

Internal Revenue Service

Number: **202343025**

Release Date: 10/27/2023

Index Number: 355.00-00, 355.01-00,
355.01-01, 368.00-00,
368.04-00

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:B02

PLR-102907-23

Date:

August 02, 2023

Legend

Distributing =

Controlled =

Business A =

Business B =

Business C =

State A =

a =

b =

c =

d =

e =

Distributing Debt =

Date 1 =

Dear :

This letter responds to a letter dated February 6, 2023, as supplemented on March 28, 2023, May 2, 2023, June 13, 2023, July 5, 2023, July 13, 2023, July 19, 2023, July 25, 2023, July 31, 2023, and August 1, 2023, submitted on behalf of the taxpayer (the "Submission"), requesting rulings on certain federal income tax consequences of a series of transactions. The material information in that Submission 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. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This letter is issued pursuant to Rev. Proc. 2023-1, 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 Transactional Rulings for one or more Covered Transactions. This office expresses no opinion as to any issue not specifically addressed by the rulings below.

This office has made no determination regarding whether the External 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) and Treas. Reg. § 1.355-7).

Summary of Facts

Distributing, a publicly traded, widely held, State A corporation, is the parent of a worldwide group of domestic and foreign entities (the “Distributing Worldwide Group”). Distributing is also the common parent of an affiliated group of domestic corporations that files a U.S. consolidated federal income tax return (the “Distributing Consolidated Group”). The Distributing Worldwide Group is engaged in multiple businesses, including Business A, Business B, and Business C (Business B and Business C, together, the “Remaining Businesses”).

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

Prior to the External Distribution (as defined below), the Distributing Worldwide Group will engage in a series of internal preparatory transactions to separate Business A from the Remaining Businesses held by certain subsidiaries of Distributing (the “Internal Preparatory Transactions”). The Internal Preparatory Transactions will include, among other transactions:

- (i) A contribution of stock by one subsidiary of the Distributing Consolidated Group to another lower-tier subsidiary (the “Lower-Tier Subsidiary 1”) intended to qualify under section 351(a) and/or section 368(a)(1)(B) and cause Lower-Tier Subsidiary 1 to satisfy the active trade or business requirement of section 355(b), followed by a series of distributions by Lower-Tier Subsidiary 1 of entities engaged in Business A to certain of its shareholders in exchange for pre-existing shares held by such shareholders (“Internal Transaction 1”); and
- (ii) A contribution of Business A assets by a lower-tier subsidiary of the Distributing Consolidated Group (“Lower-Tier Subsidiary 2”) to a newly-formed controlled subsidiary in exchange for all of the stock of such subsidiary, followed by the distribution by Lower-Tier Subsidiary 2 of the stock of the controlled subsidiary to certain of its shareholders in exchange for pre-existing shares held by such shareholders (“Internal Transaction 2”). The stock distributed pursuant to Internal Transaction 1 and Internal Transaction 2

will subsequently be distributed up the corporate chain to Distributing for purposes of facilitating the External Transaction.

Proposed Transaction

Distributing will undertake a series of steps for the purpose of separating all of the assets associated with Business A from its Remaining Businesses (the “Proposed Transaction”).

For what are represented to be valid business reasons, Distributing proposes to engage in the following transactions to separate Business A from the Remaining Businesses.

- 1) Distributing formed Controlled on Date 1 and will contribute to Controlled all of the stock of certain entities currently conducting Business A and any directly held Business A assets in exchange for (i) Controlled Stock, (ii) the assumption by Controlled of liabilities associated with Business A, if any, and (iii) Controlled Cash, if any (collectively, the “Controlled Contribution”). Distributing will hold any Controlled Cash in its general accounts. Controlled will have one authorized class of voting common stock (i.e., the Controlled Stock), all of the issued stock of which will be directly owned by Distributing immediately following the Controlled Contribution.
- 2) Controlled may (i) borrow cash from third-party lenders (the “Controlled Borrowing”) and/or (ii) issue and sell shares of Controlled Stock to third-party investors for cash in an initial public offering (the “Controlled IPO,” and the cash proceeds received by Controlled in the Controlled Borrowing and/or the Controlled IPO, the “Controlled Cash”).
- 3) Distributing will distribute, subject to any potential lock-up periods associated with any Controlled IPO, Controlled Stock representing at least a percent (but up to b percent) of the total combined voting power of all Controlled Stock to its shareholders either in exchange for Distributing stock (“Distributing Stock” and with respect to such exchange, a “Split-Off”) or as a pro rata distribution (a “Spinoff”) or a combination of both (the “Distribution”). Any shares of Controlled Stock not distributed are referred to herein as the “Retained Stock.”
- 4) Within c months following the Distribution, Distributing will (i) exchange some or all of the Retained Stock, if any, for a portion of the Distributing Debt either directly or through a financial intermediary (the “Debt-for-Equity Exchange”) and/or (ii) distribute to its shareholders some or all of the Retained Stock, if any, either in exchange for Distributing Stock (a “Clean-Up Split-Off”) or as a pro rata distribution (a “Clean-Up Spinoff”) or a combination of both (collectively, the “Clean-Up Distributions” and together with the Distribution, the “External Distribution”). In connection with a Debt-for-Equity Exchange, Distributing may issue short-term debt (the “New Debt”), to one or more financial institutions

acting as principals for their own account ("Banks") and use such proceeds to repay Distributing Debt (including principal, interest, premium, and fees). Distributing will hold any New Debt proceeds in its general accounts. Banks may also acquire Distributing Debt from existing holders of Distributing Debt ("Exchange Debt"). Distributing may enter into one or more exchange agreements with Banks (neither being legally obligated to do so) pursuant to which Distributing will exchange Retained Stock with Banks for all or a portion of the New Debt and/or Exchange Debt (each, an "Exchange Agreement"). Any Exchange Agreement will be entered into no sooner than d day(s) after the New Debt is incurred or the Banks acquire the Exchange Debt. The exchange ratio for the Debt-for-Equity Exchanges will be fixed on the date any Exchange Agreement is entered into.

Pursuant to the External Distribution, in order to avoid the expense and inconvenience of issuing fractional shares, to the extent applicable, all fractional shares of Controlled Stock that any holders of Distributing Stock would otherwise be entitled to receive as a result of the External Distribution will be aggregated by an exchange agent and sold on their behalf in the open market (or otherwise as reasonably directed by Distributing), in each case at then-prevailing market prices. The exchange agent will make available the net proceeds thereof, subject to the deduction of the amount of any withholding taxes and brokerage charges, commissions and conveyance and similar taxes, to the holders of Distributing Stock that would otherwise have been entitled to receive a fractional share of Controlled Stock pursuant to the External Distribution on a pro rata basis based on such fractional interest, without interest, as soon as practicable thereafter.

If Distributing determines that market and general economic conditions and sound business judgment do not support the disposition of all or any portion of any Retained Stock, as described above, during the c months immediately following the Distribution, Distributing will dispose of any remaining Retained Stock as soon as practicable, taking into account market and general economic conditions and sound business judgment, but in no event later than five years after the Distribution. Distributing's delayed distribution of any Retained Stock, described above, is intended to facilitate the orderly distribution of Controlled Stock and establish an effective and appropriate capital structure for both Distributing and Controlled, including by reducing Distributing's liabilities and strengthening its balance sheet in the most efficient manner (the "Retention Business Purpose").

- 5) Within c months following the Distribution, Distributing will use the Controlled Cash proceeds to make pro rata cash distributions to Distributing's shareholders (including by funding normal quarterly dividends), repurchase shares of Distributing Stock, including potentially pursuant to one or more customary accelerated share repurchase programs, and/or repurchase Distributing Debt (including principal, interest, premium, and fees), including through open market

tender or purchase (collectively, the “Cash Boot Purge”). The Controlled Contribution, External Distribution, the Debt-for-Equity Exchange (if any), and the Cash Boot Purge (if any), are collectively referred to herein as the “External Transaction.”

In connection with the External Distribution, Distributing and Controlled, collectively with their affiliates, will enter into certain agreements that will continue after the completion of the External Distribution in order to effect an orderly transition of Controlled to a standalone public company, including transition services agreements, a tax matters agreement, and other agreements (collectively, the “Continuing Arrangements”). The Continuing Arrangements will be based on arm’s-length terms and conditions, except for the transition services agreements, which will be on a cost or cost-plus basis during their terms.

Following the External Distribution, Distributing and Controlled will operate as independent companies having separate boards of directors. The separate boards of directors will have no overlapping membership, with the possible exception of one or more directors that may serve on the board of directors of Distributing and Controlled (the “Overlapping Board Member(s)”). Furthermore, to the extent there is any director overlap following the External Transaction, such Overlapping Board Member(s) will represent a minority voting share of the overall composition of Distributing’s and Controlled’s board of directors. The Overlapping Board Member(s) will serve in this capacity to provide a sense of business continuity to Controlled as it transitions to becoming a standalone public company and will enable Controlled to continue to benefit from the expertise of such director(s) regarding Business A. The Overlapping Board Member(s) will have less than e percent of the voting power with respect to the Controlled board.

Representations

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

- i. Distributing has made the following alternative representations: 3(a), 11(a), 15(a), 22(a), 31(a) and 41(a).
- ii. Distributing has not made the following representations which do not apply to the External Transaction: 24, 25, and 40.
- iii. Representation 6 is only made with respect to the Spin-Off or Clean-Up Spin-Off and representation 7 is only made with respect to the Split-Off or Clean-Up Split-Off.
- iv. Distributing has made the following modified representations and modified alternative representations with respect to the External Transaction:

Representation 2: In the Distribution, Distributing will distribute on the same day stock and securities of Controlled representing at least a percent of the total combined voting power of all Controlled stock and securities; provided that, in the case of any Clean-Up Distribution, such Clean-Up Distribution will occur as promptly as practical after the Distribution taking into account the resolution of certain market uncertainties and stock exchange and clearing agency requirements, and, in all events, any such Clean-Up Distribution will occur within c months of the initial Distribution.

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 of Distributing; provided that Distributing may (i) transfer Controlled Stock to Distributing's creditors, including Banks, in the Debt-for-Equity Exchange and (ii) transfer Controlled Cash to Distributing's creditors and/or shareholders in the Cash Boot Purge.

Representation 8(b): Distributing has securities outstanding, but it will not distribute Controlled Stock to any holder of such securities in the Distribution in satisfaction thereof; except that Distributing may transfer Controlled Cash and/or Controlled Stock to holders of Distributing Debt that qualifies as a security.

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 External Distribution, except for (i) amounts arising by reason of the Continuing Arrangements and (ii) ordinary course receivables and payables.

Representation 45: Distributing will not dispose of any Controlled Stock in anticipation of the Distribution, except for the Controlled Stock, if any, transferred by reason of the Debt-for-Equity Exchange.

Representation 46: Other than in connection with the Controlled IPO, Controlled will not issue stock or securities to any person other than Distributing in connection with the External Transaction.

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 External Transaction.

- i. 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 the New Debt, the Banks will not acquire Distributing Debt from Distributing, Controlled, or any Related Person. None of

Distributing, Controlled, or any Related Person will participate in any profit gained by Banks upon an exchange of Section 361 Consideration; nor will any such profit be limited by agreement or other arrangement. The amount of the Section 361 Consideration received by Banks in satisfaction of the Distributing Debt will be determined pursuant to arm's-length negotiations.

Representation 4: Other than the New Debt, Distributing incurred the Distributing Debt that will be assumed or satisfied (i)(A) before the date hereof and (B) no later than 60 days before the earliest of the following dates (x) the date of the first public announcement (as defined in Treas. Reg. § 1.355-7(h)(10)) of the Distribution or a similar transaction, (y) the date of the entry by Distributing into a binding agreement to engage in the Distribution or a similar transaction and (z) the date of approval of the Distribution or a similar transaction by the Distributing board of directors.

Representation 6: There are one or more substantial business reasons for any delay in satisfying Distributing Debt with any New Debt Proceeds or Controlled Cash beyond 30 days after the date of the first distribution of Controlled Stock to Distributing's shareholders. All the Distributing Debt that will be satisfied with any New Debt Proceeds and/or Controlled Cash will be satisfied no later than c months after such distribution.

Distributing has made the following representations with respect to the Retained Stock:

- i. In no event will the retention of the Retained Stock prevent Distributing from distributing in the Distribution an amount of Controlled Stock that represents control within the meaning of section 368(c).
- ii. Distributing's plan to retain the Retained Stock is motivated by the Retention Business Purpose.
- iii. Except for the Overlapping Board Members, none of Distributing's directors or officers will serve as officers of Controlled as long as Distributing retains the Retained Stock.
- iv. The Retained Stock 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 after the Distribution.
- v. Distributing will vote the Retained Stock in proportion to the votes cast by Controlled's other shareholders.

Rulings

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

- 1) The Controlled Contribution, together with the External Distribution, will qualify as a reorganization and distribution within the meaning of section 368(a)(1)(D) and section 355. 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 Controlled Contribution. Section 361(a)-(b) and section 357.
- 3) No gain or loss will be recognized by Controlled on the Controlled Contribution. Section 1032(a).
- 4) The basis in each asset received by Controlled in the Controlled Contribution will equal the basis of that asset in the hands of Distributing immediately before the Controlled Contribution. Section 362(b).
- 5) The holding period in each asset received by Controlled in the Controlled 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 on (i) the External Distribution, (ii) the Debt-for-Equity Exchange, or (iii) the Cash Boot Purge, other than (a) deductions attributable to the fact that the Distributing Debt may be redeemed at a premium, (b) income attributable to the fact that the Distributing Debt may be redeemed at a discount, and (c) interest expense accrued with respect to the New Debt or Distributing Debt. Section 361(b)-(c).
- 7) Any delayed distribution or exchange of Retained Stock that occurs within c months following the Distribution will be treated as occurring pursuant to the plan of reorganization for purposes of section 361(b)-(c).
- 8) Distributing’s continued ownership of any Retained Stock until its disposition, in no event later than five years after the Distribution, will not adversely affect the qualification of the External Transaction 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).
- 9) No gain or loss will be recognized by, and no amount will be included in the income of, Distributing’s shareholders on the receipt of Controlled Stock in the External Distribution. Section 355(a)(1).

- 10) If the Split-Off and/or Clean-Up Split-Off is undertaken, each participating shareholder's aggregate basis in the Controlled Stock it receives in exchange for Distributing Stock pursuant to the External Distribution (including any fractional share interest in Controlled Stock to which a shareholder may be entitled) will equal such shareholder's aggregate basis in the Distributing Stock surrendered in the External Distribution and will be allocated among the shares received in the manner described in Treas. Reg. § 1.358-2(a). Section 358(a)(1) and (b)(1).
- 11) If the Spinoff and/or Clean-Up Spinoff is undertaken, each Distributing shareholder's aggregate basis in its Distributing Stock and Controlled Stock immediately after the distribution(s) (including any fractional share interest in Controlled stock to which a shareholder may be entitled) will equal such shareholder's aggregate basis in its Distributing Stock immediately prior to the distribution(s). 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 External Distribution in accordance with Treas. Reg. § 1.358-2(a)(2). Section 358(a) through (c).
- 12) If a shareholder of Distributing Stock that purchased or acquired shares on different dates or at different prices is not able to identify which particular share of Controlled Stock is received in exchange for, or as a distribution with respect to, a particular share of Distributing Stock, the shareholder may designate which particular share of Controlled Stock is received in exchange for, or as a distribution with respect to, a particular share of Distributing Stock, provided the designation is consistent with the terms of the External Distribution. Treas. Reg. § 1.358-2(a)(2)(vii).
- 13) Each Distributing shareholder's holding period in its Controlled Stock received in the External Distribution (including any fractional share interest in Controlled Stock to which the shareholder may be entitled) will include the holding period of the Distributing Stock exchanged therefor or with respect to which a distribution of Controlled Stock was made, provided that such Distributing Stock is held by such Distributing shareholder as a capital asset on the date of the relevant exchange or distribution. Section 1223(1).
- 14) The receipt by the shareholders of Distributing 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 such shareholders as part of the External Distribution and then had been disposed of by such shareholders for the amount of such cash in a sale or exchange. Gain (or loss) recognized (if any, determined using the basis allocated to the fractional shares in Rulings 10-12) 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).

- 15) The earnings and profits of Distributing 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).
- 16) Following the External 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)(2) 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.
- 17) 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 External Distribution or for a taxable period beginning before and ending after the External Distribution; and (ii) will not become fixed and ascertainable until after the External Distribution, will be viewed as occurring immediately before the External Distribution. See *Arrowsmith v. Comm’r*, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transaction under other provisions of the Code or regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. No rulings were requested, and no opinion is expressed or implied, concerning the tax treatment of the Internal Preparatory Transactions.

Procedural Statements

The 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 returns that provides the date on and control number (PLR-102907-23) of the letter ruling.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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

cc: