expected that at the time of the Distribution, the aggregate consideration received by the LLC2 Junior Creditors, the Trade Creditors, and the Junior Priority Claimants (if any) will be less than q% of the value of the Controlled stock received by the LLC2 First Lien Creditors.

In addition, following the Proposed Transaction, the Distributing SAG will continue to conduct Business 2, and Controlled, through its separate affiliated group (as defined in section 355(b)(3)(B)) (the “Controlled SAG”), will continue to conduct Business 1.

REPRESENTATIONS

- (a) Distributing is currently under the jurisdiction of the Bankruptcy Court in a title 11 or similar case (within the meaning of Section 368(a)(3)(A)), and will be under the jurisdiction of the Bankruptcy Court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)) at the time of the Proposed Transaction.
- (b) The Proposed Transaction will occur pursuant to the Bankruptcy Plan of Reorganization and will be confirmed by the Bankruptcy Court as part of the Bankruptcy Proceeding.
- (c) The Preferred Stock will be stock for federal income tax purposes, and will possess no voting rights except upon the future occurrence of certain contingencies.
- (d) Each modification of the Initial Term Loans, the Delayed Term Loans, the Letter of Credit Loans, and the LLC2 First Lien Notes in the Year 1 Debt Restructuring (as described above) was an exchange of securities that constituted a recapitalization within the meaning of section 368(a)(1)(E).
- (e) In no event will Preferred Stock Entity be liable for, or be expected to satisfy, any of the LLC2 First Lien Debt or LLC2 Junior Debt, and the Preferred Stock Entity Assets received by Preferred Stock Entity in the Preferred Stock Entity Exchange will not be subject to any of the LLC2 First Lien Debt or LLC2 Junior Debt.
- (f) In no event will Controlled be liable for, or be expected to satisfy, any of the LLC2 First Lien Debt or LLC2 Junior Debt, and neither the Controlled Assets nor the

common stock of Preferred Stock Entity received by Controlled in the Contribution will be subject to any of the LLC2 First Lien Debt or LLC2 Junior Debt.

- (g) The LLC2 First Lien Creditors will be the most senior class of creditors to receive Controlled stock in the Reorganization in satisfaction of their claims. (For purposes of this representation, claims with respect to the LLC2 DIP Financing, the Administrative Claims, and the Senior Priority Claims are treated as senior to the claims of the LLC2 First Lien Creditors.)
- (h) None of the LLC2 First Lien Debt was issued in anticipation of the Distribution.
- (i) For federal income tax purposes, the Agreement is an obligation of Controlled and the Settlement Claim Obligation is an obligation of Distributing.

RULINGS

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

- (1) The Initial Term Loans, the Delayed Term Loans, the Letter of Credit Term Loans, and the LLC2 First Lien Notes constitute “securities” of Distributing for purposes of section 368(a)(1)(G) and section 355.
- (2) For purposes of section 1001, in the Preferred Stock Entity Exchange, Distributing will have an amount realized with respect to the Preferred Stock Entity Assets equal to the fair market value of the property received for such assets. For purposes of the preceding sentence, no portion of the LLC2 First Lien Debt or the LLC2 Junior Debt will be treated as an amount realized in connection with the transfer of the Preferred Stock Entity Assets.
- (3) Distributing will be respected as the seller of the Preferred Stock in the Preferred Stock Sale for federal income tax purposes, and Distributing’s sale of the Preferred Stock will be taken into account for purposes of determining whether the control requirement of section 351(a) is satisfied with respect to the Preferred Stock Entity Exchange.
- (4) For federal income tax purposes, the order of steps (vii) through (xii) of the Proposed Transaction will be respected and, therefore, the Preferred Stock Entity Exchange and Distributing’s sale of the Preferred Stock will be treated as occurring prior to the Contribution and Distribution.

- (5) No portion of the LLC2 First Lien Debt or the LLC2 Junior Debt will be treated as assumed by Controlled in the Contribution for purposes of section 357(c) and (d).
- (6) Neither the transfer of the Preferred Stock Entity Assets by Controlled to Preferred Stock Entity, nor the potential Division A Partial Adjustment, will prevent the Reorganization from qualifying as a reorganization under section 368(a)(1)(G) or prevent the Distribution from qualifying as a distribution under section 355.
- (7) Each of the LLC2 First Lien Creditors, the LLC2 Junior Creditors, the Trade Claimants, and the Junior Priority Claimants (if any) will be treated as an “owner of the enterprise” with respect to Distributing prior to the Reorganization, and their interests in Distributing, in addition to the interests in Distributing held by the Distributing Shareholders, will be taken into account in determining whether the continuity of interest requirement of §1.355-2(c) is satisfied. See §1.355-2(c)(1); cf. §1.368-1(e)(6).
- (8) The continuity of interest requirement of §1.368-1(e) will not prevent the Reorganization from qualifying as a reorganization under section 368(a)(1)(G). See §1.368-1(b).
- (9) For purposes of section 355(d), the LLC2 First Lien Creditors will not be treated as a single person under section 355(d)(7)(B) solely because such creditors participated in formulating a plan for a reorganization in the Bankruptcy Proceeding. See §1.355-6(c)(4)(ii).
- (10) Section 355(e) will not apply to the Distribution. Section 355(e)(4)(B).
- (11) Under state law limitations on liability, Distributing is not personally liable on any portion of the LLC2 First Lien Debt or the LLC2 Junior Debt, and such debt will be treated as nonrecourse liabilities of Distributing. The cancellation of the LLC2 First Lien Debt and the LLC2 Junior Debt in the Distribution will result in an amount realized under section 1001 with respect to the property transferred by Distributing to the LLC2 First Lien Creditors and the LLC2 Junior Creditors in the amount of such outstanding debt. See Commissioner v. Tufts, 461 U.S. 300 (1983). Sections 61(a)(12) and 108(a) are not applicable.
- (12) Provided the Reorganization qualifies as a reorganization under section 368(a)(1)(G), Distributing will not recognize any gain or loss with respect to the property transferred to the LLC2 First Lien Creditors and LLC2 Junior Creditors in the Distribution (including any gain or loss attributable to the amount realized under section 1001 with respect to such property, as provided in the preceding ruling). Section 361(c).

- (13) Provided the Distribution qualifies as a distribution under section 355, Distributing's earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with section 312(h) and §1.312-10(a).
- (14) Provided the Reorganization qualifies as a reorganization under section 368(a)(1)(G), Controlled will be treated as a member of the Distributing Group upon the conversion of Controlled to a corporation in the Controlled Conversion. See §1.1502-76(b)(1)(ii)(C).
- (15) Provided the basis of the Preferred Stock Entity Assets received by Preferred Stock Entity in the Preferred Stock Entity Exchange is not determined, directly or indirectly, in whole or in part, by reference to the basis of such assets in the hands of Distributing, and steps (vii) through (xi) all occur on the LLC2 Effective Date, Preferred Stock Entity will not be treated as having been a member of the Distributing Group. See §1.1502-76(b)(1)(ii)(A).

CAVEATS

No opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter, except as specifically addressed by the rulings above. In particular, no opinion is expressed concerning any aspect of any transaction or item occurring as part of the Bankruptcy Proceeding, whether prior to or following the Proposed Transaction, or the effect of any such transaction or item on the rulings above.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling may be modified or revoked by the adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 11.04 of Rev. Proc. 2016-1, 2016-1 I.R.B. 1, 59. However, when the criteria in section 11.06 of Rev. Proc. 2016-1, 2016-1 I.R.B. 1, 60 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

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 representatives.

PLR-123917-14

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,

Frances L. Kelly
Senior Counsel, Branch 2
Office of Associate Chief Counsel (Corporate)

cc: