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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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PLR-117300-20

Date:
September 17, 2020

Legend

Distributing

LLC1

LLC2

Newco

Old Controlled

Business

Business Segment

Bankruptcy Court

DIP Facility

Distributable
Subscription Rights

State A

Date 1

Date 2

Date 3

Date 4

Date 5

Date 6

Date 7

Date 8

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Dear _____ :

This letter responds to your authorized representatives' request dated August 5, 2020, requesting rulings on certain federal income tax consequences of a series of proposed transactions. The 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. 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 § 6.03(2) of Rev. Proc. 2020-1, 2020-1 I.R.B. 1, regarding one or more significant issues under section 368. The ruling contained in this letter only addresses one or more significant 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 ruling below.

Summary of Facts

Organizational Structure

Distributing, a State A corporation, is the common parent of a business group that includes corporations, and entities disregarded as separate from their sole regarded owners for U.S. federal income tax purposes (each, a "disregarded entity") (the "Distributing Group"). The Distributing Group is engaged in Business, which included Business Segment. Distributing has owned all of the membership interests of LLC1 as a disregarded entity for U.S. federal income tax purposes since Date 1 (a date over a years ago). Distributing owns no other material assets other than all of the membership interests of LLC2, formed on Date 7 and treated as a disregarded entity. LLC1 owns, directly and indirectly, all of Distributing Group's remaining subsidiaries (collectively, the

“LLC1 Subsidiaries”), most of which are disregarded entities. The substantial majority of the Distributing Group’s assets are held by disregarded entities of LLC1.

The Prior Transactions

On Date 2 (a date over a years ago), Old Controlled was formed in connection with the separation of a business from the Distributing Group (the “Prior Separation”). Pursuant to the Prior Separation, LLC1 and the LLC1 Subsidiaries contributed certain assets to Old Controlled. Thereafter, LLC1 distributed the stock of Old Controlled to Distributing, and then Distributing distributed the stock of Old Controlled to Distributing’s shareholders. The Distributing Group did not expect to file for bankruptcy or to consummate the Proposed Transaction at the time of the Prior Separation.

On Date 4 (a date about b years ago), the Distributing Group sold Business Segment for \$c (the “Prior Sale”). The Prior Sale was entered into to allow the Distributing Group to focus on its core business, and the proceeds of the Prior Sale were used to pay outstanding debt. The Distributing Group did not expect to file for bankruptcy or to consummate the Proposed Transaction at the time of the Prior Sale.

Bankruptcy Proceeding

On Date 5, Distributing, LLC1, and the LLC1 Subsidiaries (collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code with the Bankruptcy Court (the “Bankruptcy Proceeding”).

As of Date 6, LLC1 had approximately \$d of outstanding debt (the “LLC1 Debt”), not including the DIP Facility. The LLC1 Debt is composed of approximately \$e of first lien debt (the “LLC1 First Lien Debt,” and the creditors with respect to such debt, the “LLC1 First Lien Creditors”), \$f of second lien debt (the “LLC1 Second Lien Debt,” and the creditors with respect to such debt, the “LLC1 Second Lien Creditors”), and \$g of unsecured debt (the “Unsecured Debt,” and the creditors with respect to such debt, the “Unsecured Creditors”). The LLC1 First Lien Debt (other than, potentially, borrowings under a revolving credit facility), the LLC1 Second Lien Debt, and \$h of the Unsecured Debt was issued by LLC1 after Date 1. Approximately half of the LLC1 Subsidiaries guarantee the LLC1 Debt. The LLC1 Debt is not, and never has been, guaranteed by Distributing. A direct subsidiary of LLC1, treated as a corporation for U.S. federal income tax purposes, also has outstanding debt (the “Subsidiary Debt”).

Proposed Transaction

For what are represented to be valid business reasons, and in connection with the restructuring in the Bankruptcy Proceeding, Distributing has proposed the following transaction (the “Proposed Transaction”). The Proposed Transaction will be effected pursuant to the Bankruptcy Plan of Reorganization (the “Plan”) confirmed by the

Bankruptcy Court. Unless otherwise indicated, the Proposed Transaction is occurring on the effective date of the Plan.

- (i) On Date 7, Distributing formed LLC2, a State A limited liability company treated as a disregarded entity.
- (ii) On Date 8, LLC1 formed Newco, a State A limited liability company treated as a disregarded entity.
- (iii) To fund cash distributions under the Plan and to provide for operational liquidity, Newco (or one or more entities wholly owned by Newco) will issue (i) a \$i revolver (undrawn upon issuance), and (ii) Exit Financing Debt, consisting of (a) an offering of senior notes (the "Exit Notes," and the aggregate net proceeds of such notes, the "Exit Notes Proceeds") in accordance with standard market practices, (b) a term loan facility (the "Term Loan Facility"), and (c) first lien replacement term loans being issued in satisfaction of the Subsidiary Debt (the "Take-Back Debt"), in an amount such that, together with the Exit Notes and Term Loan Facility, there will be at least \$j of aggregate principal in Exit Financing Debt.
- (iv) Newco will make an election to be treated as a corporation for U.S. federal income tax purposes, effective no later than the beginning of the date the Exit Notes are issued and also no later than the beginning of the date of the Reorganization (defined in Step (xiii)).
- (v) Distributing will contribute any assets (other than equity of LLC1 or LLC2) it directly owns to LLC1 or LLC2. Holdings will then contribute LLC2 to LLC1.
- (vi) Immediately after Step (v), LLC1 will contribute all of its assets to LLC2, and LLC2 will assume all the liabilities from LLC1 that are not being discharged in connection with the Bankruptcy Proceeding (the "Continuing Liabilities").
- (vii) Immediately after Step (vi), LLC1 will contribute the equity of LLC2 to Newco (the "Contribution") in exchange for (i) newly-issued equity in Newco and regulatory warrants to purchase equity of Newco, which will be distributed to foreign LLC1 First Lien Creditors and are exercisable at a nominal price upon necessary regulatory approval (the "Regulatory Warrants") (the newly-issued equity of Newco and the Regulatory Warrants collectively, "Newco Equity"), (ii) Distributable Subscription Rights, (iii) the Exit Notes Proceeds released in Step (ix), (iv) the Remaining Exit Proceeds (defined below) received in Step (xii), and (v) the Take-Back Debt received in Step (xii) (collectively, the "Newco Consideration"). LLC2 will not assume any liabilities of LLC1 in the Contribution other than the Continuing Liabilities.

- (viii) In connection with the Contribution, and pursuant to the Plan, liabilities (including guarantees) of the direct and indirect subsidiaries of LLC2 that are not being reinstated or otherwise paid in full in connection with the Bankruptcy Proceeding will be released, in each case, consistent with the rights of LLC1 First Lien Creditors and LLC1 Second Lien Creditors (the LLC1 First Lien Creditors and the LLC1 Second Lien Creditors collectively, the “LLC1 Creditors”) to receive recoveries pursuant to the Plan (and other creditors, as applicable), with such creditors to receive recoveries from LLC1 in Step (xiii).
- (ix) In connection with the Contribution, the Exit Notes Proceeds received in Step (iii) will be released to LLC1 by Newco (or one or more entities wholly owned by Newco).
- (x) In connection with the Contribution, and pursuant to the Plan, LLC2 will issue any remaining Exit Financing Debt (other than the Take-Back Debt) in exchange for cash (the “Remaining Exit Proceeds”).
- (xi) Immediately after Step (x), LLC2 will distribute the Remaining Exit Proceeds and will issue the Take-Back Debt to Newco.
- (xii) Immediately after Step (xi), and in connection with the Contribution, Newco will transfer the Remaining Exit Proceeds and the Take-Back Debt to LLC1.
- (xiii) Immediately after Steps (vii) through (xii), LLC1 will (i) distribute (a) the Newco Consideration, (b) cash on hand, and (c) the Rights Offering Cash (defined below) received in Step (xv) to the LLC1 First Lien Creditors, and (ii) distribute cash to the LLC1 Second Lien Creditors, consistent with the terms of the Plan, and in final satisfaction of LLC1’s obligations under the LLC1 Debt (the “Distribution,” together with the Contribution, the “Reorganization”). Certain distributions will be made to other creditors.
- (xiv) In connection with the Distribution, the cash funded in connection with the exercise of the Distributable Subscription Rights (the “Rights Offering Cash”) will be released to Newco in exchange for Newco Equity.
- (xv) Newco will transfer the Rights Offering Cash to LLC1 as part of the Contribution, and LLC1 will transfer the Rights Offering Cash to the LLC1 First Lien Creditors (and other creditors, as applicable) as part of the Distribution, and consistent with the terms of the Plan.
- (xvi) Following the Distribution, Distributing and LLC1 will liquidate and any equity in Distributing will be cancelled for no consideration.

Representations

Distributing has made the following representations in connection with the Proposed Transaction:

- (a) Distributing is subject to the jurisdiction of the Bankruptcy Court under title 11 of the U.S. Code, and will be under that jurisdiction at the time of the Proposed Transaction.
- (b) The Proposed Transaction will occur pursuant to the Plan and will be confirmed by the Bankruptcy Court as part of the Bankruptcy Proceeding.
- (c) The Reorganization is being consummated for the business purpose of facilitating a successful chapter 11 restructuring of the Debtors' business.
- (d) Under all applicable state law, Distributing has never been obligated on, or liable for, the LLC1 Debt.
- (e) Pursuant to the Plan, Newco will never be obligated on the LLC1 Debt.
- (f) The Prior Separation and Prior Sale were not consummated in anticipation of the filing of the Bankruptcy Proceeding or the Plan. Excluding the Prior Sale, the Distributing Group has not made any asset dispositions that exceed \$k in the aggregate since Date 3 (a date over b years ago).
- (g) The Distributing Group will sell certain assets to Old Controlled for approximately \$l. This asset disposition will be taken into account in determining whether the Reorganization satisfies the "substantially all" requirement under section 354(b)(1)(A).
- (h) At least a portion of the Newco Equity will be received by LLC1 First Lien Creditors holding an instrument that constitutes a "security" of Distributing for U.S. federal income tax purposes.
- (i) The Regulatory Warrants are treated as newly issued equity in Newco for U.S. federal income tax purposes.
- (j) Each LLC1 First Lien Creditor will receive equity in Newco in the Proposed Transaction.
- (k) Distributing's existing shareholders will receive no recovery.

Rulings

- (1) The LLC1 Creditors and Unsecured Creditors will be treated as holders of proprietary interests in Distributing for purposes of the continuity of interest requirement under Treas. Reg. § 1.368-1(e)(6)(i).
- (2) Assuming the Reorganization otherwise satisfies the requirements of section 368(a)(1)(G), the property received by the LLC1 Creditors pursuant to the Plan shall be treated as having been received by Distributing, and distributed by Distributing to the LLC1 Creditors.
- (3) The Prior Separation and the Prior Sale will not be taken into account in determining whether the Reorganization satisfies the “substantially all” requirement under section 354(b)(1)(A).
- (4) Assuming Distributing is not personally liable on any portion of the LLC1 Debt in light of state law limitations on liability, the LLC1 Debt will be treated as nonrecourse liabilities of Distributing for purposes of Treas. Reg. § 1.1001-2. The cancellation of the LLC1 First Lien Debt pursuant to the Distribution will result in amount realized under section 1001 with respect to the property transferred by LLC1 to the LLC1 First Lien Creditors in the amount of such outstanding debt. See Commissioner v. Tufts, 461 U.S. 300 (1983). Section 61(a)(12) and Section 108(a) are not applicable to the cancellation of the LLC1 First Lien Debt with respect to which the LLC1 First Lien Creditors received property from LLC1 in the Distribution.
- (5) Provided the Reorganization qualifies as a reorganization under section 368(a)(1)(G), Distributing will not recognize any gain or loss with respect to the consideration transferred to the LLC1 First Lien Creditors in the Distribution (including any gain or loss attributable to the amount realized under section 1001 with respect to property transferred by LLC1 to the LLC1 First Lien Creditors, as provided in Ruling (4)). Section 361(c).
- (6) Provided the Reorganization qualifies as a reorganization under section 368(a)(1)(G) and section 354, section 357(c) and (d) will not apply to the Reorganization.

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences 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 is not specifically addressed by this letter. Specifically, no opinion is expressed concerning the federal tax consequences with

respect to (i) any debt other than the LLC1 Debt, including (but not limited to) the Continuing Liabilities, the DIP Facility, the Subsidiary Debt, and the Take-Back Debt, and (ii) the LLC1 Creditors' basis in the stock of Newco as a result of the Proposed Transaction.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling may 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. 2020-1, 2020-1 I.R.B. 1, 62. However, when the criteria in section 11.06 of Rev. Proc. 2020-1, 2020-1 I.R.B. 1, 63 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

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 should be attached to the federal 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 on and control number (PLR-117300-20) of this 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,

Susan E. Massey
Branch Chief, Branch 3
Office of Associate Chief Counsel (Corporate)

cc: