

**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:B05

PLR-118877-22

Date:

December 20, 2022

Legend

Distributing =

Controlled =

Parent =

Sub 1 =

Sub 2 =

LLC 1 =

LLC 2 =

State A =

Business A =

Business B =

Continuing Relationships =

Shared Services Employees =

Shared Services =

Short-Term Debt =

Long-Term Debt =

Refinanced Debt =

Credit Facility =

New Bank Debt =

New Long-Term Debt =

Date 1 =

a =

b =

c =

d =

e =

Dear :

This letter responds to your letter dated September 28, 2022 requesting rulings on certain federal income tax consequences of a series of transactions (the “Proposed Transaction,” as described below). The material information submitted is summarized below.

This letter is issued pursuant to Rev. Proc. 2022-1, 2022-1 I.R.B. 1, Rev. Proc. 2022-10, 2022-6 I.R.B. 473 and 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 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 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 materials submitted in support of the requested rulings, it 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 section 355(a)(1)(B) and Treas. Reg. §1.355-2(d)); or (iii) is part of a plan (or a 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 relevant distributing corporation or the controlled corporation, or any predecessor or successor of such distributing corporation or controlled corporation, within the meaning of Treas. Reg. §1.355-8 (see section 355(e)(2)(A)(ii) and Treas. Reg. §1.355-7).

### Summary of Facts

Parent and Distributing, State A corporations, are members of an affiliated group of corporations that join in filing a consolidated U.S. federal income tax return on a calendar year basis. Parent and Distributing use the accrual method of accounting. Parent owns all of the stock of Distributing.

Distributing conducts Business A, and it conducts the Business B through a separate division of Distributing. For purposes of satisfying the active trade or business requirement of section 355(b) with respect to the Distribution, Distributing will rely upon Business A, and Controlled will rely upon Business B.

Financial information has been submitted in accordance with Rev. Proc. 2017-52 indicating that Business A and Business B each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing owns Sub 1, a State A corporation. Sub 1 provides certain services to the division of Distributing that conducts Business B.

Parent owns all of the interests in LLC 1, a state A limited liability company that has elected to be taxed as a corporation for federal income tax purposes. LLC 1 owns all of the interests in LLC 2, a state A limited liability company, which is disregarded as an entity separate from LLC 1 for U.S. federal income tax purposes. LLC 2 receives certain services from Distributing's employees that conduct Business B.

Distributing has various debts that it intends to satisfy as part of the Proposed Transaction. In particular, it has Short-Term Debt that will mature on Date 1. Distributing will refinance the Short-Term Debt on or prior to its maturity date with the Refinanced Debt. Additionally, in its ordinary course of business, Distributing routinely borrows under an ongoing commercial paper ("Commercial Paper") program under the Credit Facility. Distributing has approximately \$b of Commercial Paper outstanding. Distributing has approximately \$c of Long-Term Debt. Together, the Refinanced Debt, the Commercial Paper, and Long-Term Debt are Distributing's "Distributing Debt."

### Proposed Transaction

For what are represented to be valid business purposes, Distributing proposes to engage in the following steps to separate Business A from Business B (collectively, the "Proposed Transaction"):

1. Distributing will form Controlled.
2. Distributing will transfer the assets comprising Business B and all of the issued and outstanding stock of Sub 1 (the "Contribution") to Controlled in exchange for Controlled common stock and the assumption by Controlled of liabilities associated

with the transferred assets and liabilities described in Step 3.

3. For regulatory and business reasons, Controlled will enter into a bridge loan with Distributing (the “Controlled Loan”). The Controlled Loan will have a maturity date not to exceed g months following the date of the Distribution. The principal amount of the Controlled Loan on the date of the Distribution will equal Controlled’s allocable share of the Distributing Debt (\$d).
4. Distributing will distribute all of the Controlled stock to Parent (the “Distribution”).
5. Parent will form Sub 2. Sub 2 will serve as a holding company for all of Parent’s State A operations in the a business.
6. Immediately after the Distribution, Parent will contribute all of the stock of Controlled to Sub 2. As a result, Controlled will become a wholly owned subsidiary of Sub 2.
7. After the Distribution, Parent will cause LLC 1 to merge into Sub 2 with Sub 2 surviving.
8. After the Distribution and prior to the repayment of the Controlled Loan, Distributing will make advances to Controlled, as needed, for Business B. Such advances (“Additional Loans”) will be added to the principal amount of the Controlled Loan.
9. Within g months after the Distribution:
  - a. Controlled will enter into the New Bank Debt with one or more banks and intends to incur the New Long-Term Debt. The precise amount of both borrowings will depend on market considerations and working-capital determinations at such time.
  - b. Controlled will repay the Controlled Loan and the Additional Loans.
  - c. Distributing will use an amount of cash equal to the proceeds from the repayment of the Controlled Loan to repay principal and interest of Distributing Debt.
  - d. Distributing will use an amount of cash equal to the proceeds from the repayment of the Additional Loans to repay Commercial Paper.
10. In connection with the Proposed Transaction, Distributing and Controlled will have entered into or will enter into agreements (the “Continuing Relationships”) intended to govern their relationship (and that of their respective subsidiaries) following the Proposed Transaction.

### **Representations**

Except as set forth below, Distributing has made all of the representations in section 3 of the Appendix to Rev. Proc. 2017-52 with respect to the Proposed Transaction:

1. Distributing has made the following alternative representations:

Representations 3(a), 8(b), 15(a), 22(a), 31(a), and 41(a).

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

Representations 7, 20, 24, 25, and 35.

3. Distributing has made the following modified representations:

Representation 11: 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 its share of all the integrated activities of the business on which it relies to meet the active trade or business requirement of §355(b), as conducted by Distributing or the DSAG prior to consummation of the transaction. Following the Distribution, Controlled will also rely on Shared Services performed by the Shared Services Employees.

Representation 32. Following the Distribution, Controlled will be indebted to Distributing (Controlled Loan) for a period not to exceed e months following the date of the Distribution. Apart from the Controlled Loan and the Additional Loans, no intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution of Controlled Stock.

Representation 33. Except with respect to Shared Services, payments made in connection with all continuing transactions, if any, between Distributing and Controlled after the Distribution will be for fair market value based on the arm's-length terms. Shared Services will be provided based on allocable costs.

Except as set forth below, Distributing has made all of the representations in section 3.04 of Rev. Proc. 2018-53 with respect to the Proposed Transaction.

Distributing has made the following modified representation:

Representation 4: Distributing incurred the Distributing Debt that will be assumed or satisfied (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 Treas. Reg. §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) after the request for any relevant ruling is submitted, provided that 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 clause (a) of this representation.

Representation 6: There are one or more substantial business reasons for any delay in satisfying Distributing Debt with §361 Consideration beyond 30 days after the date of the first distribution of Controlled Stock to Distributing's shareholder. All of the Distributing Debt that will be satisfied with §361 Consideration will be satisfied no later than e months after such distribution.

### **Rulings**

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

1. The Contribution, together with the Distribution, will qualify as a "reorganization" within the meaning of sections 368(a)(1)(D) and 355. Distributing and Controlled will each be "a party to the reorganization" within the meaning of section 368(b).
2. Distributing will recognize no gain or loss on the Contribution. Sections 357(a) and 361(a).
3. Controlled will recognize no 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 that asset in the hands of Distributing immediately prior to the Contribution. Section 362(b).
5. Controlled's holding period in each asset received in the Contribution will include the period during which Distributing held such asset. Section 1223(2).
6. Distributing will recognize no gain or loss on the Distribution. Section 361(c)(1).
7. Parent will recognize no gain or loss (and no amount will be includable in its income) on the receipt of the stock of Controlled in the Distribution. Section 355(a).
8. Parent's aggregate basis in the common stock of Distributing and the common stock of Controlled immediately after the Distribution will be the same as Parent's basis in the stock of Distributing immediately before the Distribution, allocated between common stock of Controlled and the common stock of Distributing in proportion to the respective fair market values of each in accordance with Treas. Reg. §1.358-2(a)(2). Section 358(a), (b), and (c).
9. Parent's holding period of the Controlled stock received in the Distribution will include the holding period of the shares of Distributing with respect to which the Distribution will be made, provided that such shares are held as capital assets on the date of the Distribution. Section 1223(1).

10. The earnings and profits of Distributing will be allocated between Distributing and Controlled will be made in accordance with section 312(h) and Treas. Reg. §§1.312-10(a) and 1.1502-33(e)(3).

### **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 Transaction that is not specifically addressed by this letter.

### **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.

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

Sincerely,

*Robert M. Rhyne*

Robert M. Rhyne  
Assistant to the Branch Chief, Branch 2  
Office of Associate Chief Counsel (Corporate)

cc: