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Person To Contact:

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Refer Reply To:
CC:CORP:B02
PLR-129759-15

Date:
March 08, 2016

LEGEND

Distributing =

Shareholder A =

Shareholder B =

SplitCo =

Sub =

PRS =

Party 1 =

Party 2 =

Business =

Business Adjunct =

Sub Business =

PRS Assets and
Activities =

State =

Governing
Documents =

a =
b =
c =
d =
e =
f =
g =
h =
i =
j =
k =
l =
m =
Year 1 =
Year 2 =
Year 3 =
Date =

Dear :

This letter responds to your letter dated September 8, 2015, requesting rulings on certain U.S. federal (“Federal”) income tax consequences of the Proposed Transaction (defined below). The information provided in that letter and in later correspondence is summarized 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 the 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 section 6.03 of Rev. Proc. 2016-1, 2016-1 I.R.B. 1, 18-19, regarding one or more significant issues under sections 355 and 368. The rulings contained in this letter only address one or more discrete legal issues involved in the transaction. This office expresses no opinion as to the overall tax consequences of the transactions described in this letter or as to any issue not specifically addressed by the rulings below.

Summary of Facts

Distributing has been engaged directly and through members of its separate affiliated group within the meaning of Section 355(b) (a “SAG,” and Distributing’s SAG, the “DSAG”) in the active conduct of Business throughout the five-year period ending on the date of the Exchange (defined below, and such period, the “Five-Year Period”). Shareholder A and Shareholder B directly own a percent and b percent, respectively, of the issued and outstanding Distributing common stock (representing a and b percent, respectively, of the total value and voting power of all Distributing stock outstanding). No other classes or shares of Distributing stock are authorized or outstanding.

Sub is engaged directly in the active conduct of Sub Business. Historically, Distributing, Party 1, and Party 2 owned c percent, d percent, and e percent, respectively, of the issued and outstanding stock of Sub. In Year 1, Distributing purchased all of Party 2’s stock of Sub (representing e percent of the outstanding stock of Sub) and f-percent of the outstanding stock of Sub from Party 1. On Date, the Governing Documents of Sub were amended to provide Distributing with the right to elect m percent of Sub’s directors. Currently, Distributing owns g percent, and Party 1 owns the remaining h percent, of the issued and outstanding stock of Sub.

PRS, which is classified as a partnership for Federal tax purposes, was formed in Year 2 and has owned and has been engaged in the PRS Assets and Activities (together with Sub Business, “Business Adjunct”) since Year 3. Historically, Distributing, Party 1, and Party 2 owned c percent, d percent, and e percent, respectively, of the outstanding membership interests in PRS. In Year 1, Distributing and one of its wholly owned corporate subsidiaries purchased Party 1’s and Party 2’s entire membership interests in PRS. Currently, Distributing owns i percent, and its wholly owned subsidiary owns the remaining j percent, of the membership interests in PRS.

Proposed Transaction

Distributing has undertaken or proposes to undertake the following steps (each a “Step” and, collectively, the “Proposed Transaction”). To the extent the ordering of the steps is neither (i) relevant to any of the requested rulings, nor (ii) otherwise explicitly stated as between specific steps or a series of steps, steps may occur in a different order vis-à-vis one another than the order set forth below.

- (i) Distributing incorporated SplitCo.
- (ii) Sub will contribute to a newly formed corporation (“Corp 1”) cash in an amount equal to h percent of the agreed equity value of Sub (determined without regard to the cash distributed by Sub in Step (iv) and by Sub LLC in Step (vii)).
- (iii) Corp 1 will contribute the cash received in Step (ii) to a newly formed limited liability company (“LLC 1”), which will be disregarded as an entity separate from its sole owner, Corp 1, for Federal tax purposes (a “disregarded entity”).
- (iv) Sub will redeem all of Party 1’s Sub stock in exchange for all of the stock of Corp 1 and Party 1’s share of Sub’s cash in excess of the reasonable needs of its business, including reasonable reserves for contingencies relating to pending and potential litigation or otherwise (the “Redemption”).
- (v) Distributing will contribute all of the issued and outstanding stock of Sub to a newly formed corporation (“New Sub”) in exchange for stock of New Sub.
- (vi) Sub will convert under State law to a limited liability company (“Sub LLC”), after which it will be a disregarded entity.
- (vii) Sub LLC will distribute all of its remaining cash in excess of the reasonable needs of its business, including reasonable reserves for contingencies relating to pending and potential litigation or otherwise, to New Sub.
- (viii) New Sub will merge with and into a newly formed limited liability company wholly owned by Distributing that is a disregarded entity (“New Sub LLC”), with New Sub LLC surviving (the “Merger”).
- (ix) New Sub LLC will distribute the cash received by New Sub in Step (vii) and by New Sub LLC in Step (viii) to Distributing.

- (x) PRS will distribute its cash in excess of the reasonable needs of its business, including reasonable reserves for contingencies relating to pending and potential litigation or otherwise, pro rata to its members, including Distributing.
- (xi) Distributing will borrow cash from third party lenders based on its independent debt capacity (the “Distributing Borrowing”).
- (xii) Distributing will contribute to SplitCo (i) the proceeds of the Distributing Borrowing; (ii) the cash received from New Sub LLC and PRS in Steps (ix) and (x), respectively; (iii) an a-percent interest in New Sub LLC; and (iv) a k-percent interest in PRS in exchange for actual or constructively issued shares of SplitCo stock (the “SplitCo Contribution”).
- (xiii) New Sub LLC will contribute all of the interests in Sub LLC to LLC 1 in exchange for a g-percent interest in LLC 1 (the “LLC 1 Contribution”), reducing Party 1’s interest in LLC 1 to h percent.
- (xiv) LLC 1 will contribute the cash received in Step (iii) to Sub LLC to be used in the operations of Sub Business, including to provide reasonable reserves for contingencies relating to pending and potential litigation or otherwise.
- (xv) Distributing will distribute all of the stock of SplitCo to Shareholder A in complete redemption of Shareholder A’s stock of Distributing (the “Exchange”).
- (xvi) Following the Exchange, (i) as part of its efforts to realize some of the synergies anticipated as a result of the Proposed Transaction, Shareholder B (and/or any of its direct or indirect, wholly owned entities) may contribute assets to Distributing in exchange for Distributing equity for Federal income tax purposes, and (ii) Distributing may recapitalize its capital structure.

Representations

- (a) The common stock of Distributing held by Shareholder A and Shareholder B is the only equity of Distributing for Federal income tax purposes that will have been outstanding from the time immediately prior to the time the Proposed Transaction was first contemplated until the time of the Exchange.

- (b) The common stock of Distributing held by Shareholder B will be the only equity of Distributing for Federal income tax purposes outstanding immediately after the Exchange.
- (c) There is no plan or intent for Distributing to issue any equity for Federal income tax purposes to any person other than Shareholder B (or any of its direct or indirect, wholly owned entities) following the Exchange.
- (d) There is no plan or intent for SplitCo to own, directly or indirectly, less than an l-percent interest, by capital and profits, in each of PRS, New Sub LLC, LLC 1, and Sub LLC following the Exchange.

Rulings

Based solely on the information submitted and the representations set forth above, and provided that (i) the Exchange otherwise satisfies the requirements of Section 355 or (ii) the Merger otherwise qualifies as a reorganization described in Section 368(a)(1)(A), as applicable, we rule as follows:

- (1) Section 355(g) will not apply to the Exchange.
- (2) The acquisition by the DSAG of Sub Business, and the integration of Sub Business with PRS Assets and Activities in the DSAG, during the Five-Year Period will constitute an expansion of Business (the "Business Expansion"), and not the acquisition of a new or different business, for purposes of the active trade or business requirement of Section 355(b) (the "ATB Requirement"). Treas. Reg. § 1.355-3(b)(3)(ii); Rev. Rul. 2003-38, 2003-1 C.B. 811; and Rev. Rul. 2003-18, 2003-1 C.B. 467.
- (3) SplitCo will not be precluded from relying on Business Adjunct that will be conducted by LLC 1 (through Sub LLC) and PRS to satisfy the ATB Requirement with respect to the Exchange because of (i) SplitCo's indirect ownership interest in LLC 1, (ii) the relative value of SplitCo's indirect interest in the assets of Business Adjunct as compared to the value of all of the assets of SplitCo, (iii) the Business Expansion, or (iv) Distributing's continuing interest in Business Adjunct through its indirect ownership interest in LLC 1 and its direct ownership interest in PRS following the Exchange.
- (4) Shareholder B's increased proportionate interest in Distributing resulting from the Exchange will not be taken into account as an acquisition of Distributing stock for purposes of applying Section 355(e)(2)(A)(ii).

- (5) The Merger will not be disqualified as a reorganization described in Section 368(a)(1)(A) or recharacterized as a result of the SplitCo Contribution or the LLC 1 Contribution. Treas. Reg. § 1.368-2(k).

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

Procedural Statements

This ruling letter is directed only to the taxpayers who requested it. Section 6110(k)(3) 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.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 11.04 of Rev. Proc. 2016-1, 2016-1 I.R.B. 1, 59. However, when the criteria in section 11.06 of Rev. Proc. 2016-1, 2016-1 I.R.B. 1, 60 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

In accordance with the 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)