

Internal Revenue Service

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Person To Contact:

ID No.

Telephone Number:

Refer Reply To:
CC:CORP:2
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Date:
April 01, 2022

Legend

Distributing =

Controlled =

DRE 1 =

DRE 2 =

DRE 3 =

DRE 4 =

DRE 5 =

DRE 6 =

DRE 7 =

DRE 8 =

DRE 9 =

DRE 10 =

DRE 11 =

DRE 12 =

PRS 1 =

PRS 2 =

PRS 3 =

PRS 4 =

Date 1 =

Date 2 =

Date 3 =

Business A =

Business B =

Continuing
Agreements =

a =

b =

c =

d =

e =

f =

g =

Dear :

This letter responds to your authorized representatives' letter dated November 23, 2021, as supplemented by subsequent information and documentation, requesting rulings on certain federal tax consequences of a series of transactions (the "Proposed Transaction," as defined below). The material information submitted in that letter and 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 section 6.03(2) of Rev. Proc. 2021-1, 2021-1 I.R.B. 1, regarding one or more significant issues under section 332 of 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 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 material 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 (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, (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, and (iii) whether Distributing has a withholding obligation under section 1445.

Facts

Distributing is a publicly traded domestic corporation and the parent of an affiliated group of corporations that file a consolidated return for U.S. federal income tax purposes. Distributing has two classes of voting stock issued and outstanding: Distributing Class A and Distributing Class B (collectively, the "Distributing stock"). The two classes have different voting rights but identical economic rights.

Distributing owns all of the interests in DRE 1, DRE 2, and DRE 3, each an eligible entity (within the meaning of Treas. Reg. § 301.7701-3(a)) that is disregarded as separate from its owner for federal income tax purposes (a “disregarded entity”). DRE 1 was previously a corporation but converted to a limited liability company on Date 1 (“Conversion 1”).

DRE 1 owns all of the interests in DRE 4, DRE 5, and DRE 6, each a disregarded entity. DRE 6 was previously a corporation but converted to a limited liability company on Date 2 (“Conversion 2” and, together with Conversion 1, the “Conversions”).

DRE 3 owns all of the interests in DRE 7, DRE 8, DRE 9, and DRE 10, each a disregarded entity.

DRE 6 owns all of the interest in DRE 11, a disregarded entity.

DRE 6 and DRE 11 own all of the interests in DRE 12, a disregarded entity.

DRE 4 owns, indirectly through disregarded entities, an a% (an amount greater than 20% but less than 33.3%) limited partner interest and a general partner interest in PRS 1, an eligible entity that is classified as a partnership for federal income tax purposes (a “partnership”). DRE 4 also owns, indirectly through disregarded entities, a b% (an amount greater than 20% but less than 33.3%) limited partner interest and a general partner interest in PRS 2, a partnership. PRS 1 and PRS 2 own, indirectly through disregarded entities, all of the issued and outstanding stock of corporations that have elected to be taxed as real estate investment trusts for federal income tax purposes (“REITs”). The REITs, indirectly through disregarded entities, own Business B assets.

DRE 11 and DRE 12 own, directly and indirectly through disregarded entities, an approximately c% (an amount greater than 20% but less than 33.3%) general partner interest in PRS 3, a partnership. PRS 3 owns Business B assets.

Financial information has been submitted in accordance with Rev. Proc. 2017-52 indicating that each of Business A (conducted directly and indirectly by Distributing) and Business B (conducted through DRE 4, DRE 8, DRE 9 and DRE 10) each 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

For what are represented to be valid business reasons, Distributing proposes to engage in the following steps to separate Business A from Business B, some of which have been completed (collectively, the “Proposed Transaction”):

- (i) On Date 3, Distributing formed Controlled. At the time of the Distribution (defined below), Controlled will have two classes of voting common stock issued and outstanding: Controlled Class A and Controlled Class B (collectively, the “Controlled stock”). The two classes have different voting rights but identical economic rights.
- (ii) DRE 1 will distribute all of its interests in DRE 4 and DRE 5 to Distributing; DRE 6 will distribute all of its interests in DRE 11 and DRE 12 to Distributing; and DRE 3 will distribute all of its interests in DRE 7, DRE 8, DRE 9, and DRE 10 to Distributing.
- (iii) Distributing will contribute to Controlled approximately \$d in cash and all of its interests in DRE 2, DRE 4, DRE 5, DRE 7, DRE 8, DRE 9, DRE 10, DRE 11, and DRE 12 in exchange for Controlled stock (the “Contribution”).
- (iv) After the Contribution, Distributing will distribute the stock of Controlled to its shareholders (the “Distribution”). Distributing generally will make a pro rata distribution of Controlled Class A stock to Distributing shareholders, except that Distributing shareholders may elect to receive Controlled Class B stock instead of Controlled Class A stock. If applicable, cash may be distributed in lieu of fractional shares.

After the Proposed Transaction, Distributing and Controlled will have separate boards of directors, except for one overlapping board member. Each board member will be elected for a term of e months.

In connection with the Proposed Transaction, Distributing and Controlled will enter into certain Continuing Agreements.

Distributing and an unrelated third party are in discussions regarding entering into one or more agreements pursuant to which, immediately after the Distribution, the third party would exchange its interests in a disregarded entity for approximately f% to g% of Controlled Class A stock.

Representations

With respect to the Distribution, except as otherwise set forth below, Distributing has made all the representations in section 3 of the Appendix to Rev. Proc. 2017-52.

Distributing has made the following alternative representations:

Representations 3(a), 8(b), 11(a), 15(a), 31(a), and 41(a).

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

Representations 7, 22, 24, and 25.

Distributing has not made Representation 42 (but provided the required explanation). Additionally, Distributing has made the following representations:

1. The assets of DRE 6 that Distributing will contribute to Controlled will represent less than 30 percent of the gross fair market value of the assets of DRE 6 immediately before Conversion 1.
2. The assets of DRE 1 that Distributing will contribute to Controlled will represent less than 30 percent of the gross fair market value of the assets of DRE 1 immediately before Conversion 2.

Rulings

1. The Contribution and Distribution, together, will constitute 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 not recognize gain or loss on the Contribution. Sections 357(a) and 361(a).
3. Controlled will not recognize gain or loss on the Contribution. Section 1032(a).
4. Controlled's basis in each asset received in the Contribution will be the same as the basis of the asset in the hands of the Distributing immediately before the Contribution. Section 362(b).
5. Controlled's holding period in each asset received in the Contribution will include the period during which Distribution 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, the shareholders of Distributing will not recognize gain or loss (and no amount otherwise will be includable in their income) upon receipt of 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 shareholder immediately after the Distribution will equal the aggregate basis of the

Distributing stock held by such shareholder 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). Section 358(a)(1) and (b).

9. Except to the extent required as a result of section 897, each shareholder's holding period in the Controlled stock received will include the holding period of the Distributing stock with respect to which the Distribution is made, provided that such Distributing stock is held by the shareholder 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. 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. Payments made between Distributing and Controlled and their respective affiliates under any of the Continuing Arrangements regarding liabilities, indemnities, or other obligations, that (i) have arisen or will arise for a taxable period ending on or before the Distribution or for a taxable period beginning before and ending after the Distribution; and (ii) will not become fixed and ascertainable until after the Distribution, will be viewed as occurring immediately before the Distribution. *See Arrowsmith v. Commissioner*, 344 U.S. 6, 73 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.
13. The contribution to Controlled of certain assets held by DRE 1 and DRE 6 following the Conversions will not preclude either Conversion 1 or Conversion 2 from qualifying as a "complete liquidation" within the meaning of section 332.

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the proposed transaction 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 transaction that is 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.

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.

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

Sincerely,

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

cc: