

**Internal Revenue Service**

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

Telephone Number:

Refer Reply To:  
CC:CORP:2  
PLR-128459-19

Date:  
May 29, 2020

Legend:

Parent =

Controlled =

Date 1 =

State A =

State B =

State C =

Country X =

Country Y =

Business A =

Business B =

Distributing 3 =

Distributing 2 =

Distributing 1 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

FSub 1 =

FSub 2 =

Shareholder A =

Shareholder B =

Remaining  
Shareholders =

LLC 1 =

LLC 2 =

a =

b =

c =

d =

e =

f =

g =

Senior Credit  
Facility  
Assumption  
Agreement =

Transition  
Services  
Agreement =

Facilities  
Agreement =

Dear :

This letter responds to your representative's November 26, 2019, letter requesting rulings on certain federal income tax consequences of the Proposed Transaction (defined below). The information provided in that letter and in later correspondence is summarized below.

This letter is issued pursuant to Rev. Proc. 2019-1, 2019-1 I.R.B. 1, and Rev. Proc. 2017-52, 2017-41 I.R.B. 283, as amplified and modified by Rev. Proc. 2018-53, 2018-43 I.R.B. 667, regarding several "Covered Transactions" under sections 355 and 368 of the Internal Revenue Code (the "Code"). This office expresses no opinion as to the overall tax consequences of the transactions or as to any issue not specifically addressed by the rulings below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalty 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 any of the Demerger, Distribution 1, Distribution 2, or Distribution 3 (each as defined below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (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 § 1.355-2(d)); or (iii) is part of a plan (or a 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 § 1.355-8 (see section 355(e) and § 1.355-7).

### **Summary of Facts**

Parent is a State A corporation and the common parent of an affiliated group of corporations that files a consolidated federal income tax return ("Parent Group"). Parent has a single class of stock outstanding that is owned by Shareholder A, Shareholder B and the Remaining Shareholders (collectively "the Shareholders"). Parent conducts Business A and Business B through its subsidiaries and its foreign affiliates.

Parent owns all the stock of Distributing 3, a holding company organized under the laws of State A.

Distributing 3 owns all the stock of Distributing 2, a company organized under the laws of State A.

Distributing 2 owns all the stock of Distributing 1, an operating company organized under the laws of State A. Distributing 2 is engaged in each of Business A and Business B, directly and indirectly through its subsidiaries.

Distributing 1 owns all the stock of (i) Sub 1, an operating company organized under the laws of State A, (ii) Sub 2, a holding company organized under the laws of State C, (iii) Sub 3, a holding company organized under the laws of State A, (iv) Sub 4, a holding company organized under the laws of State A, (v) Sub 5, a holding company organized under the laws of State A, and (vi) Sub 6, a holding company organized under the laws of State A. Sub 1 is engaged in Business B. Sub 4, Sub 5, and Sub 6 have no business activities and do not hold any assets or liabilities.

Sub 1 owns all the stock of Sub 7, an operating company organized under the laws of State A and is engaged solely in Business B. Sub 7 owns all the stock of Sub 8, an operating company organized under the laws of State B that is primarily engaged in Business B, except for certain employees who provide services to Sub 9. Sub 9 is engaged in Business A.

Sub 2 owns all the stock of Sub 9, an operating company organized under the laws of State A and is engaged solely in Business A. Sub 9, owns all of the equity interests of FSub 1, a Country X entity classified as an association taxable as a corporation for U.S. federal income tax purposes that is engaged solely in Business A.

Sub 3 owns all the stock of FSub 2, a Country Y entity classified as an association taxable as a corporation for U.S. federal income tax purposes that is engaged solely in Business A.

Financial information has been received indicating that each of Business A and Business B have had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

### Senior Credit Facility

On Date 1, Distributing 2, and some of its subsidiaries, entered into an amended and restated credit agreement (the "Senior Credit Facility"), which allows for borrowings of up to \$a. Pursuant to the Senior Credit Facility and unrelated to the Proposed Transaction, Distributing 2 has borrowed approximately \$b. As parties to the Senior Credit Facility and to a Guaranty and Security Agreement required thereby, most of Distributing 2's domestic subsidiaries (including Sub 1, Sub 7, and Sub 8) have guaranteed Distributing 2's borrowing and have pledged certain of their assets in support of such borrowing. Certain aspects of the Proposed Transaction would violate certain covenants set forth in the agreement governing the Senior Credit Facility. Because the cost of refinancing the Senior Credit Facility currently would exceed any savings realizable from resetting the terms of borrowing, the parties to the Senior Credit Facility will obtain the consent of the lenders thereunder to effectuate the Proposed Transaction to avoid accelerating repayment of Distributing 2's borrowing. The Senior Credit Facility, the Guaranty and Security Agreement required thereby, and the Senior Credit Facility Assumption Agreement will remain outstanding for a maximum length of time of f following the completion of the Proposed Transaction.

### **Proposed Transaction**

For what are represented to be valid corporate business reasons, Parent proposes to engage in the following steps to separate Business A from Business B (the "Proposed Transaction"):

- (i) The Shareholders will organize LLC 1, a State A limited liability company that will elect to be classified as a partnership for U.S. federal income tax purposes (the "LLC 1 Formation").
- (ii) The Shareholders will contribute all their Parent common stock to LLC 1 in exchange for all the equity of LLC 1 (the "LLC 1 Contribution").

- (iii) Sub 1 and Sub 9 will enter into an agreement pursuant to which Sub 9: (a) will directly employ those personnel who currently provide services to Sub 9 and whose costs are reimbursed thereby to Sub 1, and (b) will lease from Sub 1 on an arm's-length basis warehouse space for which it currently reimburses Sub 1.
- (iv) Distributing 1 will convert to a limited liability company pursuant to the applicable State A conversion statute and will change its name to LLC 2 (the "Distributing 1 Conversion"). Following the Distributing 1 Conversion, LLC 2 will make an election under Treas. Reg. § 301.7701-3(c) to be classified as an association taxable as a corporation for U.S. federal income tax purposes effective from the time of conversion (the "LLC 2 Election," and collectively with the Distributing 1 Conversion, the "Distributing 1 Restructuring").
- (v) LLC 2 will engage in a divisive merger (demerger) under the laws of State A, resulting in the creation of Controlled, a State A limited liability company, which will make an election under Treas. Reg. § 301.7701-3(c) to be classified as an association taxable as a corporation for U.S. federal income tax purposes effective from the time of formation (the "LLC 2 Demerger"). Pursuant to the LLC 2 Demerger, Controlled will acquire all the Business B assets formerly owned by LLC 2, including all the outstanding stock of Sub 1 and will become obligated with respect to all the Business B liabilities with respect to which LLC 2 was formerly obligated, if any. Controlled will employ the personnel associated with Business B who were formerly employed by LLC 2. Pursuant to the Senior Credit Facility, Controlled will become a party to the Senior Credit Facility and the Guaranty and the Security Agreement required thereby.
- (vi) Distributing 2 and Controlled will enter into the Senior Credit Facility Assumption Agreement (the "Senior Credit Facility Assumption") (see representations (8) and (9)).
- (vii) Distributing 2 will distribute 100% of the outstanding equity of Controlled to Distributing 3 ("Distribution 1").
- (viii) Distributing 3 will distribute 100% of the outstanding equity of Controlled to Parent ("Distribution 2").
- (ix) Parent will distribute 100% of the outstanding equity of Controlled to LLC 1 ("Distribution 3").

### Continuing Arrangements

In connection with the Proposed Transaction, Controlled and its subsidiaries (entities engaged in Business B) and Parent and its subsidiaries (entities engaged in Business A) will enter into certain business arrangements, including (i) a Transition Services Agreement, (ii) a Facilities Agreement, and (iii) the Senior Credit Facility, the Guaranty and Security Agreement required thereby, and the Senior Credit Facility Assumption Agreement, that will continue after the completion of the Proposed Transaction (the "Continuing Arrangements"). All such relationships will be based on arm's-length terms and conditions. Except with respect to the Senior Credit Facility, the Guaranty and Security Agreement required thereby, and the Senior Credit Facility Assumption Agreement, these arrangements are expected to terminate within g following the completion of the Proposed Transaction.

### Director Overlap

Parent's board of directors currently has d members. Following the Proposed Transaction, it is expected that the boards of directors of Controlled and its subsidiaries, and Parent and its subsidiaries, will each be composed of e members. Less than half of the members of the boards of directors of Controlled and its subsidiaries will also be members of the boards of directors of Parent and its subsidiaries, and vice versa (the "Overlapping Directors"). The presence of the Overlapping Directors, if any, is intended to provide continuity. Overlapping Directors are expected to remain on the respective boards no longer than f.

## **Representations**

### The LLC 2 Demerger

With respect to the LLC 2 Demerger, except as set forth below, Taxpayer makes all the representations in section 3 of the Appendix to Rev. Proc. 2017-52 in the form set forth therein.

- (1) Taxpayer does not make the following representations: Representations 7, 19, 20, 24, 25, 35, 39, and 40.
- (2) Taxpayer has made the following alternative representations set forth in section 3 of the Appendix to Rev. Proc. 2017-52: 3(a), 8(a), 11(a) (except as noted in the Continuing Relationships section above), 15(a), 22(a), 31(a), and 41(a).

### Distribution 1, Distribution 2 and Distribution 3

With respect to each of Distribution 1, Distribution 2, and Distribution 3, except as set forth below, Taxpayer makes all the representations in section 3 of the Appendix to Rev. Proc. 2017-52 in the form set forth therein.

- (3) Taxpayer does not make the following representations:



Representations 7,17,18, 19, 20, 22, 24, 25, 35, 39, and 40.

- (4) Taxpayer has made the following alternative representations set forth in section 3 of the Appendix to Rev. Proc. 2017-52: 3(a), 8(a), 11(a) (except as noted in the Continuing Relationships section above), 15(a), 31(a), and 41(a).

### **Other Representations**

- (5) LLC 1 will be treated as a partnership for U.S. federal income tax purposes. The LLC 1 Formation and LLC 1 Contribution together is a tax-free contribution under section 721.
- (6) The Distributing 1 Restructuring is a reorganization within the meaning of section 368(a)(1)(F).
- (7) None of the Business B liabilities for which Controlled will be the obligor for U.S. federal income tax purposes as a result of the LLC 2 Demerger are evidenced by a debt instrument, and none constitute Distributing Debt within the meaning of § 3.01 of Rev. Proc. 2018-53, 2018-43 I.R.B. 667.
- (8) Distributing 2 and Controlled will each treat the Senior Credit Facility Assumption as a distribution of property in the amount of c by Controlled to Distributing 2 to which section 301 applies and will reduce Distributing 2's basis in its shares of Controlled pursuant to §§ 1.1502-13(f)(2) and 1.1502-32.
- (9) The Senior Credit Facility Assumption will occur separately from the LLC 2 Demerger and Distribution 1, and therefore Controlled will not assume Distributing Debt within the meaning of § 3.01 of Rev. Proc. 2018-53, 2018-43 I.R.B. 667 in a transfer to which section 357(a) applies. Distributing 2 will not receive any boot that could be subsequently distributed in satisfaction of a Distributing 2 debt obligation to which section 361(b) and/or (c) applies in connection with the Senior Credit Facility Assumption.
- (10) At no point during the Proposed Transaction, will a member of the Parent Group that is distributing the stock of Controlled pursuant to the Proposed Transaction have an excess loss account (within the meaning of § 1.1502-19) in the stock of Controlled.

### **Rulings**

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

The LLC 2 Demerger

1. For U.S. federal income tax purposes, the LLC 2 Demerger is treated as if LLC 2 transferred the Business B assets to Controlled in exchange for all the equity of Controlled and Controlled's assumption of any liabilities associated with the Business B assets, and, immediately thereafter, distributed all of the Controlled equity to Distributing 2. Cf. Rev. Rul. 77-191, 1977-1 C.B. 94.
2. The LLC 2 Demerger will be a reorganization within the meaning of section 368(a)(1)(D). LLC 2 and Controlled each will be a "party to a reorganization" within the meaning of section 368(b).
3. No gain or loss will be recognized by LLC 2 upon the deemed contribution of the Business B assets to Controlled pursuant to the LLC 2 Demerger. Sections 357(a) and 361(a).
4. No gain or loss will be recognized by LLC 2 upon the deemed distribution of the equity of Controlled to Distributing 2 pursuant to the LLC 2 Demerger. Section 361(c).
5. No gain or loss will be recognized by Controlled as a result of the LLC 2 Demerger. Section 1032(a).
6. The basis in each asset received by Controlled as a result of the LLC 2 Demerger will be the same as the basis of that asset in the hands of LLC 2 immediately before its transfer. Section 362(b).
7. The holding period in each asset received by Controlled as a result of the LLC 2 Demerger will include the period during which LLC 2 held the asset. Section 1223(2).
8. No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 2 upon receipt of the Controlled equity as a result of the LLC 2 Demerger. Section 355(a)(1).
9. The aggregate basis of the LLC 2 equity and the Controlled equity in the hands of Distributing 2 immediately after the LLC 2 Demerger is the same as Distributing 2's basis in the LLC 2 equity held immediately before the LLC 2 Demerger allocated in the manner described in § 1.358-2(a)(2). Section 358; § 1.358-1(a).
10. Distributing 2's holding period in the Controlled equity received in the LLC 2 Demerger includes the holding period of the LLC 2 equity held by Distributing 2 with respect to which the distribution of the Controlled equity was made, provided

that the LLC 2 equity is held as a capital asset on the date of the LLC 2 Demerger. Section 1223(1).

11. The earnings and profits of LLC 2, if any, will be allocated between LLC 2 and Controlled in accordance with section 312(h) and §§ 1.312-10(a) and 1.1502-33(f)(2).

#### Distribution 1

12. No gain or loss will be recognized by Distributing 2 in Distribution 1. Section 355(c).
13. No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 3 in Distribution 1. Section 355(a)(1).
14. The aggregate basis of the Distributing 2 stock and the Controlled equity in the hands of Distributing 3 immediately after Distribution 1 is the same as Distributing 3's basis in the Distributing 2 stock held immediately before Distribution 1, allocated in the manner described in 1.358-2(a). Section 358; § 1.358-1(a).
15. The holding period of the Controlled equity received by Distributing 3 in Distribution 1 will include the holding period of the Distributing 2 stock held by Distributing 3, provided that such Distributing 2 stock is held as a capital asset on the date of Distribution 1. Section 1223(1).
16. The earnings of profits of Distributing 1, if any, will be allocated between Controlled and Distributing 2 in accordance with section 312(h) and §§ 1.312-10(b) and 1.1502-33(f)(2).

#### Distribution 2

17. No gain or loss will be recognized by Distributing 3 in Distribution 2. Section 355(c).
18. No gain or loss will be recognized by (and no amount will be included in the income of) Parent in Distribution 2. Section 355(a)(1).
19. The aggregate basis of the Distributing 3 stock and the Controlled equity in the hands of Parent immediately after Distribution 2 will be the same as Parent's basis in the Distributing 3 stock immediately before Distribution 2, allocated between the Distributing 3 stock and the Controlled equity in the manner described in 1.358-2(a). Section 358; § 1.358-1(a).

20. The holding period of the Controlled equity received by Parent in Distribution 2 will include the holding period of the Distributing 3 stock held by Parent, provided that such Distributing 3 stock is held as a capital asset on the date of Distribution 2. Section 1223(1).
21. Earnings and profits, if any, will be allocated between Controlled and Distributing 3 in accordance with section 312(h) and §§ 1.312-10(b) and 1.1502-33(f)(2).

### Distribution 3

22. No gain or loss will be recognized by Parent in Distribution 3. Section 355(c).
23. No gain or loss will be recognized by (and no amount will be included in the income of) LLC 1 in Distribution 3. Section 355(a)(1).
24. The aggregate basis of the Parent stock and the Controlled equity in the hands of LLC 1 immediately after Distribution 3 will be the same as LLC 1's basis in the Parent stock held immediately before Distribution 3, allocated between the Parent stock and the Controlled equity in the manner described in Treas. Reg. § 1.358-2(a). Section 358; § 1.358-1(a).
25. The holding period of the Controlled equity received by LLC 1 in Distribution 3 will include the holding period of the Parent stock held by LLC 1, provided that such Parent stock is held as a capital asset on the date of Distribution 3. Section 1223(1).
26. Earnings and profits, if any, will be allocated between Controlled and Parent in accordance with section 312(h) and §§ 1.312-10(b) and 1.1502-33(e)(3).
27. Following Distribution 3, Controlled will not be treated as a "successor" to Parent for purposes of section 1504(a)(3). Therefore, Controlled and its direct and indirect subsidiaries that are "includable corporations" under section 1504(b) and satisfy the ownership requirements of section 1504(a)(2) will be members of an affiliated group of corporations entitled to file a consolidated federal income tax return with Controlled as the common parent.

### **Caveats**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transaction under other provisions of the Code or regulations or the tax treatment of any condition existing at the time of, or effects resulting from the Proposed Transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed or implied concerning the tax treatment of the LLC 1 Formation, the LLC 1 Contribution, or the Distributing 1 Restructuring.

**Procedural Statements**

The 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 returns that provides the date on and control number (PLR-128459-19) of the letter ruling.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Douglas C. Bates  
Branch Chief, Branch 4  
Associate Chief Counsel (Corporate)

cc: