

**Internal Revenue Service**

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Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
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CC:CORP:B03  
PLR-123650-20

Date:  
April 14, 2021

Legend

Distributing =

Controlled =

Business 1 =

Business 2 =

Sub1 =

Sub2 =

Sub3 =

Y% =

Z% =

State A =

State B =

LLC1 =

Company1 =

Date 1 =

\$a =

\$b =

\$c =

\$d =

Period1 =

Period2 =

Dear :

This letter responds to your letter dated October 16, 2020, as supplemented on April 6, 2021, requesting rulings under section 355 and related provisions of the Internal Revenue Code and related regulations with respect to a series of proposed transactions (the "Proposed Transaction"). The material information submitted 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 a Transactional Ruling for a Covered Transaction under sections 355 and 368 of the Internal Revenue Code.

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 material submitted in support of the request for rulings. The material, and other data is subject to verification on examination.

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 § 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 a publicly traded State A corporation and is the common parent of a group of domestic affiliated corporations ("Distributing Group") that join in the filing of a consolidated U.S. federal income tax return. Distributing has a single class of voting common stock issued and outstanding ("Distributing Stock"). Distributing and its subsidiaries are engaged in Business 1 ("Distributing Business") and Business 2, ("Controlled Business"). The following describes the relevant corporate structure of the Distributing Group immediately before the Proposed Transaction (defined subsequently). Except as otherwise described, each entity is treated as a corporation for U.S. federal income tax purposes.

Distributing owns directly all the issued and outstanding stock of Sub1, a State B corporation. Sub1 owns Y% interest in LLC1, a State B limited liability company, treated as a partnership for U.S. federal income tax purposes. The remaining Z% is owned by Company1, an unrelated entity. Sub1 also owns all the issued and outstanding stock of Sub2, a State B corporation and Sub3, a State B corporation.

As of Date 1, Distributing had \$a of long-term debt to unrelated parties outstanding ("Historic Distributing Debt").

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

### **Proposed Transaction**

The following transactions (the "Proposed Transaction") will occur to separate the Controlled Business from the Distributing Group. The following steps may ultimately be effected in a different order.

1. Distributing (and subsidiaries thereof) will settle intercompany balances of receivables/payables.
2. Sub1 will contribute all the stock of Sub2 and Sub3 to LLC1 in exchange for additional LLC1 units. Following this step, the ownership of Sub1 and Company1 of LLC1 will not materially change.
3. LLC1 will incur debt and will make a cash distribution to Company1 of \$b.
4. Distributing will form a new State B corporation ("Controlled") with one authorized class of common stock ("Controlled Stock").
5. Distributing will issue debt ("New Distributing Debt") to an investment bank ("Exchange Bank") for an amount between \$c and \$d (based on a multiple of Controlled's earnings before interest, taxes, depreciation and amortization). The cash proceeds (or an amount equal thereto) will be used, contemporaneously with or prior to the Distribution, to pay principal, interest, or premium on Historic Distributing Debt. Distributing and the Exchange Bank will enter into the Exchange Agreement (defined below).
6. Distributing will contribute to Controlled all the issued and outstanding capital stock of Sub1 in exchange for (i) Controlled Stock and (ii) newly issued debt securities ("Controlled Securities"), together the "Contribution."
7. Distributing will enter into an exchange agreement with Exchange Bank ("Exchange Agreement"). Pursuant to Exchange Agreement, Distributing will transfer an agreed upon amount of Controlled Securities to Exchange Bank in exchange for (and in retirement of) New Distributing Debt (together with the repayment of a portion of the Historic Distributing Debt, the "Debt Exchange"). The exchange ratio for the Debt Exchange will be fixed on the date the Exchange Agreement is entered into. Exchange Bank intends to sell Controlled Securities to parties unrelated to Distributing or Controlled.
8. Distributing will distribute all Controlled Stock owned by Distributing pro rata to Distributing shareholders (the "Distribution").
9. At least one day after the Distribution, Company1 may exchange its equity interests in LLC1 for Controlled Stock.

#### Post-Separation Key Agreements

In connection with the Proposed Transaction, Distributing and Controlled will enter into certain arrangements that will continue after the completion of the Proposed Transaction to effect an orderly transition of Controlled to a standalone public company ("Continuing Arrangements"). The Continuing Arrangements include agreements, such

as a separation and distribution agreement, a transition services agreement and a tax matters agreement. All the Continuing Arrangements will be based on arm's-length terms and conditions, including arm's-length pricing, except for certain arrangements that may be priced at cost or cost-plus for up to Period1.

### Continuing Business Relationship

In addition to the Continuing Arrangements, Distributing (or its affiliates) will have certain continuing business relationships with Controlled (or its affiliates). The agreements documenting the terms and conditions for the various services Controlled (or its affiliates) provides to Distributing (or its affiliates) will be based on arm's-length terms and payments for the services will be at fair market value. Such agreements are expected to be in place for at least Period2 from the Proposed Transaction.

## **Representations**

The following representations have been made with respect to the Proposed Transaction:

Except as otherwise provided below, Distributing has made all the representations provided in section 3 of the Appendix to Rev. Proc. 2017-52, in the form set forth therein, as of immediately prior to the Distribution:

1. Distributing has made the following alternative representations set forth in section 3 of the Appendix to Rev. Proc. 2017-52, as of immediately prior to the Distribution: 3(a), 11(a), 15(a), 22(a), 31(a) and 41(a).
2. Distributing has not made the following representations, which do not apply: 7, 17, 19, 24, 25 and 40.
3. Distributing has made the following modified representations:

Representation 5: None of the Controlled Stock, Controlled Securities, or other property to be distributed in the Distribution will be received in any capacity other than that of a shareholder or creditor of Distributing.

Representation 8(b): Distributing has securities outstanding and it intends to, in substance, transfer the Controlled Securities in satisfaction of a portion of Distributing's outstanding securities in the Debt Exchange.

Representation 32: No intercorporate debt will exist between Distributing and Controlled (and their respective affiliates, as applicable) at the time of, or subsequent to, the Distribution, except for Controlled Securities and ordinary course payables and receivables arising in connection with any continuing arrangements.

Except as otherwise provided below, Distributing has made all the representations provided in Rev. Rul. 2018-53 as of immediately prior to the Distribution. For purposes of the representations below, terms used but not otherwise defined herein have the meanings set forth in Rev. Proc. 2018-53. "Distributing Debt" means both the Historic Distributing Debt and the New Distributing Debt:

Distributing has made the following modified representations:

Representation 3: The holder of Distributing Debt that will be assumed or satisfied will not hold the debt for the benefit of Distributing, Controlled, or any Related Person. With the exception of New Distributing Debt, the Exchange Bank will not acquire Distributing Debt from Distributing, Controlled, or any Related Person. None of Distributing, Controlled, nor any Related Person will participate in any profit gained by the Exchange Bank upon an exchange of § 361 Consideration; nor will any such profit be limited by agreement or other arrangement. The amount of the § 361 Consideration received by the Exchange Bank in satisfaction of the Distributing Debt will be determined pursuant to arm's-length negotiations.

Representation 4: Distributing incurred the Historic Distributing Debt that will be satisfied with cash proceeds from New Distributing Debt (a) before the request for any relevant ruling is submitted and no later than 60 days before the earliest of the following dates: (i) the date of the first public announcement (as defined in § 1.355-7(h)(10)) of the Divisive Reorganization 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, or (b) if such debt was issued more recently, the proceeds of the issuance of such debt were used to satisfy other debt of Distributing that was incurred no later than the time described in representation above, and such debt was not issued in anticipation of, or in connection with the Proposed Transaction.

### **Rulings**

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

1. The 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. No gain or loss will be recognized by Distributing on the Contribution. (Sections 361(a), 361(b), and 357(a)).
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 equal 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 the asset was held by Distributing. (Section 1223(2)).

6. No gain or loss will be recognized by Distributing upon the Distribution and the Debt Exchange. (Section 361(c)).

7. No gain or loss will be recognized by (and no amount otherwise will be included in the income of) holders of Distributing Stock upon the receipt of Controlled Stock in the Distribution. (Section 355(a)).

8. Each Distributing shareholder's aggregate basis in its Distributing Stock and Controlled Stock after the Distribution will equal such shareholder's aggregate basis in its Distributing Stock immediately prior to the Distribution. (Section 358(a)). The basis will be allocated between Distributing Stock and Controlled Stock in proportion to the fair market values of each immediately after the Distribution in accordance with Treas. Reg. § 1.358-2(a)(2). (Sections 358(a), (b), and (c)).

9. Each Distributing shareholder's holding period in its Controlled Stock will include the holding period of the Distributing Stock with respect to which the distribution of the Controlled Stock is made; provided that such Distributing Stock is held by such Distributing shareholder as a capital asset on the date of the Distribution. (Section 1223(1)).

10. Earnings and profits of Distributing will be allocated between Distributing and Controlled in accordance with Section 312(h). (Treas. Reg. § 1.312-10(a) and Treas. Reg. § 1.1502-33(e)).

### **Caveat**

No opinion is expressed or implied about the tax treatment of the Proposed Transaction under any 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 preceding 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 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,

Gerald B. Fleming  
Senior Technician Reviewer, Branch 2  
Office of Associate Chief Counsel (Corporate)

cc: