

Internal Revenue Service

Department of the Treasury
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Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B01
PLR-115756-23

Date:
November 30, 2023

Distributing =

Controlled =

State A =

State B =

Business A =

Business B =

Business C =

Business D =

Segment 1 =

Segment 2 =

Preparatory
Internal
Transactions =

Continuing =
Arrangements

Dear _____ :

This letter responds to your letter dated August 1, 2023, as supplemented by additional letters dated September 18, 2023 and November 2, 2023, submitted on behalf of Distributing, its affiliates, and its shareholders, requesting rulings under sections 355 and 368(a)(1)(D), and related provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and related regulations with respect to a series of proposed transactions (the "Proposed Transaction," as described below). The material information submitted in that request and subsequent correspondence is summarized below.

This letter is issued pursuant to Rev. Proc. 2023-1, 2023-1 I.R.B. 1, Rev. Proc. 2023-26, 2022-33 I.R.B. 486, and Rev. Proc. 2017-52, 2017-41 I.R.B. 283, regarding one or more "Covered Transactions" under section 355 and/or section 368 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 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 office has made no determination regarding whether the Proposed Transaction: (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, widely held, State A corporation, is the parent company of a worldwide group that includes both domestic and foreign entities (the "Distributing Worldwide Group"). Distributing and its domestic affiliates join in the filing of a consolidated U.S. federal income tax return. At the time of the Proposed Transaction, Distributing will have a single class of voting common stock issued and outstanding.

The Distributing Worldwide Group is engaged in multiple businesses, including Business A, Business B, Business C, and Business D (Business B, Business C, and Business D, together, the "Controlled Businesses").

Distributing proposes to undertake the Proposed Transaction to separate the Controlled Businesses from Business A pursuant to one overall plan of reorganization.

For purposes of satisfying the active trade or business requirement of section 355(b), with respect to the External Spin-Off (defined below), Distributing and the members of its “separate affiliated group” as defined in section 355(b)(3)(B) will rely on Segment 1 of Business A, and Controlled and the members of its “separate affiliated group” as defined in section 355(b)(3)(B) will rely on Segment 2 of Business B. Financial information has been submitted in accordance with Rev. Proc. 2017-52 indicating that each of Segment 1 and Segment 2 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

In preparation for the Proposed Transaction, Distributing has undertaken and will undertake the Preparatory Internal Transactions to separate the Controlled Businesses from Business A.

After the Preparatory Internal Transactions are completed, Distributing will directly own all of the issued and outstanding membership interests of Controlled, a State B limited liability company treated as a disregarded entity for U.S. federal income tax purposes. Controlled will directly and indirectly own (through domestic and foreign entities) domestic and foreign assets associated with the Controlled Businesses, including Segment 2.

For what are represented to be valid business reasons, Distributing proposes to engage in the following transactions to separate the Controlled Businesses from Business A. Following the Proposed Transaction, Distributing will conduct Business A and Controlled will conduct the Controlled Businesses.

Step 1: Controlled will convert, under State B law, from a State B limited liability company to a State B corporation (the “Contribution”). As a result, Distributing will own all of the issued and outstanding stock of Controlled. Prior to such conversion, Controlled may make an election under Treas. Reg. § 301.7701-3 to be treated as an association taxable as a corporation.

Step 2: Distributing will distribute all of the issued and outstanding stock of Controlled pro rata to its shareholders (the “Distribution”).

The Contribution and the Distribution are together referred to as the “External Spin-Off.”

In connection with the External Spin-Off, Distributing and Controlled (or their respective affiliates, as applicable) will enter into certain agreements that will continue after the completion of the External Spin-Off in order to effect an orderly transition of Controlled

to a standalone public company, including a transitional services agreement, a tax matters agreement, and other agreements (i.e., the Continuing Arrangements).

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 exception of one overlapping board member (the "Overlapping Board Member"). The Overlapping Board Member will represent a minority share of the overall composition of Distributing's and Controlled's board of directors. The Overlapping Board Member will serve in this capacity to benefit both Business A and the Controlled Businesses as Controlled transitions into an independent public company. The Overlapping Board Member will at all times have a minority voting power with respect to each of the boards of Distributing and Controlled. Under Controlled's governing documents the Overlapping Board Member will be subject to re-election in a manner consistent with Controlled's other board members.

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: 3(a), 8(b), 11(a), 15(a), 31(a), and 41(a).
2. Distributing has not made the following representations, which do not apply to the Proposed Transaction: 7, 19, 20, 24, 25, 39, and 40.
3. Distributing has not made representation 37, but provided the required explanation.
4. Distributing has made the following modified representations:

Representation 22(b): With respect to Property being transferred by Distributing to Controlled as part of the External Spin-Off for which an investment credit determined under section 46 has been (or will be) claimed, the income tax obligation for the taxable year in which the Property is transferred will be adjusted pursuant to section 50(a)(1) or (a)(2) as required to reflect an early disposition of the Property.

Representation 23: Other than potentially as a result of a Continuing Arrangement, the External Spin-Off does not involve and will not result in a situation in which one party recognizes income, but another party recognizes the deductions associated with such income or a situation in which one party owns Property, but another party recognizes the income associated with such Property.

Representation 32: Except for debt potentially incurred under the Continuing Arrangements or ordinary course payables and receivables, no intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the External Spin-Off.

Representation 33: Except as contemplated by the Continuing Arrangements, payments made in connection with all continuing transactions, if any, between Distributing and Controlled after the External Spin-Off will be for fair market value based on arm's-length terms.

Distributing has made the following additional representations:

5. With respect to any repurchase of shares of stock of Distributing or Controlled, as applicable, after the External Spin-Off, including potentially in the open market or through an accelerated share repurchase (an "ASR" and together with any other repurchase, a "Post-Closing Share Repurchase"), Distributing represents that:

(a) Any Post-Closing Share Repurchase will be motivated by a business purpose, and the stock that will be repurchased by Distributing, or acquired by a counterparty pursuant to an ASR, will be widely held.

(b) To the extent that any Post-Closing Share Repurchases are made on the open market (including through a Rule 10b5-1 plan, a purchase in compliance with Rule 10b-18, or a tender offer), Distributing or Controlled, as applicable, does not expect to know the identity of any shareholder from which stock will be repurchased. To the extent that any Post-Closing Share Repurchases are made through an ASR, Distributing or Controlled, as applicable, does not expect to know with certainty the identity of any shareholder from which stock is borrowed or purchased by each counterparty that participates in such ASR.

(c) There is no plan or intention that the aggregate amount of stock purchased or acquired through Post-Closing Share Repurchases will equal or exceed 20 percent of the outstanding stock of Distributing or Controlled, as applicable.

(d) No Post-Closing Share Repurchase will be motivated to any extent by a desire to increase or decrease the ownership percentage of any particular shareholder or group of shareholders.

Rulings

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

1. The Contribution, together with the Distribution, will qualify as a tax-free reorganization 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 Contribution. Sections 357(a) and 361(a).

3. No gain or loss will be recognized by Controlled on the Contribution. Section 1032(a).

4. The basis of each asset received by Controlled in the Contribution will equal the basis of such asset in the hands of Distributing immediately before the Contribution. Section 362(b).

5. The holding period in each asset received by Controlled in the Contribution will include the period during which the asset was held by Distributing. Section 1223(2).

6. No gain or loss will be recognized by (and no amount will be included in the income of) Distributing’s shareholders on their receipt of the Controlled stock in the Distribution. Section 355(a).

7. No gain or loss will be recognized by Distributing on the Distribution. Section 361(c).

8. Each Distributing shareholder’s aggregate basis in the Distributing stock and the Controlled stock immediately after the Distribution (including any fractional share interest in the Controlled stock to which the shareholder may be entitled) will equal such shareholder’s aggregate basis of the Distributing stock immediately before the Distribution. Section 358(a). The basis will be allocated between the Distributing stock and the Controlled stock in proportion to their fair market values. Section 358(b) and (c); Treas. Reg. § 1.358-2.

9. If a holder 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 as a distribution with respect to a particular share of Distributing stock, the holder may designate which particular share of Controlled stock is received as a distribution with respect to a particular share of Distributing stock, provided the designation is consistent with the terms of the Distribution. Treas. Reg. § 1.358-2(a)(2)(vii).

10. Each Distributing shareholder’s holding period in its Controlled stock received in the 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 with respect to which the 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 Distribution. Section 1223(1).

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

12. Any payments made between any of Distributing and Controlled and their respective affiliates under 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 taxable year beginning before and ending after the Distribution; and (ii) will not become fixed and ascertainable until after the Distribution, will be characterized in a manner consistent with the proper treatment as if such payments had occurred immediately before the Distribution. See Arrowsmith v. Commissioner, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.

13. The receipt by Distributing shareholders 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 8), 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 determined in Ruling 10.

14. Following the 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) 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.

15. To the extent any Post-Closing Share Repurchases are treated as part of a plan (or series of related transactions) with the External Spin-Off for purposes of section 355(e), such Post-Closing Share Repurchases will be treated as being made from all public shareholders (defined as a shareholder who is not a “controlling shareholder” or “ten-percent shareholder” within the meaning of Treas. Reg. §§ 1.355-7(h)(3) and (14)) of Distributing or Controlled, as applicable, on a pro rata basis for purposes of testing the effect of such Post-Closing Share Repurchases on the External Spin-Off under section 355(e) and Treas. Reg. § 1.355-7.

Caveats

No opinion is expressed or implied about the tax treatment of the Proposed Transaction under any other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that is not specifically covered by the above rulings.

Procedural Statements

This letter ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that this letter may not be used or cited as precedent.

A copy of this letter ruling 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 and control number (PLR-115756-23) of this letter ruling.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Brian R. Loss

Brian R. Loss
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel (Corporate)

cc: