

**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:B2  
PLR-118922-23

Date:  
February 21, 2024

Legend

Parent =

Distributing =

Controlled =

Controlled Sub 1 =

Controlled Sub 2 =

Controlled Sub 3 =

Controlled Sub 4 =

Business A =

Business B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

State A =

a =

b =

c =

d =

Distributing Debt =

Continuing =

Agreements =

Dear

This letter responds to a letter from your authorized representatives dated September 18, 2023, as supplemented by subsequent information and documentation, requesting rulings on certain federal tax consequences of a series of transactions (the “Proposed Transaction,” as defined below). The material information submitted in that letter and subsequent correspondence is summarized below.

This letter is issued pursuant to Rev. Proc. 2017-52, 2017-41 I.R.B. 283, regarding “Covered Transaction[s]” under section 355 and 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. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

This office has made no determination regarding whether the Distribution (defined below): (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B)

and Treas. Reg. § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation, or any predecessor or successor of 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**

Parent, a publicly traded State A corporation, is the parent of an affiliated group of corporations that files a consolidated return for U.S. federal income tax purposes. Parent owns all outstanding stock of Distributing. Distributing owns all the outstanding stock of Controlled. Controlled owns all the outstanding stock of Controlled Sub 1. Controlled Sub 1 owns all the outstanding stock of Controlled Sub 2. Controlled Sub 2 owns all the outstanding stock of Controlled Sub 3, and Controlled Sub 3 owns all the outstanding stock of Controlled Sub 4.

Distributing has engaged directly and through members of its “separate affiliated group” as defined in section 355(b)(3)(B) (the “DSAG”) in Business A and Business B. Controlled has also engaged directly and through members of its “separate affiliated group” as defined in section 355(b)(3)(B) (the “CSAG”) in Business A and Business B. As part of a strategic expansion of Business A and Business B, through a series of transactions commencing on Date 1 and culminating on Date 3, Distributing acquired all the equity interests of Controlled. On Date 2, (a date within five years of the Distribution, as defined below) Controlled became a member of the DSAG in a taxable transaction.

On Date 4, Distributing extended a loan to Controlled Sub 3 (the “Controlled Intercompany Loan”).

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

### **The Proposed Transaction**

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

1. Controlled will convert from a State A limited liability company to a State A corporation.

2. Controlled Sub 4 will borrow approximately \$a from a third-party lender under a new loan facility (the “New Controlled Sub 4 Borrowing”).
3. The proceeds of the New Controlled Sub 4 Borrowing will be distributed by Controlled Sub 4 to Controlled through a series of intercompany distributions.
4. Controlled will distribute to Distributing: (A) proceeds of the New Controlled Sub 4 Borrowing, and (B) a note with a face value equal to the excess of the expected net proceeds from the Controlled IPO (defined below) over the amount of the Controlled Intercompany Loan outstanding at the time of the Controlled IPO (the “Controlled Note”). Distributing will use the cash received with respect to the New Controlled Sub 4 Borrowing to pay Distributing Debt. This step will create an excess loss account in some of Distributing’s stock of Controlled.
5. Pursuant to an initial public offering (the “Controlled IPO”), Controlled will issue common stock worth approximately \$b to the public representing not more than c percent of its sole class of stock. Thereafter, (i) Controlled will contribute a portion of the proceeds from the Controlled IPO (net of applicable expenses) equal to the balance of the Controlled Intercompany Loan at the time of the Controlled IPO to Controlled Sub 1, (ii) Controlled Sub 1 will contribute such proceeds to Controlled Sub 2, (iii) Controlled Sub 2 will contribute such proceeds to Controlled Sub 3, and Controlled Sub 3 will use such cash to repay the Controlled Intercompany Loan, and (iv) Controlled will distribute the remaining proceeds from the Controlled IPO to Distributing in complete satisfaction of the Controlled Note. Distributing will, in turn, use the cash received from Controlled Sub 3 and Controlled to pay Distributing Debt.
6. No later than d months following the Controlled IPO, Distributing will distribute all the Controlled stock held by it to Parent (the “Internal Spin-off”).
7. Parent will distribute Controlled to the Public Stockholders (the “External Spin-off” and together with the Internal Spin-off, the “Distribution”).

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

### **Representations**

The following representations have been made with respect to the Proposed Transaction:

*Internal Spin-off*

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

Distributing has made the following alternative representations:

Representations: 3(a), 8(b), 11(b), 15(a), 22(a), 31(a), 41(a)

Distributing has not made the following representations, which do not apply to the Internal Spin-off:

Representations: 7, 18, 19, 20, 24, 25

Distributing has made the following modified representations:

Representation 13 – Neither Business A or Business B conducted by the DSAG nor control of an entity conducting that business will have been acquired during the five-year period ending on the date of the Internal Spin-off in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with acquisitions of Controlled).

Representation 46 – Controlled will not issue stock or securities to a person other than the public in respect of the Controlled IPO.

Distributing does not make Representation 38.

*External Spin-off*

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

Parent has made the following alternative representations:

Representations: 3(a), 8(b), 11(b), 15(a), 22(a), 31(a), 41(a)

Parent has not made the following representations, which do not apply to the External Spin-off:

Representations: 7, 18, 19, 20, 24, 25

Parent has made the following modified representations:

Representation 13 – Neither Business A or Business B conducted by the DSAG nor control of an entity conducting that business will have been acquired during the five-year period ending on the date of the External Spin-off in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with acquisitions of Controlled.

Representation 46 – Controlled will not issue stock or securities to a person other than the public in respect of the Controlled IPO.

*Additional Representations*

The sum of (1) the distribution from the proceeds of the New Controlled Sub 4 Borrowing and (2) the amount distributed by way of the Controlled Note will not exceed (3) the aggregate basis of Distributing in the stock of Controlled.

**Rulings***Internal Spin-off*

1. No gain or loss will be recognized by (and no amount will be included in the income of) Parent upon its receipt of the Controlled Stock in the Internal Spin-off (section 355(a)).
2. No gain or loss will be recognized by Distributing on the Internal Spin-off (section 355(c)).
3. The aggregate basis of the Distributing stock and the Controlled stock in the hands of Parent immediately after the Internal Spin-off will equal the aggregate adjusted basis of the Distributing stock held by Parent immediately before the Internal Spin-off, allocated in the manner described in Treas. Reg. § 1.358-2(a)(2) (section 358(b)).
4. The holding period of the Controlled stock received by Parent in the Internal Spin-off will include the holding period of Controlled stock held by Distributing with respect to which the Internal Spin-off will be made, provided that such Controlled stock is held as a capital asset on the date of the Internal Spin-off (section 1223(1)).
5. Earnings and profits will be allocated between Distributing and Controlled in accordance with section 312(h) and Treas. Reg. § 1.312-10(b) and 1.1502-33(e)(3).
6. Distributing will not take into account as income or gain the excess loss account in the stock of Controlled immediately before the Internal Spin-off (Treas. Reg. § 1.1502-19(b)(2) and Treas. Reg. § 1.1502-19(g), Ex. 3).

*External Spin-off*

7. No gain or loss will be recognized by Public Stockholders upon receipt of the Controlled Stock in the External Spin-off (section 355(a)).

8. No gain or loss will be recognized by Parent on the distribution of Controlled Stock in the External Spin-off other than any deferred intercompany gains or losses (section 355(c) and Treas. Reg. § 1.1502-13(d)).
9. The aggregate basis of the Parent stock and the Controlled stock in the hands of the Public Stockholders immediately after the External Spin-off will equal the aggregate adjusted basis of the Parent stock held by such Public Stockholders immediately before the External Spin-off, allocated in the manner described in Treas. Reg. § 1.358-2(a)(2) (section 358(b)).
10. The holding period of the Controlled stock received by the Public Stockholders in the External Spin-off will include the holding period of Controlled stock held by Parent with respect to which the External Spin-off will be made, provided that such Controlled stock is held as a capital asset on the date of the External Spin-off (section 1223(1)).
11. Earnings and profits will be allocated between Parent and Controlled in accordance with section 312(h), Treas. Reg. § 1.312-10(b), and Treas. Reg. § 1.1502-33(e).

### **Caveats**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transaction under any provision of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the Proposed Transaction that is not specifically covered by the above rulings.

### **Procedural Statements**

This ruling is directed only to the taxpayer who requested 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 in this matter, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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

cc: