

**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-136016-17

Date:  
June 01, 2018

Legend

Distributing =

DRE 1 =

DRE 2 =

DRE 3 =

DRE 4 =

HoldCo =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

LP 1 =

LP 2 =

Business A =

Business B =

Controlled =

Employee  
Equity Awards =

a =

b =

c =

d =

e =

f =

g =

h =

i =

Date 1 =

Date 2 =

Dear :

This letter responds to your letter dated December 1, 2017, as supplemented by subsequent submissions, requesting rulings on certain federal income tax consequences of a series of proposed transactions described below (the “Proposed Transaction”). The information submitted in that letter and in subsequent correspondence is summarized below.

This letter is issued pursuant to Rev. Proc. 2017-52, 2017-41 I.R.B. 283, regarding one or more “Covered Transactions” under §§ 355 and 368 of the Internal Revenue Code (the “Code”). This office expresses no opinion as to the overall tax consequences of any issue not specifically addressed by the rulings 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 an appropriate party. This office has not verified any of the materials 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 either the Internal Distribution or the External Distribution (as each is 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 § 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. § 1.355-8T (see § 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

### **Summary of Facts**

Distributing is a publicly traded corporation and the parent of a group of affiliated corporations that file a consolidated federal income tax return (the “Distributing

Consolidated Group”). Distributing has a single class of voting common stock issued and outstanding.

Distributing owns all of the issued and outstanding membership interests in DRE 1. DRE 1 owns all of the issued and outstanding membership interests in DRE 2. DRE 2 owns all of the issued and outstanding membership interests in DRE 3. DRE 3 owns all of the issued and outstanding stock of HoldCo, Sub 1, and Sub 2, as well as  $c\%$  of the issued and outstanding stock of Sub 3. Each of HoldCo, Sub 1, Sub 2, and Sub 3 is a member of the Distributing Consolidated Group. Sub 2 is engaged in Business A and Sub 3 is engaged in Business B.

HoldCo owns the remaining  $c\%$  of Sub 3, as well as  $c\%$  of the partnership interests (consisting of an  $a\%$  general partnership interest and a  $b\%$  limited partnership interest) in LP 1, a limited partnership. LP 1 owns the issued and outstanding membership interests in DRE 4, and  $d\%$  of the partnership interests in LP 2, a limited partnership. Sub 2 owns the remaining  $a\%$  general partnership interest in LP 2.

Sub 1 owns all of the stock of Sub 4, a corporation operating as a captive insurance company. Sub 4 owns all of the membership interests of Sub 5, an LLC that is treated as a corporation for federal income tax purposes and also operating as a captive insurance company established solely to benefit the Business B business.

Distributing has adopted the Omnibus Incentive Plan. As a result, Distributing ceased providing any grants under its prior employee equity award vehicle, the Stock Incentive Plan. However, awards previously granted under the Stock Incentive Plan were unaffected by the plan’s termination. The Omnibus Incentive Plan provides for Employee Equity Awards, including restricted stock, as defined therein (“Restricted Stock”).

Distributing, through DRE 3, has a senior secured term loan facility outstanding (“Term Loan”). It also has a series of senior notes outstanding.

Distributing’s weighted quarterly average third party debt for the 24-month period ending on the day before the Distributing board of directors first discussed the Proposed Transaction was approximately \$e.

### **Proposed Transaction**

The Taxpayer has proposed the following transaction:

- (1) Certain Business B assets and the stock of Sub 5 have been or will be transferred to DRE 3. To get Sub 5 to DRE 3, on Date 2, Sub 4 distributed Sub 5 to Sub 1 (“Distribution 1”), which then distributed Sub 5 to DRE 3 (“Distribution 2”). DRE 3 then contributed  $c\%$  of the member interests in Sub 5 to each of Sub 3 (the “Sub 3 Contribution”) and HoldCo (the “HoldCo Contribution”).

- (2) HoldCo and DRE 3 will undertake a transaction intended to qualify as a recapitalization of Sub 3 under § 368(a)(1)(E) such that HoldCo will own stock representing at least 80 percent of the combined voting power of all classes of Sub 3 stock. Sub 3 will not have outstanding any non-voting stock.
- (3) HoldCo transferred its c% member interests in Sub 5 (that it received in Step (1) above) to Sub 3 (the “Sub 5 Contribution”). HoldCo will then distribute the Sub 3 stock to DRE 3 (the “Internal Distribution”).
- (4)
- (a) DRE 3 will issue debt (“New Debt 1”) to one or more financial institutions (collectively, the “Financial Institution”) for approximately \$f of cash (the “First Debt Issuance”). The cash proceeds will not be segregated in a separate bank account or otherwise. The cash proceeds (or an amount equal thereto) will be used, contemporaneously with or prior to the External Distribution (defined below), primarily to pay principal, interest, or premium on the Term Loan or other debt of Distributing or for other strategic purposes. At least h days after the First Debt Issuance, DRE 3 will enter into an exchange agreement with Financial Institution pursuant to which DRE 3 will transfer Controlled Debt Securities (defined below) to Financial Institution in exchange for (and in retirement of) New Debt 1 (the “Debt-for-Debt Exchange”). The exchange ratio for the Debt-for-Debt Exchange will be fixed on the date the exchange agreement is entered into.
  - (b) DRE 3 formed Controlled on Date 1.
  - (c) DRE 3 will transfer all of the issued and outstanding Sub 3 stock and Business B assets received in Step (1) above to Controlled in exchange for Controlled stock and newly-issued Controlled debt securities (“Controlled Debt Securities”) (the “Contribution”).
  - (d) At least i days after the First Debt issuance, DRE 3 will transfer the agreed upon amount of Controlled Debt Securities to Financial Institution in repayment of New Debt 1 in the Debt-for-Debt Exchange. For various non-tax reasons (e.g., regulatory approvals, risk management, board approvals, etc.), Steps (1) through (4)(d) may ultimately be effected in a different order.
  - (e) DRE 3 will distribute at least 80 percent of Controlled to DRE 2, DRE 2 will distribute all of such Controlled stock to DRE 1, and DRE 1 will distribute all of such Controlled stock to Distributing.
  - (f) Distributing will distribute all of the Controlled stock it received in the prior step to its shareholders (the “External Distribution”).

(5)

- (a) DRE 3 will issue new debt (“New Debt 2”) to Financial Institution for approximately \$g of cash (the “Second Debt Issuance”). The cash proceeds will not be segregated in a separate bank account or otherwise. The cash proceeds (or an amount equal thereto) will be used to pay back principal, interest, or premium on the Term Loan or other debt of Distributing or for other strategic purposes. At least h days after the Second Debt Issuance, DRE 3 will enter into an exchange agreement with Financial Institution pursuant to which DRE 3 will transfer Retained Shares (defined below) to Financial Institution in exchange for (and in retirement of) New Debt 2 (the “Debt-for-Equity Exchange”). The exchange ratio for the Debt-for-Equity Exchange will be fixed on the date the exchange agreement is entered into.
- (b) DRE 3 will transfer the retained Controlled stock (the “Retained Shares”) to Financial Institution in exchange for New Debt 2 in the Debt-for-Equity Exchange on or before the Deadline (as defined below). At least i days after the Second Debt Issuance, DRE 3 will transfer the agreed upon amount of Retained Shares to Financial Institution in repayment of New Debt 2 in the Debt-for-Equity Exchange.

For purposes of Step (5)(b):

The term “Deadline” means the date that is 30 days after the due date for the Form 10-K or 10-Q (as applicable) for the Applicable Quarter. If the Deadline pursuant to the foregoing sentence would fall on a date that is not a business day, then the Deadline shall be the next business day.

The term “Applicable Quarter” means the first full financial accounting quarter beginning after the date of the External Distribution; provided, that, if such full financial accounting quarter is the quarter ended December 31, then “Applicable Quarter” means the year ended December 31.

## **Representations**

With respect to both the Internal Distribution and the External Distribution, except as set forth below, Distributing has made all of the representations set forth in § 3 of the Appendix to Rev. Proc. 2017-52, 2017-42 I.R.B. 283.

### Internal Distribution

1. HoldCo has made the following alternative representations set forth in § 3 of the Appendix to Rev. Proc. 2017-52: 3(b), 8(a), 11(a), 15(a), 22(a), 31(a) and 41(a).
2. HoldCo has not made the following representations, which do not apply: 7, 20, 24, 25 and 39.

3. Additional representations:

- (a) Distribution 1 will qualify as a distribution under § 311.
- (b) Distribution 2 will qualify as a distribution under § 311.
- (c) The Sub 3 Contribution will qualify as an exchange under § 351.
- (d) The HoldCo Contribution will qualify as an exchange under § 351.
- (e) Except for Distribution 1, Distribution 2, the Sub 3 Contribution, and the HoldCo Contribution, the transactions described in Step (1) of the Proposed Transaction will qualify as taxable exchanges under § 1001.
- (f) Step (2) of the Proposed Transaction will qualify as a reorganization under § 368(a)(1)(E).
- (g) The sum of the amount of HoldCo debt that is assumed under § 357 and the amount of HoldCo debt satisfied under § 361 does not exceed the historic average of the total amount of debt owed to unrelated persons by HoldCo and other members of HoldCo's separate affiliated group (as defined in § 355(b)(3)(B)). The historic average will be computed as of the close of the eight fiscal quarters immediately before the date that is at least 60 days before the transaction or a similar transaction is disclosed or announced to the public or approved by HoldCo's board of directors (whichever is earlier).

External Distribution

- 1. Distributing has made the following alternative representations set forth in § 3 of the Appendix to Rev. Proc. 2017-52: 3(a), 11(a), 15(a), 22(a), 31(a) and 41(a).
- 2. Distributing has not made the following representations, which do not apply: 7, 24 and, 25.
- 3. Distributing has made the following modified representations:
  - (a) Representation 2: Distributing will distribute no less than 80 percent of the Controlled stock to its shareholders in the External Distribution.
  - (b) Representation 5: None of the Controlled stock or Controlled Debt Securities to be distributed or transferred in the External Distribution will be received in any capacity other than that of a shareholder or creditor of Distributing.

(c) Representation 8: Pursuant to an overall plan of reorganization, DRE 3 will distribute Controlled stock and Controlled Debt Securities to creditors of DRE 3 in exchange for DRE 3 debt.

4. Additional representations:

- (a) Following the External Distribution, no person will serve as a director or officer of both Distributing and Controlled.
- (b) In the event of any Controlled shareholder vote occurring after the External Distribution but prior to the transfer of the Retained Shares to Financial Institution, Distributing will vote the Retained Shares in proportion to the votes cast by Controlled's other shareholders.
- (c) The sum of the amount of Distributing debt that is assumed under § 357 and the amount of Distributing debt satisfied under § 361 does not exceed the historic average of the total amount of debt owed to unrelated persons by Distributing and other members of Distributing's separate affiliated group (as defined in § 355(b)(3)(B)). The historic average will be computed as of the close of the eight fiscal quarters immediately before the date that is at least 60 days before the transaction or a similar transaction is disclosed or announced to the public or approved by Distributing's board of directors (whichever is earlier).

### **Rulings**

#### The Sub 5 Contribution and the Internal Distribution

1. The Sub 5 Contribution, together with the Internal Distribution, will qualify as a reorganization within the meaning of § 368(a)(1)(D). HoldCo and Sub 3 each will be "a party to a reorganization" within the meaning of § 368(b).
2. HoldCo will not recognize any gain or loss on the Sub 5 Contribution. Sections 361(a) and 357(a).
3. Sub 3 will not recognize any gain or loss on the Sub 5 Contribution. Section 1032(a).
4. Sub 3's basis in each asset received from HoldCo in the Sub 5 Contribution will equal the basis of that asset in the hands of HoldCo immediately before the Sub 5 Contribution. Section 362(b).



5. Sub 3's holding period in each asset received from HoldCo in the Sub 5 Contribution will include the period during which HoldCo held that asset. Section 1223(2).
6. HoldCo will not recognize any gain or loss upon the Internal Distribution. Section 361(c).
7. Distributing will not recognize any gain or loss (and will not otherwise include any amount in income) as a result of the Internal Distribution. Section 355(a)(1).
8. Distributing's basis in the Sub 3 stock and HoldCo stock immediately following the Internal Distribution will equal the basis of the HoldCo stock that Distributing held immediately before the Internal Distribution, allocated in the manner described in Treas. Reg. § 1.358-2. Section 358(a) through (c).
9. Distributing's holding period in the Sub 3 stock received in the Internal Distribution will include the holding period of the HoldCo stock with respect to which the Internal Distribution is made, provided the Sub 3 stock is held as a capital asset on the date of the Internal Distribution. Section 1223(1).
10. Earnings and profits will be allocated between HoldCo and Sub 3. Section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33.

#### The External Distribution

1. The Contribution and the External Distribution will qualify as a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled each will be "a party to a reorganization" within the meaning of § 368(b).
2. Distributing will not recognize any gain or loss on the Contribution. Sections 361(a) and 357(a).
3. Controlled will not recognize any gain or loss on the Contribution. Section 1032(a).
4. Controlled's basis in each asset received from Distributing in the Contribution will equal the basis of that asset in the hands of Distributing immediately before the Contribution. Section 362(b).
5. Controlled's holding period in each asset received from Distributing in the Contribution will include the period during which Distributing held that asset. Section 1223(2).
6. Distributing will not recognize any gain or loss upon the External Distribution, the Debt-for-Debt Exchange, and the Debt-for-Equity Exchange. Section 361(c).

7. Distributing shareholders will not recognize any gain or loss (and will not otherwise include any amount in income) as a result of the External Distribution. Section 355(a)(1).
8. Each Distributing shareholder's basis in the Controlled stock and Distributing stock immediately following the External Distribution will equal the basis of the Distributing stock that the shareholder held immediately before the External Distribution, allocated in the manner described in Treas. Reg. § 1.358-2. Section 358(a) through (c).
9. Each Distributing shareholder's holding period in the Controlled stock received in the External Distribution will include the holding period of the Distributing stock with respect to which the External Distribution is made, provided the Distributing stock is held as a capital asset on the date of the External Distribution. Section 1223(1).
10. Earnings and profits will be allocated between Distributing and Controlled. Section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33(e).
11. The Employee Equity Awards currently outstanding (other than Restricted Stock), and those issued in connection with or after the External Distribution (and any Controlled shares underlying or issued pursuant to any such Employee Equity Awards) are not taken into account for purposes of determining whether Distributing distributed an amount of Controlled stock constituting control under § 368(c) in the External Distribution.

### **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. Specifically, no opinion is expressed concerning the tax consequences of the transactions described in Steps (1) and (2).

### **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.

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

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.

Sincerely,

*Richard K. Passales*

Richard K. Passales  
Senior Counsel, Branch 4  
Office of Associate Chief Counsel  
(Corporate)

cc: