

**Internal Revenue Service**

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Person To Contact:  
, ID No.

Telephone Number:

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Legend

Distributing 1 =

Distributing 2 =

Distributing 3 =

Sub =

LLC 1 =

U.S. Controlled =

Foreign Controlled =

Business =

Business A =

Business B =

Business C =

Business D =

Business E =

Segment A Domestic =

Segment A Foreign =

State =

Country A =

Country B =

Date 1 =

Date 2 =

Month 1 =

Year 1 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

Person A =

Person B =

Dear :

This letter responds to your authorized representatives' letter dated August 23, 2016, requesting rulings on certain federal income tax consequences of a proposed transaction (the "Proposed Transaction"). The material information provided in that request and in subsequent correspondence 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. This office has not verified any of the materials submitted in support of the request for rulings. Such materials are 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 and section 3.01(50) of Rev. Proc. 2016-3, 2016-1 I.R.B. 126, regarding rulings on

one or more significant issues that are presented in a transaction described in section 332, section 351, section 355, section 368, or section 1036 of the Internal Revenue Code (the “Code”) or that address the tax consequences that result from the qualification of a transaction under these sections. The rulings contained in this letter only address discrete legal issues presented by the Proposed Transaction. This Office expresses no opinion as to the overall tax consequences of the Proposed Transaction. Except as expressly provided in the Rulings section 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.

### Summary of Facts

Distributing 1 is a publicly traded State corporation and the common parent of an affiliated group that files a U.S. consolidated federal income tax return. Distributing 1 also is the parent of a worldwide group that includes U.S. and foreign entities (the “Distributing 1 Group”).

The Distributing 1 Group is engaged in Business. The group’s operations are divided into 5 segments (Businesses A, B, C, D, and E), each of which comprises domestic and foreign segments (e.g., Business A comprises Segment A Domestic and Segment A Foreign). Business A will be spun off pursuant to the Proposed Transaction (as described below). Businesses B, C, D, and E (each, an “Other Business” and collectively, the “Other Businesses”) will remain with the Distributing 1 Group.

Prior to the Proposed Transaction, Distributing 1 directly owned all of the outstanding stock of Sub (a State corporation) and a percent of the interests in Distributing 2 (a State limited liability company treated as a corporation for U.S. federal income tax purposes), and Sub directly owned the remaining b percent of Distributing 2 interests.

Distributing 2 directly owns all of the interests in LLC 1 (a State limited liability company treated as a corporation for U.S. federal income tax purposes). Distributing 2 also directly owns c percent of the stock of Distributing 3 (a Country A entity treated as a corporation for U.S. federal income tax purposes). LLC 1 directly owns the remaining d percent of Distributing 3 stock. Additionally, Distributing 2 directly owns various other U.S. entities that are engaged in Business (including Segment A Domestic).

Distributing 3 owns (directly and indirectly) various foreign entities that are engaged in Business (including Segment A Foreign). Some of these foreign entities conduct Other Business operations as well as Segment A Foreign operations (the “Foreign Mixed Business Entities”).

Distributing 2 owes approximately e to third-party lenders. Distributing 2 and its subsidiaries also have intercompany debt outstanding.

### Proposed Transaction

For what are represented to be valid corporate business purposes (the “Corporate Business Purposes”), Distributing 1 proposes to separate Business A from the Other Businesses in a transaction that includes the following steps (among others) (the “Proposed Transaction”):

1. On Date 1, Distributing 2 formed a new State corporation (“U.S. Controlled”).
2. On Date 2, Sub merged into Distributing 1, with Distributing 1 surviving.
3. In a series of transactions that will include distributions, contributions, reorganizations, sales, and other taxable and nontaxable transfers, the assets and liabilities of Segment A Foreign held by the Foreign Mixed Business Entities will be separated from the assets and liabilities of the Other Businesses held by these entities and positioned in regarded entities and DREs for later transfer to Foreign Controlled (defined below) (the “Foreign Restructuring”). The Foreign Restructuring began in Month 1 of Year 1. As part of the Foreign Restructuring, various entity classification elections have been made or will be made.

As part of the Foreign Restructuring, intercompany debt owed to Distributing 2 (or to DREs of Distributing 2) or LLC 1 by DREs of Distributing 3 will be repaid, capitalized, or otherwise eliminated so that there will be no indebtedness owed by Foreign Controlled (or any entity controlled directly or indirectly by Foreign Controlled) to Distributing 1 (or any entity controlled directly or indirectly by Distributing 1), other than approximately  $f$  described in Step 4 below, at the time of or after the Distributions (defined below).

4. In a series of transactions, Distributing 3 (through its DREs) will contribute the following assets to Foreign Controlled (a newly formed Country B entity initially treated as a DRE of Distributing 3 for U.S. federal income tax purposes) in exchange for all Foreign Controlled common stock and the assumption by Foreign Controlled of related liabilities (including approximately  $f$  owed by a DRE of Distributing 3 to Distributing 2 (the “Assumed Loan”)): (i) all of the entities conducting Segment A Foreign; (ii) any Segment A Foreign assets held directly by Distributing 3; and (iii) intercompany agreements to acquire any Segment A Foreign entities and assets that cannot be contributed contemporaneously due to legal, regulatory, or similar impediments (collectively, “Contribution 1”). No other class of Foreign Controlled stock will be authorized. Assets and entities transferred to Foreign Controlled and liabilities assumed by Foreign Controlled may be further transferred to or assumed by wholly owned subsidiaries of Foreign Controlled.

The amount of the Assumed Loan, if any, has not been finally determined and will be based on market conditions. The Assumed Loan will be repaid in Step 6.

Prior to Step 5, Foreign Controlled will make an election to be treated as a corporation for U.S. federal income tax purposes.

5. Distributing 3 will distribute all of the Foreign Controlled stock to Distributing 2 in exchange for part of the Distributing 3 stock held by Distributing 2 (the "First Distribution").
6. Following the separation of Segment A Domestic assets and liabilities from Other Business assets and liabilities, and following the positioning of these separated Segment A Domestic assets and liabilities in regarded entities and DREs held by Distributing 2, Distributing 2 will contribute to U.S. Controlled: (i) all of the entities conducting Segment A Domestic; and (ii) all stock in Foreign Controlled. In exchange for this contribution, Distributing 2 will receive approximately g of cash (from borrowings described below) (the "Cash Amount") and 2 classes of U.S. Controlled common stock: (i) Class A, representing h percent of the vote and i percent of the value (the "Class A Common Stock"); and (ii) Class B, representing j percent of the vote and k percent of the value (the "Class B Common Stock"; together with the Class A Common Stock, the "Dual Class Structure"). The foregoing exchange is referred to herein as "Contribution 2."

U.S. Controlled (possibly together with Foreign Controlled, depending on market conditions) will borrow approximately l from one or more third-party lenders on customary terms (the "Debt Amount"). From these borrowings, U.S. Controlled will distribute the Cash Amount to Distributing 2 and loan approximately m (the "Loan Amount") to Foreign Controlled, which will use the funds to repay the Assumed Loan owed to Distributing 2. (If Foreign Controlled borrows funds directly from one or more third-party lenders, then U.S. Controlled will not loan funds to Foreign Controlled.) U.S. Controlled will use the remaining cash to repay amounts owed to Distributing 2 and LLC 1 by U.S. Controlled-owned entities. Distributing 2 will use the cash received (totaling approximately l) to repay third-party creditors.

Amounts g, l, and m have not been finally determined and will be based on market conditions. If Foreign Controlled directly borrows any of the Debt Amount from third-party lenders, Foreign Controlled will use such funds to repay the Assumed Loan and will distribute any remaining amount to U.S. Controlled (which will distribute such funds to Distributing 2).

7. Distributing 2 will distribute all of the Class B Common Stock to Distributing 1 (the "Second Distribution") and will retain the Class A Common Stock (the "Retention" of the "Retained Stock").
8. Distributing 1 will distribute all of the Class B Common Stock to its shareholders on a pro rata basis (the "Third Distribution"; together with the First Distribution and the Second Distribution, the "Distributions").

Distributing 2 intends to use the Retained Stock to repay a portion of its existing third-party debt (the “Retention Business Purpose”). By reducing its debt load, the Distributing 1 Group expects to (i) achieve its stated leverage target, (ii) achieve a debt level comparable to that of its peer group, (iii) avoid the risk of a credit downgrade, and (iv) reduce its prospective borrowing costs.

To this end, after the Second Distribution, one or more investment banks (the “Investment Banks”), acting as principals for their own account, will purchase a portion of the Distributing 2 third-party debt (each such purchase, a “Relevant Debt Purchase,” and such purchased debt, the “Relevant Debt”). No sooner than 5 days after a Relevant Debt Purchase, Distributing 2 will enter into an exchange agreement with the relevant Investment Bank (each such agreement, an “Exchange Agreement”). Pursuant to each Exchange Agreement, Distributing 2 will exchange Retained Stock with the Investment Bank for the Relevant Debt (a “Relevant Debt Exchange”). Each Relevant Debt Exchange will occur at least 14 days after the Relevant Debt Purchase, and the exchange ratio for each Relevant Debt Exchange will reflect arm’s-length terms based on the fair market value of the Relevant Debt and the Retained Stock as of the date of the exchange. It is expected that, immediately after receiving Retained Stock, the Investment Banks will sell the Retained Stock to unrelated third parties in public or private offerings.

All Relevant Debt Exchanges will take place within 12 months after the Second Distribution (the “Debt Exchange Period”). In the event that market conditions and sound business judgment prevent Distributing 2 from disposing of any or all Retained Stock in the Relevant Debt Exchanges, Distributing 2 will dispose of any and all remaining Retained Stock as soon as the disposition is warranted, consistent with the Retention Business Purpose, but in no event later than 5 years after the Second Distribution (the “Remaining Dispositions”). Any proceeds from the Remaining Dispositions will be used to repay third-party debt.

Following the Distributions, Distributing 2 and U.S. Controlled will operate as separate corporations, and no ongoing business relationship will exist between the Distributing 1 Group on the one hand and U.S. Controlled and its subsidiaries (the “U.S. Controlled Group”) on the other hand. However, Distributing 1 and U.S. Controlled will enter into a Separation and Distribution Agreement and certain other agreements, including a Tax Matters Agreement, that will govern certain rights and obligations of the parties after the Distributions. Under the Separation and Distribution Agreement, Distributing 1 will be required, following the Distributions, to cause Distributing 3 to transfer assets and liabilities to Foreign Controlled or its subsidiaries, and cause Distributing 2 to transfer assets and liabilities to U.S. Controlled or its subsidiaries, that could not be transferred before the Distributions due to legal, regulatory, or similar impediments (the “Delayed Asset Transfers”). Under the Tax Matters Agreement, Distributing 3 and Foreign Controlled may be required to make payments to one another with respect to certain items arising in taxable years beginning before the Distributions,

and Distributing 2 and Distributing 1 may be required to make payments to U.S. Controlled, or vice versa, with respect to certain items arising in taxable years beginning before the Distributions.

### Representations

The taxpayer has made the following representations with respect to the Proposed Transaction:

- a) Distributing 2's plan to retain the Retained Stock is motivated by the Retention Business Purpose. The use of the Retained Stock to repay third-party debt is expected to (i) meaningfully reduce the debt load of the Distributing 1 Group consistent with its publicly stated goals, (ii) avoid a potential credit downgrade following the Proposed Transaction, and (iii) reduce borrowing costs.
- b) None of the officers or directors of Distributing 1 or Distributing 2 will serve as an officer of U.S. Controlled. Distributing 1 expects Person A (an officer and director of Distributing 1 and Distributing 2) and Person B (a director of Distributing 1) to serve on the initial board of directors of U.S. Controlled. These 2 persons will constitute a minority of each board of directors, and their presence on the initial board of U.S. Controlled is intended to (i) reassure investors that U.S. Controlled will continue to operate under the principles that govern Distributing 1, (ii) provide a sense of continuity for the employees and customers of the U.S. Controlled Group, (iii) help the Distributing 1 Group and the U.S. Controlled Group transition into standalone operating entities, and (iv) give both groups access to the experience base of the common directors. The overlap of directors is not inconsistent with the Corporate Business Purposes. With the exception of Person A and Person B, no officer or director of Distributing 1 or Distributing 2 will serve as a director of U.S. Controlled. Person A will stand for reelection for the board of U.S. Controlled by its shareholders within n months following the Third Distribution.
- c) All Relevant Debt Exchanges will occur within 12 months after the Second Distribution. If Distributing 2 continues to own any Retained Stock after the final Relevant Debt Exchange, Distributing 2 will complete the Remaining Dispositions as soon as such dispositions are warranted, consistent with the Retention Business Purpose, but in no event later than 5 years after the Second Distribution.
- d) Distributing 2 will vote, or cause to be voted, the Retained Stock in proportion to the votes cast by the other U.S. Controlled shareholders, and Distributing 2 may grant a proxy to U.S. Controlled to effectuate such voting.
- e) In no event will the Retention prevent Distributing 2 from distributing an amount of U.S. Controlled stock that represents control under section 368(c).



- f) If all of the U.S. Controlled stock were distributed by Distributing 2 to Distributing 1 and by Distributing 1 to its public shareholders in the Second and Third Distributions, none of the distributed stock would be treated as “other property” under section 356.
- g) No action will be taken (including the adoption of any plan or policy), at any time before the earlier of (i) the date of the final Relevant Debt Exchange (“Date X”), or (ii) the date that is 12 months after the date of the Second Distribution (“Date Y”), by U.S. Controlled’s board of directors, its management, or any of its controlling shareholders (as defined in § 1.355-7(h)(3)) that would (if implemented) actually or effectively result in an unwind of the Dual Class Structure. Distributing 2 may continue to hold Retained Stock after Date X.
- h) U.S. Controlled will not engage in a transaction with one or more persons (for example, a merger of U.S. Controlled with another corporation) that results in an unwind of the Dual Class Structure within 24 months after the earlier of Date X or Date Y, unless: (1) There is no agreement, understanding, arrangement, or substantial negotiations (within the meaning of § 1.355-7(h)(1)) or discussions (within the meaning of § 1.355-7(h)(6)) concerning the transaction or a similar transaction (applying the principles of § 1.355-7(h)(12) and (13), relating to similar acquisitions), at any time during the 24-month period ending on the earlier of Date X or Date Y; and (2) No more than 20 percent of the interest in the other party, in vote or value, is owned by the same persons that own more than 20 percent in vote or value of the stock of U.S. Controlled. For purposes of the preceding sentence, ownership is determined by application of the constructive ownership rules of section 318(a) as modified by section 304(c)(3), except that for purposes of applying section 318(a)(3)(A) and (B), the principles of section 304(c)(3)(B)(ii) (without regard to section 304(c)(3)(B)(ii)(I)) apply. In the case of a corporation the stock of which is listed on an established market (within the meaning of § 1.355-7(h)(7)), the persons referred to in clause (2) of this representation (h) are limited to controlling shareholders (within the meaning of § 1.355-7(h)(3)(i), taking into account § 1.355-7(h)(8) but without regard to whether stock of a corporation is transferred) and ten-percent shareholders (within the meaning of § 1.355-7(h)(14) but without regard to the second sentence thereof or whether stock of a corporation is transferred). Other than with respect to a transaction with one or more persons described in clauses (1) and (2) of this representation (h), no action will be taken (including the adoption of any plan or policy), at any time prior to 24 months after the earlier of Date X or Date Y, by U.S. Controlled’s board of directors, its management, or any of its controlling shareholders (as defined in § 1.355-7(h)(3)) that would (if implemented) actually or effectively result in an unwind of the Dual Class Structure.

- i) None of the Distributing 2 debt to be exchanged for Retained Stock pursuant to the Relevant Debt Exchanges was issued in anticipation of the Proposed Transaction.
- j) Any Investment Bank acquiring Relevant Debt in connection with a Relevant Debt Exchange (i) will hold the Relevant Debt for at least 5 days before entering into an agreement with Distributing 2 to exchange the Relevant Debt for all or a portion of the Retained Stock, and (ii) will not complete the Relevant Debt Exchange until at least 14 days after the Investment Bank acquired the Relevant Debt to be exchanged in such Relevant Debt Exchange.

### Rulings

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

1. The Retention by Distributing 2 of the Retained Stock will not be in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax within the meaning of section 355(a)(1)(D)(ii) and Treas. Reg. § 1.355-2(e).
2. Provided that the Relevant Debt Exchanges occur within 12 months following the date of the Second Distribution, and provided that the Second Distribution otherwise would satisfy the requirements of section 355 if all Controlled stock had been distributed in the Second Distribution, the Retained Stock transferred in the Relevant Debt Exchanges will be treated as being distributed pursuant to the Second Distribution plan of reorganization for purposes of sections 361(c)(1) and 361(c)(3).
3. Provided that the Relevant Debt Exchanges occur within 12 months following the date of the Second Distribution, the involvement of the Investment Banks in the Relevant Debt Exchanges will not preclude the application of section 361(c)(3) to the Relevant Debt Exchanges.
4. Any payments from Distributing 3 to Foreign Controlled (or vice versa) following the First Distribution, from Distributing 2 to U.S. Controlled (or vice versa) following the Second Distribution, or from Distributing 1 to U.S. Controlled (or vice versa) following the Third Distribution, that are made pursuant to the Separation and Distribution Agreement or the Tax Matters Agreement regarding liabilities, indemnities, or other obligations that (i) have arisen or will arise for a taxable period ending on or before the date of, or for a taxable period beginning before but ending after the date of, the First Distribution, the Second Distribution, or the Third Distribution, respectively, and (ii) will not have become fixed and ascertainable until after such Distribution, will be treated as occurring immediately before the date of such Distribution. See *Arrowsmith v. Comm'r*, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.

5. Any Delayed Asset Transfer between Distributing 3 and Foreign Controlled will be treated as occurring on the same date as Contribution 1, and any Delayed Asset Transfer between Distributing 2 and U.S. Controlled will be treated as occurring on the same date as Contribution 2. See Treas. Reg. § 1.368-2(g); Rev. Rul. 83-73, 1983-1 C.B. 84.

#### 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 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 return that provides the date and control number of the letter ruling.

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,

*Robert H. Wellen*

Robert H. Wellen  
Associate Chief Counsel  
Office of Associate Chief Counsel (Corporate)

cc: