

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Date:
May 01, 2023

Distributing =

Controlled =

New DRE =

New Sub =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

DRE 1 =

DRE 2 =

DRE 3 =

DRE 4 =

Business A =

Business B =

Business C =

Business D =

Date 1 =

Date 2 =

Date 3 =

a =

b =

C =

X =

Y =

Continuing
Arrangements =

Sub 1 Third Party Debt =

DRE 1 Third Party Debt =

Controlled Equity Awards =

Distributing Equity Awards =

Equity Awards =

Intercompany Sub 5 Receivables =

Potential Business D
Impacts =

Refinancing Debt =

Distributing
Shareholders =

Specified Distribution =

Retention Business =
Purpose

Dear :

This letter responds to your representatives' letter, dated December 20, 2022, as supplemented by subsequent information and documentation (the "Ruling Request"), requesting rulings on certain federal income tax consequences of a series of transactions (the "Proposed Transaction" defined below). The material information submitted in the Ruling Request is summarized below.

This letter is issued pursuant to 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 section 368 of the Internal Revenue Code (the "Code"), and pursuant to section 6.03(2) of Rev. Proc. 2022-1, 2022-1 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 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 Ruling Request. 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. § 1.355-8 (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

Summary of Facts

Distributing, a publicly traded corporation, is the parent of a group of domestic entities and the common parent of an affiliated group of corporations that join in filing a consolidated U.S. federal income tax return (the "Distributing Group"). As of Date 1, Distributing has a single class of voting common stock issued and outstanding. The Distributing Group currently conducts Business A, Business B, Business C, and Business D.

Distributing directly owns 100% of the stock of Sub 1 and 100% of the equity interests in DRE 1;

DRE 1 owns 100% of the stock of Sub 2 and 100% of the equity interests in DRE 2 and DRE 3;

DRE 2 owns 100% of the stock of Sub 3 and DRE 3 owns 100% of the stock of Sub 4;

Sub 1 owns 100% of the equity interests of DRE 4 and 100% of the stock of Sub 5, Sub 6, and Sub 7;

DRE 4 owns 100% of the stock of Sub 8 and Sub 9; and

Sub 5 owns 100% of the stock of Sub 10. In turn, Sub 10 owns 100% of the stock of Sub 11, which owns approximately x shares of Distributing's outstanding common stock representing approximately y percent of the total number of shares of Distributing stock outstanding as of Date 1.

Sub 2, Sub 3, and Sub 4 are the principal Distributing Group members that conduct Business A. Sub 5 is the parent of a subgroup of entities that conduct Business B. Sub 6 is the parent of a subgroup of entities that conduct Business D. Sub 7 is the parent of a subgroup of entities that conduct Business C.

For purposes of satisfying the active trade or business requirements of section 355(b) with respect to the Distribution, Distributing and members of its "separate affiliated group" within the meaning of Section 355(b)(3) (the "Distributing SAG") will rely on Business A and Controlled and members of its separate affiliated group (the "Controlled SAG") will rely on Business B. Distributing has submitted financial information in accordance with Rev. Proc. 2017-52 indicating that Business A and Business B have had gross income and employee wages representing the active conduct of a trade or business for each of the past five years.

In connection with the Initial Distribution (defined below), some of the Distributing Equity Awards are expected to convert into Controlled Equity Awards.

As of Date 2, the Distributing Group had the following debt outstanding (collectively, the “Third Party Debt”): (a) the Sub 1 Third Party Debt and (b) DRE 1 Third Party Debt. References to Third Party Debt, and references to Sub 1 Third Party Debt, include references to any Refinancing Debt and to any Sub 1 Third Party Debt assumed by New DRE in the Merger (defined below). The Distributing Group will not segregate or otherwise trace the proceeds of any Refinancing Debt.

Proposed Transaction

In connection with the Contribution (defined below), members of the Distributing Group may engage in additional internal separation transactions to assure that assets and liabilities are appropriately aligned with the Distributing Group or Controlled SAG, as the case may be, following the Proposed Transaction.

For what are represented to be valid corporate business purposes, Distributing proposes to separate Business B from its other businesses through the following steps, one or more of which have been completed, subject to the Potential Business D Impacts (the “Proposed Transaction”).

Step 1: Distributing forms Controlled, a corporation with a single class of common stock outstanding.

Step 1.1: Sub 1 forms New Sub as a corporation or limited liability company (taxed as a corporation) with a single class of equity outstanding and Sub 1 contributes the minimum capital required to form a new captive insurance company to New Sub. Certain liabilities and assets associated with Business B are transferred from Sub 9 to New Sub.

Step 2: Distributing may contribute cash to Controlled to the extent the required escrow is greater than the net proceeds of the bond issuance, both as described in Step 3 (the “Cash Contribution”).

Distributing’s contribution of cash, if any, to Controlled in Step 2 is expected to be relatively small in comparison to the amount borrowed in Step 3.

Step 3: Controlled issues bonds (the “Bonds”), if desired, and deposits the proceeds, along with cash from Step 2, into an escrow account (the “Escrow Account”).

Alternatively, or in addition, Controlled may obtain a financing commitment with respect to one or more term loans (collectively, the “Term Loan”) and/or revolving credit facilities (the “Revolver”, and together with the Term Loan, the “Bank Facilities”). The timing of this step will depend on capital market conditions, and may occur at any time prior to Step 9.

Step 4: Distributing forms New DRE, a limited liability company disregarded as an entity separate from Distributing for U.S. federal income tax purposes. This step may occur prior to Step 2 or 3.

Step 5: Sub 1 merges with and into New DRE, with New DRE surviving (the “Merger”).

Step 6: Sub 8 transfers (i) certain real property, IT assets, and other miscellaneous assets, if any (“collectively the Sub 8 Asset Transfers”), in one or more transactions to which section 1001 applies and (ii) cash to Sub 5 in settlement of certain intercompany balances. The Sub 8 Asset Transfers may occur at any time prior to Step 7.

Step 7: New DRE distributes the stock of Sub 5 and any other assets held by New DRE related to Business B, including the equity of New Sub but excluding any Intercompany Sub 5 Receivables to be repaid in Step 11 below (collectively, the “New DRE Business B Assets”), to Distributing.

Step 8: Distributing contributes (i) the New DRE Business B Assets, and (ii) certain assets held by Distributing related to Business B (collectively, the “Transferred Assets”) to Controlled in constructive exchange for additional Controlled common stock to be issued pursuant to Step 8.1 and the assumption of liabilities, if any, associated with the Transferred Assets (the “Assumed Liabilities” and such contribution, together with the Cash Contribution, the “Contribution”). In connection with the Contribution, certain employees are transferred from Distributing to Controlled.

Step 8.1: Distributing will cause Controlled to issue additional Controlled common stock through a recapitalization or other form of issuance such that the amount of Controlled common stock outstanding is sufficient for the Initial Distribution, the Specified Distribution, and any Retention.

Step 9: Controlled receives the cash from the Escrow Account and may draw down on the Bank Facilities, if desired (collectively, the “Debt Proceeds”).

Step 10: Controlled lends or contributes the Debt Proceeds to Sub 5 in an amount not exceeding the aggregate issue price of the Bonds and Bank Facilities.

Step 11: Sub 5 repays the Intercompany Sub 5 Receivables owing to New DRE in an amount equal to the amount transferred to Sub 5 in Step 10 less any working capital needs (the “Net Debt Proceeds”). New DRE will not segregate or otherwise trace the use of the Net Debt Proceeds received in this Step 11. Sub 5 may make additional repayments of the Intercompany Sub 5 Receivables with other intercompany receivables due to Sub 5.

Step 12: New DRE repays Sub 1 Third Party Debt, including principal, interest, premium (if any), and associated fees, with the Net Debt Proceeds received in Step 11. It is possible that Step 12 may occur after Step 13, depending on the specific Sub 1 Third Party Debt to be repaid, the prepayment provisions thereof, and the circumstances existing at the time.

Step 13: Distributing distributes at least a percent (a number in excess of 80 percent) of its Controlled stock pro rata to its shareholders other than Sub 11 (collectively, the “Distributing Shareholders” and such distribution, the “Initial Distribution”), and distributes Controlled stock to Sub 11 in the Specified Distribution. Distributing plans to retain up to

b percent of its Controlled stock (the “Retention” and such shares, the “Remaining Shares”).

Collectively, the Initial Distribution, the Debt-for-Equity Exchange (defined below), and any Clean-up Distribution (defined below) constitute the “Distribution”, and together with the Contribution, the “Spin-Off.”

Step 13.1: To the extent that the Sub 1 Third Party Debt exceeds or is expected to exceed the Net Debt Proceeds, any remaining debt (the “Remaining Sub 1 Third Party Debt”) will be refinanced by either New DRE or Distributing (i.e., the proceeds from such refinancing will be used to repay the Remaining Sub 1 Third Party Debt). This step may occur any time after the Merger. Any refinancing by Distributing directly through its own revolving credit facility, term loans, or bonds is referred to as the “Distributing Refinancing,” and such refinanced debt is referred to as the “Distributing Refinanced Debt” and is included in Refinancing Debt.

Step 13.2: After the Initial Distribution, Sub 5 and Controlled will change their names. This step may instead occur immediately before the Initial Distribution.

Step 14: If Remaining Sub 1 Third Party Debt will be refinanced by New DRE and not Distributing, Distributing contributes all or a portion of the Remaining Shares, if any, to New DRE.

Step 15: Within c months of the Initial Distribution, New DRE (or Distributing in the case of a Distributing Refinancing) issues short-term debt (“Short Term Debt”), with a maturity date of less than c months, to one or more investment banks (the “Investment Banks”) based upon the anticipated fair market value of the Remaining Shares. New DRE (or Distributing in the case of a Distributing Refinancing) uses the Short Term Debt proceeds to repay the Remaining Sub 1 Third Party Debt or Distributing Refinanced Debt (as applicable), including principal, interest, premium (if any), and associated fees. The total amount of Sub 1 Third Party Debt, Remaining Sub 1 Third Party Debt and/or Distributing Refinanced Debt repaid in Step 12 and Step 15 will not exceed the amount of Sub 1 Third Party Debt outstanding on Date 2.

Distributing will not segregate or otherwise trace the use of the cash proceeds of the Short-Term Debt. The repayment of Remaining Sub 1 Third Party Debt may occur on the same day as the issuance of the Short-Term Debt or may occur at a later date no later than c months following such issuance. Steps 15 and 16 may occur in a single tranche or more than one tranche over the c month period after the Initial Distribution. Any references to Sub 1 Third Party Debt and/or Refinancing Debt include references to Short-Term Debt.

Step 16: At least one day after the issuance of the Short Term Debt, Distributing and the Investment Banks will enter into an exchange agreement (the “Debt-for-Equity Exchange Agreement”) pursuant to which New DRE (or Distributing in the case of a Distributing Refinancing) exchanges some or all of the Remaining Shares (the “Transferred Shares”)

in satisfaction of the Short Term Debt held by the Investment Banks (the “Debt-for-Equity Exchange”).

Under the Debt-for-Equity Exchange Agreement, Distributing and the Investment Banks may include a variable pricing mechanism with respect to the disposition of the Transferred Shares (collectively, the “Variable Pricing Agreements”). In all cases, the Debt-for-Equity Exchange Agreement, including the Variable Pricing Agreements, will be entered into and the Transferred Shares will be transferred to the Investment Banks in satisfaction of the Short Term Debt within c months of the Initial Distribution.

The Variable Pricing Agreements are expected to take the form of either a True-Up Payment (defined below) or a Forward Exchange Agreement (defined below).

If the pricing mechanism for the Transferred Shares takes the form of a True-Up Payment, then either the Investment Banks will make a payment to Distributing or Distributing will make a payment to the Investment Banks (each a “True-Up Payment”).

- (a) While the exchange ratio for the Debt-for-Equity Exchange will be fixed on the date that the parties enter into the Debt-for-Equity Exchange Agreement (the “Initial Price”), the True-Up Payment is expected to be based on the difference between (i) the reference price, as determined below, (the “Reference Price”) and (ii) the Initial Price.
- (b) The Reference Price is the average daily volume-weighted average price per share of Controlled shares beginning one day after the Debt-for-Equity Exchange, through a subsequent specified date no later than c months after the Initial Distribution, plus or minus an agreed upon spread. The latest permissible period of time used to determine the Reference Price will be set such that in no event will any True-Up Payment occur more than c months after the date of the Initial Distribution.
- (c) If the Initial Price exceeds the Reference Price, Distributing or New DRE will pay the Investment Banks (the “Distributing True-Up Payment”).
- (d) If the Reference Price exceeds the Initial Price, the Investment Banks will pay Distributing or New DRE. Any True-Up Payment made by the Investment Banks to Distributing may be made in cash (the “Bank True-Up Cash Payment”) or the surrender of Third Party Debt (the “True-Up Debt Settlement”). Additionally, in the case of a True-Up Debt Settlement, the Investment Banks will acquire the Third Party Debt as a principal acting for its own account.

Alternatively, under the Debt-for-Equity Exchange Agreement, Distributing and the Investment Banks may enter into a forward exchange agreement (“Forward Exchange Agreement”), pursuant to which:

- (a) The Investment Banks would agree to acquire the Transferred Shares from Distributing at the end of a period not to exceed c months following the Initial Distribution (such period, the “Measurement Period” and such acquisition date, the “Forward Exchange Closing Date”), in exchange for the Exchange Value (defined

below), provided that the Measurement Period shall end no later than c months following the date of the Initial Distribution. The Exchange Value is an amount per share equal to the average daily volume-weighted average price per share of Controlled shares over the Measurement Period, plus or minus an agreed upon spread (the "Exchange Value").

- (b) On the Forward Exchange Closing Date, the Investment Banks would deliver the Exchange Value to Distributing through a full or partial offset of Distributing's obligation to pay the outstanding principal amount on the Short-Term Debt (which may have up to a c month term in a scenario in which a Forward Exchange Agreement is pursued).
- (c) If the Exchange Value exceeds the outstanding principal amount of the Short-Term Debt, then the Investment Banks will either pay to Distributing or New DRE, cash in an amount equal to the excess over the outstanding principal amount of the Short Term Debt (the "Bank Forward Contract Cash Payment", together with the Bank True-Up Cash Payment, the "Bank Cash Payment") or the Investment Banks will purchase on the open market all or a portion of the Third Party Debt and surrender the Third Party Debt in extinguishment thereof (the "Forward Contract Debt Settlement", together with the True-Up Debt Settlement, the "Debt Settlement").
- (d) If the outstanding principal amount of the Short-Term Debt exceeds the Exchange Value, then Distributing or New DRE will pay to the Investment Banks an amount of cash equal to such excess (the "Distributing Forward Contract Payment," together with the Distributing True-Up Payment, the "Distributing Shortfall Payment").
- (e) During the Measurement Period, Distributing might pledge the Transferred Shares as collateral to secure Distributing's obligations under the Forward Exchange Agreement, which shares the Investment Banks would hold in a pledge account. Alternatively, during the Measurement Period, Distributing might not pledge such Transferred Shares, and in such a case, it might or might not hold the Transferred Shares at one or more securities accounts with one or more of the Investment Banks.
- (f) The Investment Banks may receive the right to sell, lend, pledge, assign, invest, use, commingle or otherwise dispose of, or otherwise use in its business ("Rehypothesize") the Transferred Shares during the period they would otherwise be held in the pledge account, provided that, if the Investment Banks exercise such right with respect to any of the Transferred Shares, the Investment Banks generally would be required to replace such Transferred Shares with other shares of Controlled stock on or before the Forward Exchange Closing Date, except to the extent the parties agree to offset the replacement value of the Transferred Shares against the Short-Term Debt.

Step 17: Distributing distributes all or a portion of the Remaining Shares not exchanged in the Debt-for-Equity Exchange via either a pro rata distribution to the Distributing Shareholders (the "Clean-up Spin-Off Distribution") and/or as part of a non-pro rata exchange offer for Distributing's shares (the "Clean-up Split-off Distribution", together with

the Clean-up Spin-Off Distribution, the “Clean-up Distribution”). The Clean-up Distribution, if any, will occur within c months after the Initial Distribution. Alternatively, Distributing may sell all or a portion of the Remaining Shares to third-party investors, no later than five years after the Initial Distribution in a taxable disposition.

In connection with the Proposed Transaction, Distributing and Controlled (or their respective affiliates, if applicable) will enter into certain Continuing Arrangements. In addition, Controlled may issue Controlled Equity Awards, pursuant to the conversion of Distributing Equity Awards or otherwise.

Representations

Merger Representations

1. Assuming that the transfer of the New DRE Business B Assets by Distributing to Controlled in the Contribution is not a prohibited reincorporation of Sub 1's assets, the Merger will be a transaction to which Section 332 will apply.
2. Other than the Contribution, the Merger will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation, of more than 30 percent of the businesses or assets of Sub 1, if persons who hold, directly or indirectly, more than 20 percent in value of the stock of Sub 1 also hold, directly or indirectly, more than 20 percent of the stock of such recipient corporation.

Rev. Proc. 2017-52 Representations

Except as set forth below, Distributing makes all of the representations in Section 3 of the Appendix to Rev. Proc. 2017-52 in the form set forth therein.

Distributing did not make the following representations, which do not apply to the Proposed Transaction: 19, 20, 24, 25, 39 and 40.

Distributing makes the following alternative representations: 3(a), 22(a), 31(a), and 41(a).

Distributing has made the following modified representations:

1. With respect to Representations 1, 4, 12, 15(b), 21, 27, 28, 30, and 36 Distributing makes such representation, except that any reference to the “Distribution” refers to the “Initial Distribution,” and with respect to Representation 21, any reference to the “transaction” refers to the “Initial Distribution.”
2. Representation 2: In the Initial Distribution, Distributing will distribute to the Distributing Shareholders on the same day at least a percent of the stock of Controlled outstanding immediately before the Initial Distribution (determined

without regard to any Equity Awards and any Controlled shares underlying, or issued following the Initial Distribution pursuant to, any Equity Awards).

3. Representation 5: Other than the Remaining Shares transferred in the Debt-for-Equity Exchange, 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 of Distributing (e.g., as a creditor or employee).
4. Representation 6: No Distributing Shareholder will surrender Distributing stock in the Distribution, other than in the Clean-up Split-off, if any.
5. Representation 8(b): Distributing may have securities outstanding, but it will not distribute Controlled stock, Controlled securities or Other Property to any holder of such securities in the Distribution, in satisfaction thereof, except potentially in satisfaction of a portion of the Third Party Debt pursuant to the Debt Settlement, if any.
6. Representation 11(a): Following the Initial Distribution, Distributing or the Distributing SAG and Controlled or the Controlled SAG each will continue, independently and with its separate employees, the active conduct of the business on which it relies to meet the active trade or business requirement of Section 355(b), except with respect to activities performed pursuant to the Continuing Arrangements.
7. Representation 32: No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Initial Distribution of Controlled stock, except for any debt arising under the Continuing Arrangements and/or ordinary course payables and receivables.
8. Representation 33: Payments made in connection with all continuing transactions, if any, between Distributing and Controlled after the Initial Distribution will be for fair market value based on arm's-length terms, except as otherwise described in connection with the Continuing Arrangements.
9. Representation 34: Other than pursuant to the Continuing Arrangements, Distributing and Controlled each will pay its own expenses, if any, incurred in connection with the Distribution.
10. Representation 35: The payment of cash in lieu of fractional shares of Controlled is solely for the purpose of avoiding the expense and inconvenience of issuing fractional shares and does not represent separately bargained-for consideration. The fractional share interests of each Distributing Shareholder will be aggregated

and no Distributing Shareholder of record will receive cash in an amount equal to or greater than the value of one full share of Controlled (with the possible exception of shareholders who hold Controlled stock in multiple accounts or with multiple brokers).

11. Representation 37: Other than certain property transferred pursuant to the Sub 8 Asset Transfers, there is no loss subject to § 1.1502-13 that will be taken into account as a result of a transaction related to the Distribution.
12. Representation 45: Other than pursuant to the Specified Distribution, Distributing will not dispose of any Controlled stock in anticipation of the Distribution.
13. Representation 46: Other than any issuance of the Bonds, Controlled will not issue stock or securities to a person other than Distributing in anticipation of the Distribution.

Rev. Proc. 2018-53 Representations

With respect to the representations provided in section 3 of Rev. Proc. 2018-53, Distributing makes each such representation, modified as provided below.

With respect to Representations 2 and 5, Distributing makes such representation, except that any reference to the “Distributing Debt” shall refer to the “Third Party Debt.”

1. Representation 1: For U.S. federal income tax purposes, Distributing is in substance the obligor of any Assumed Liabilities constituting Distributing Debt (within the meaning of Rev. Proc. 2018-53) that will be assumed in the Contribution and the Third Party Debt that will be satisfied in the Debt-for-Equity Exchange.
2. Representation 3:
 - a. The holder of any Assumed Liabilities constituting Distributing Debt (within the meaning of Rev. Proc. 2018-53) that will be assumed in the Contribution and the Third Party Debt that will be satisfied in the Debt-for-Equity Exchange will not hold the debt for the benefit of Distributing, Controlled, or any Related Person.
 - b. In the event of a Debt Settlement made in the form of Third Party Debt, the Investment Banks will not acquire such Third Party Debt from Distributing, Controlled, or any Related Person.
 - c. Neither Distributing, nor Controlled, nor any Related Person will participate in any profit gained by the Investment Banks upon an exchange of § 361 Consideration; nor will any such profit be limited by agreement or other

- arrangement, except as otherwise provided pursuant to the Debt-for-Equity Exchange Agreement.
- d. The value of the § 361 Consideration received by the Investment Banks in satisfaction of the Third Party Debt will not exceed the amount to which the holder is entitled under the terms of the Third Party Debt, except as otherwise provided pursuant to the Debt-for-Equity Exchange Agreement.
3. Representation 4: Except with regard to the Refinancing Debt (including the Short-Term Debt), Sub 1 or Distributing incurred the Third Party Debt that will be repaid in Step 15 or exchanged in Step 16 (the "Historic Debt") (a) before the request for any relevant ruling is submitted and (b) 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 (currently expected to be Date 3) (the "Relevant Dates"). Distributing incurred any Historic Debt that was Sub 1 Third Party Debt for U.S. federal income tax purposes as a result of the Merger.
 4. Representation 6: There are one or more substantial business reasons for any delay in satisfying Third Party Debt with § 361 Consideration beyond 30 days after the date of the first distribution of Controlled stock to Distributing's Shareholders. All the Third Party Debt that will be satisfied with § 361 Consideration will be satisfied as soon as practicable following the Initial Distribution and, in any event, no later than c months after the Initial Distribution.
 5. Representation 7: Distributing will not replace any of the Assumed Liabilities constituting Distributing Debt (within the meaning of Rev. Proc. 2018-53) that will be assumed in the Contribution or any Third Party Debt, or Refinancing Debt (including Short Term Debt) that will be satisfied in the Debt-for-Equity Exchange with previously committed borrowing, other than borrowing in the ordinary course of business pursuant to a revolving credit agreement or similar arrangement.

Other Representations

1. Distributing's retention of any Remaining Shares is motivated by the Retention Business Purpose.
2. None of Distributing's directors or officers will serve as directors or officers of Controlled as long as Distributing retains any Remaining Shares.
3. The Remaining Shares will be disposed of as soon as a disposition is warranted consistent with the Retention Business Purpose, but, in any event, not later than five years from the Initial Distribution.

4. Distributing will vote, or cause to be voted, any Remaining Shares in proportion to the votes cast by Controlled's other shareholders.
5. Distributing will recognize an amount of gain on any Bank Cash Payment from the Investment Banks to Distributing equal to the lesser of (a) the amount of cash received or (b) the amount of gain that would have been realized if a proportionate amount of the Transferred Shares had been sold in a taxable transaction.
6. Distributing will treat any Distributing Shortfall Payment from Distributing to the Investment Banks as made in exchange for the Short-Term Debt.

Rulings

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

The Merger

1. The transfer of the New DRE Business B Assets by Distributing to Controlled in the Contribution will not preclude the Merger from qualifying as a "complete liquidation" within the meaning of Section 332.

The Spin-Off

2. The Contribution, together with the Distribution, will be a "reorganization" within the meaning of sections 368(a)(1)(D) and 355. Distributing and Controlled will each be a "party to a reorganization" within the meaning of Section 368(b).
3. Distributing will recognize no gain or loss on the Contribution. Sections 361(a) and 357(a).
4. Controlled will recognize no gain or loss on the Contribution. Section 1032(a).
5. Controlled's basis in each asset received from Distributing in the Contribution will be the same as the basis of the asset in the hands of Distributing immediately before the Contribution. Section 362(b).
6. Controlled's holding period for each asset received in the Contribution will include the period during which Distributing held such asset. Section 1223(2).
7. The Distributing Shareholders will recognize no gain or loss (and no amount will be includible in income) upon the receipt of Controlled stock in the Initial Distribution or any Clean-Up Distribution under Section 355(a).
8. Distributing will recognize no gain or loss upon the Initial Distribution or any Clean-Up Distribution. Section 361(c).

9. Distributing will recognize no gain or loss, or deductions or items of income, on the Debt-for-Equity Exchange, other than (i) an amount of gain on any Bank Cash Payment equal to the lesser of: (a) the amount of cash received, or (b) the amount of gain that would have been realized if a proportionate amount of the Transferred Shares had been sold in a taxable transaction, (ii) deductions attributable to the fact that the Short-Term Debt (or Third Party Debt, if any, transferred by the Investment Banks as a Debt Settlement) may be redeemed at a premium, (iii) income attributable to the fact that the Short-Term Debt (or any such Third Party Debt) may be redeemed at a discount, and (iv) interest expense accrued with respect to the Short-Term Debt (or any such Third Party Debt). Section 361(c).
10. Any Debt Settlement paid within 6 months of the Initial Distribution will be treated as part of the Debt-for-Equity Exchange. Section 361(c).
11. The aggregate basis of the Distributing common stock and the Controlled stock in the hands of any Distributing Shareholder receiving Controlled stock in the Initial Distribution or any Clean-Up Spin-Off Distribution (including any fractional share interest in Controlled stock to which a shareholder may be entitled) will equal the aggregate basis of the Distributing common stock held by such Distributing Shareholder immediately before the Initial Distribution or Clean-Up Spin-Off Distribution, respectively, allocated between Distributing stock and Controlled stock in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2). Section 358(a) through (c).
12. The aggregate basis of the Controlled stock in the hands of any Distributing Shareholder who exchanges Distributing stock for Controlled stock (including any fractional share interest in Controlled stock to which a shareholder may be entitled) in a Clean-up Split-off Distribution, if any, will be the same as the basis of the Distributing stock surrendered in each such exchange and will be allocated among the shares received in the manner described in Reg. § 1.358-2(a). Section 358(a)(1) and (b)(1).
13. The holding period of the Controlled stock received by each Distributing Shareholder in the Initial Distribution or Clean-Up Distribution (including any fractional share interest in Controlled stock to which shareholders may be entitled) will include the holding period of the Distributing common stock held by each Distributing Shareholder with respect to which the Initial Distribution or any Clean-Up Distribution will be made, provided that the Distributing common stock is held as a capital asset on the date of the Initial Distribution or Clean-Up Distribution, respectively. Section 1223(1).
14. Earnings and profits 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).
15. Distributing's continuing ownership of any Remaining Shares until Distributing's disposition no later than five years after the Initial Distribution will not adversely

impact the qualification of the Contribution and Distribution under sections 355 and 368(a)(1)(D) and will not be in pursuance of a plan having as one of its principal purposes the avoidance of U.S. federal income tax for purposes of section 355(a)(1)(D)(ii) and Treas. Reg. § 1.355-2(e).

16. Any payments made between any of 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 Initial Distribution or for a taxable year beginning before and ending after the Initial Distribution, and (ii) will not become fixed and ascertainable until after the Initial Distribution will be characterized in a manner consistent with the proper treatment if such payments or transfers had occurred immediately before the Initial Distribution pursuant to the Spin-Off. See *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952) and Revenue Ruling 83-73, 1983-1 C.B. 84.
17. The receipt by any Distributing Shareholder of cash in lieu of fractional shares, if any, of Controlled stock will be treated for U.S. federal income tax purposes as if the fractional shares had been distributed to the Distributing Shareholders as part of the Distribution and then had been disposed of by such shareholders for the amount of such cash in a sale or exchange. The gain (or loss) recognized (determined using the basis allocated to the fractional shares in Ruling 11), if any, will be treated as capital gain (or loss) under Section 1001, provided the stock was held as a capital asset by the selling shareholder. Such gain (or loss) will be short-term or long-term capital gain (or loss) determined using the holding period provided in Ruling 13.
18. Following the Initial 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 eligible to file a consolidated U.S. federal income tax return with Controlled as the common parent.
19. Equity Awards currently outstanding and any Equity Awards issued in connection with or after the Initial Distribution (and any Controlled shares underlying, or issued following the Initial Distribution pursuant to, any such Equity Awards) will not be taken into account (i.e., will not be included in the numerator or the denominator) for purposes of determining whether Distributing distributed an amount of Controlled stock constituting control under section 368(c).

Caveats

Except as expressly provided herein, no opinion is expressed or implied as to: (i) the tax treatment of any Continuing Arrangement that is not entered into on an arm’s-length or cost-plus basis, or (ii) the tax treatment of the Proposed Transaction under any provision of the Code and 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 above rulings.

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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.

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,

Richard K. Passales
Senior Counsel, Branch 4
Office of Associate Chief Counsel (Corporate)

cc: