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Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Refer Reply To:
CC:CORP:3
PLR-113942-21

Date:
December 28, 2021

Legend

Distributing =

Controlled =

Sub =

Acquiring =

Acquiring Sub =

Business A =

Business B =

State A =

Date 1 =

Date 2 =

Long-Term
Debts =

Recent Debt =

Transition
Services
Agreement =

Tax Matters
Agreement =

Employee
Matters
Agreement =

IP Matters
Agreement =

Commercial
Agreements =

Securities
Exchange
Condition =

Internal
Distributing
Ownership
List =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

Dear :

This letter responds to the letter from your authorized representative dated June 30, 2021, submitted on behalf of Distributing, requesting rulings on certain federal income tax consequences of a transaction described below (the "Proposed Transaction"). The material information submitted in that request and in subsequent correspondence is summarized below.

This letter is issued pursuant to 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, and section 6.03(2) of Rev. Proc. 2021-1, 2021-1 I.R.B. 1, regarding one or more significant issues under sections 355, 361, and 368 of the Internal Revenue Code (the Code"). This Office expresses no opinion as to 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. 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 office has made no determination regarding whether the distribution in the Proposed Transaction: (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 Distributing or Controlled or both (see Section 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 Distributing or Controlled, or any predecessor or successor of Distributing or Controlled, within the meaning of Treas. Reg. § 1.355-8 (see Section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

Summary of Facts

Distributing is a publicly traded State A corporation, the parent of a worldwide group, and the common parent of an affiliated group of corporations filing a consolidated U.S. federal income tax return (the "Distributing Group"). Distributing, itself and through its affiliates, has been engaged in Business A, Business B, and other lines of business for more than five years.

On Date 1 (less than five years ago), in a transaction in which gain was recognized, Distributing acquired Sub, now a wholly owned subsidiary of Distributing. Sub is engaged in Business B and other lines of business.

Acquiring is a publicly traded State A corporation unrelated to Distributing. Acquiring operates businesses that are complementary with those of Sub.

Distributing and Acquiring have determined that there are business synergies between Acquiring and Sub. Therefore, Distributing will spin off or split off Sub's business (through newly formed Controlled), and Acquiring will combine with Controlled.

For purposes of satisfying the active trade or business requirement of Section 355(b) with respect to the Distribution (defined below), Distributing will rely upon Business A conducted by members of its separate affiliated group (as defined in Section 355(b)(3)(B)), and Controlled will rely upon Business B conducted by members of its separate affiliated group. Financial information has been submitted in accordance with Rev. Proc. 2017-52 indicating that each of Business A and Business B had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing has various debts that it intends to satisfy as part of the Proposed Transaction. In particular, it has Long-Term Debts with varying maturity dates. Certain Long-Term Debts will mature prior to or after the Distribution and may be refinanced prior to their maturity dates (the "Distributing Refinanced Debt"). Additionally, in its ordinary course of business, Distributing routinely borrows under an ongoing commercial paper ("Commercial Paper") program. Distributing has approximately \$a of

Commercial Paper outstanding that has been rolled over or refinanced from earlier borrowings. Together, these debts are Distributing's "Historic Debt."

Distributing also entered into the Recent Debt, which was funded or incurred less than 60 days before the Proposed Transaction was approved by Distributing's board on Date 2. However, more than 60 days before Date 2, Distributing was already obligated to make the payments funded by the Recent Debt, and those obligations were independent of its decision to engage in the Proposed Transaction. Together, Distributing's Historic Debt and its Recent Debt are its "Qualifying Debt."

Distributing has a Section 401(k) qualified plan (a "Savings Plan") for the Distributing Group's employees. Distributing stock is one of the investment options available to Savings Plan participants, who may self-direct investments. The Savings Plan currently holds approximately b% (less than 5%) of the stock of Distributing in aggregate. In the Proposed Transaction, the Savings Plan may receive stock of Controlled, which will then be converted to stock of Acquiring in the Merger.

In tandem with the proposed separation of Distributing and Controlled, the Savings Plan will also be split into a Distributing Savings Plan (whose participants are the employees remaining in the Distributing Group) and a Controlled Savings Plan (whose participants are the employees of Controlled and its subsidiaries). To ensure that the Distributing Savings Plan is in compliance with certain legal requirements, the Distributing Savings Plan will sell all of its shares of Acquiring stock by a specified date after the Distribution in open-market transactions. In contrast, participants in the Controlled Savings Plan will not be required to sell their Acquiring stock.

The Proposed Transaction may result in members of the Distributing group taking into account certain intercompany gains and losses (the losses, "Deferred Losses") under Treas. Reg. § 1.1502-13. Distributing will not selectively take into account Deferred Losses.

Proposed Transaction

For what are represented to be valid business purposes, Distributing proposes the following steps:

1. Acquiring has already formed Acquiring Sub, a wholly owned State A corporation, and Distributing has formed Controlled, a wholly owned State A corporation.
2. One or more banks will lend approximately \$c to Distributing ("New Bank Debt"). At least one day later, Distributing will enter an arm's-length agreement with the banks to satisfy the New Bank Debt with Controlled securities.

3. Controlled will borrow approximately \$d from unrelated lenders (the “Controlled Borrowing”). The precise amount of borrowing in steps 2 and 3 will depend on market considerations and working-capital determinations at the time of the transaction.
4. Provided market conditions satisfy the Securities Exchange Condition, within e business days of entering into the agreement in step 2 and pursuant to that agreement, Distributing will use the Controlled securities, which may be received prior to the Contribution in step 5, to satisfy the New Bank Debt (the “Securities Exchange”).
 - a. If the Securities Exchange Condition is not satisfied, Controlled will borrow an equivalent additional amount of cash and distribute it to Distributing in the Contribution (the “Contingent Additional Cash”).
 - b. If the Controlled securities are received prior to step 5, Distributing will be obligated under certain agreements to contribute Controlled’s business to Controlled, and the legal documentation for the Controlled Securities will include covenants, enforceable by the debt holders, that Distributing will make such contributions prior to the Distribution. In the event the Distribution is abandoned, Distributing will contribute cash, including the proceeds of the New Bank Debt, to Controlled, and Controlled will redeem the Controlled Securities, potentially with a prepayment premium.
5. Distributing will contribute Sub and other assets and entities relating to Controlled’s business to Controlled in exchange for Controlled stock and Controlled securities (“Controlled Securities”), some or all of the cash borrowed in step 3 (the “Controlled Cash”), and the assumption of liabilities associated with the Controlled business (together, the “Contribution”).
6. Distributing will distribute all of the Controlled stock to its shareholders (the “Distribution”). The Distribution will take the form of a pro rata dividend, an exchange offer for Distributing stock, or a combination of the two.
7. Immediately after the Distribution, Acquiring Sub will merge into Controlled in a Section 368 reorganization (the “Merger”). As a result, Controlled will become a wholly owned subsidiary of Acquiring. Immediately after the Merger, Distributing shareholders will hold f% of the stock of Acquiring; the remaining g% of the stock will be held by pre-Merger shareholders of Acquiring.
 - a. Pursuant to the Merger, in order to avoid the expense and inconvenience of issuing fractional shares, all fractional shares of Acquiring common stock that a record holder of shares of Controlled stock would otherwise be entitled to receive as a result of the Merger will be aggregated by the exchange agent. The exchange agent will sell the shares on behalf of such holders of Controlled stock in an open market transaction or as

otherwise reasonably directed by Acquiring, in each case at then-prevailing market prices, and remit the cash proceeds to the shareholders of record.

- b. Distributing will designate h members of Acquiring's initial board after the Merger and Acquiring will designate the remaining i members. These members will be subject to election by shareholders in the normal course after serving their initial terms.

8. Within j months after the Distribution:

- a. Distributing will use an amount of cash equal to the proceeds of the New Bank Debt to repay principal, interest, or premium of Qualifying Debt.
- b. Distributing will use an amount of cash equal to the Controlled Cash to make distributions to shareholders; repurchase its outstanding common stock; repay principal, interest, or premium of Qualifying Debt; or satisfy ordinary-course liabilities whenever incurred (or some combination of these) (the "Controlled Cash Purge").

The term "Controlled Separation" refers to the Proposed Transaction excluding the Merger.

In connection with the Proposed Transaction, Distributing, Acquiring, and Controlled have entered into and will enter into agreements (the "Continuing Arrangements") intended to govern their relationship (and that of their respective subsidiaries) following the Proposed Transaction. The specific agreements include the Transition Services Agreement, the Tax Matters Agreement, the Employee Matters Agreement, and the IP Matters Agreement. Distributing, Acquiring, and Controlled also have entered into and will enter into certain Commercial Agreements.

Representations

Except as follows, Distributing has made all of the representations in section 3 of the Appendix to Rev. Proc. 2017-52 with respect to the Controlled Separation:

1. Distributing has made the following alternative representations: 3(a), 11(a), 15(a), 22(b), 31(a), 41(a).
2. Distributing has not made the following representations, which do not apply to the Distribution: 24, 25, 35, 40.
3. To the extent the Distribution is a split-off, Distributing makes Representation 7, and representations 5 and 6 do not apply. To the extent the Distribution is a pro-rata distribution, Distributing makes Representations 5 (as modified below) and 6, and Representation 7 does not apply.

4. Distributing has made the following modified representations:
- a. Representation 2: In the Proposed Transaction, Distributing will distribute or exchange all of the stock and securities of Controlled.
 - b. Representation 4: Other than the Controlled Securities, no indebtedness owed by Controlled to Distributing after the Distribution will constitute stock or securities of Controlled or any other entity.
 - c. Representation 5: To the extent the Distribution is effected as a pro rata distribution, other than Controlled Securities transferred in the Securities Exchange or the cash transferred in the Controlled Cash Purge, none of the Controlled stock, Controlled Securities, or other property to be distributed in the Controlled Separation will be received in any capacity other than that of a shareholder of Distributing.
 - d. Representation 8(b): Distributing has securities outstanding, but it will not distribute Controlled stock, Controlled Securities, or other property to any holder of such securities in the Controlled Separation, in satisfaction thereof, except potentially pursuant to the Securities Exchange or the Controlled Cash Purge.
 - e. Representation 13: Except to the extent of the Contingent Additional Cash and potential payments under the Tax Matters Agreement, Distributing will not have acquired any Controlled stock in a transaction in which gain or loss was recognized during the five-year period immediately preceding the Distribution.
 - f. Representation 19: The Controlled Cash distributed by Controlled to Distributing in pursuance of the plan of reorganization will be transferred by Distributing to its shareholders in pursuance of the plan of reorganization or to its creditors in connection with the reorganization.
 - g. Representation 23: Other than potentially as a result of a Continuing Arrangement, the Proposed Transaction does not involve and will not result in a situation in which one party recognizes income but another party recognizes the deductions associated with such income or a situation in which one party owns property but another party recognizes the income associated with such property.
 - h. Representation 32: Except for the Continuing Arrangements, ordinary-course payables and receivables, or potentially the Controlled Securities, no intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.

- i. Representation 33: Payments made in connection with all continuing transactions, if any, between Distributing and Controlled will be for fair market value based on arm's-length terms, except as contemplated by the Continuing Arrangements.
- j. Representation 37: Other than the Deferred Losses, there is no loss subject to Treas. Reg. § 1.1502-13 that will be taken into account as a result of a transaction related to the Distribution.
- k. Representation 46: Other than potentially pursuant to the Controlled Borrowing, Controlled will not issue stock or securities to a person other than Distributing in anticipation of the Distribution.

Except as follows, Distributing has made all of the representations in section 3.04 of Rev. Proc. 2018-53 with respect to the Controlled Separation:

5. Distributing has made the following modified representations:

- a. Representation 3: Distributing makes Representation 3 with respect to its Qualifying Debt. With respect to the New Bank Debt, Distributing modifies Representation 3 to provide that the holder(s) of the New Bank Debt that will be satisfied will not hold the New Bank Debt for the benefit of Distributing, Controlled, or any related person. Neither Distributing, nor Controlled, nor any related person will participate in any profit gained by the Banks upon an exchange of § 361 Consideration; nor will any such profit be limited by agreement or other arrangement. The value of the § 361 Consideration received by the Banks in satisfaction of the New Bank Debt will be determined pursuant to arm's length negotiations.
- b. Representation 4: Other than the New Bank Debt, the Recent Debt, Commercial Paper, and the Distributing Refinanced Debt, Distributing incurred the Qualifying Debt that will be assumed or satisfied pursuant to the Controlled Separation (a) before the request for any relevant ruling is submitted and (b) no later than 60 days before the earliest of the following dates: (i) the date of the first public announcement (as defined in § 1.355-7(h)(10)) of the Proposed Transaction or a similar transaction, (ii) the date of the entry by Distributing into a binding agreement to engage in the Proposed Transaction or a similar transaction, and (iii) the date of approval of the Proposed Transaction or a similar transaction by the board of directors of Distributing.
- c. Representation 6: There are one or more substantial business reasons for any delay in satisfying Qualifying Debt with § 361 Consideration beyond the 30 days after the date of Distribution. All the Qualifying Debt that will be satisfied with § 361 Consideration will be satisfied no later than j months after the Distribution.

Distributing has made the following additional representations:

6. The payment of cash in lieu of fractional shares of Acquiring common stock in the Merger is solely for the purpose of avoiding the expense and inconvenience of issuing fractional shares and does not represent separately bargained-for consideration. The fractional share interests of each Distributing shareholder will be aggregated, and no Distributing shareholder of record will receive cash in an amount equal to or greater than the value of one full share of Acquiring common stock (with the possible exception of shareholders who hold Distributing stock in multiple accounts or with multiple brokers).
7. Distributing would have incurred the Recent Debt at the same time and in the same amount regardless of the Proposed Transaction, and Distributing would have entered into an agreement to undertake the Proposed Transaction regardless of whether the Recent Debt had been incurred.

Rulings

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

1. The Contribution, together with the Distribution, will be a reorganization within the meaning of Section 368(a)(1)(D). Distributing and Controlled will each be “a party to a reorganization” within the meaning of Section 368(b).
2. No gain or loss will be recognized by Distributing on the Contribution except to the extent of the distribution of the Contingent Additional Cash and potential payments under the Tax Matters Agreement. Section 361(a); Section 361(b); Section 357(a).
3. No gain or loss will be recognized by Controlled on the Contribution. Section 1032(a).
4. The basis in each asset received by Controlled in the Contribution will equal the basis of that asset in the hands of Distributing immediately before the transfer, increased by the amount of gain, if any, recognized by Distributing as a result of the distribution of the Contingent Additional Cash and taxable payments under the Tax Matters Agreement. Section 362(b).
5. The holding period in each asset received by Controlled in the Contribution will include the period during which the asset was held by Distributing. Section 1223(2).
6. No gain or loss will be recognized by Distributing upon the distribution of the Controlled stock in the Distribution. Section 355(c); Section 361(c).

7. The Controlled Cash will be treated as being distributed pursuant to the plan of reorganization for purposes of Section 361(b)(1)(A) and (b)(3).
8. No gain or loss on the Controlled securities will be recognized by Distributing in the Securities Exchange. Section 361(c).
9. No gain or loss will be recognized by holders of Distributing stock upon the receipt of Controlled stock in the Distribution. Section 355(a).
10. To the extent the Distribution is effected as a split-off, the aggregate basis of the Controlled stock in the hands of a holder of Distributing stock who exchanges Distributing stock for Controlled stock in the Distribution immediately after the Distribution will be the same as the aggregate basis of the Distributing stock exchanged therefor. Section 358(a).
11. To the extent Controlled stock is distributed to holders of Distributing stock on a pro rata basis, the aggregate basis of the Distributing stock and the Controlled stock in the hands of such holders immediately after the Distribution will be the same as the basis of the Distributing stock immediately before the Distribution on which such distribution was made, allocated between the Distributing stock and Controlled stock in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a). Section 358(a).
12. The holding period of the Controlled stock received in the Distribution will include the holding period of the Distributing stock exchanged therefor (if the Distribution is effected as a split-off) or the holding period of the Distributing stock with respect to which the Controlled stock is distributed (if the Distribution is effected as a pro rata distribution), provided that such Distributing stock is held as a capital asset on the date of such Distribution. Section 1223(1).
13. Earnings and profits of Distributing will be allocated between Controlled and Distributing in accordance with Section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33(e)(3), as applicable.
14. The initial designations of the post-Merger members of the Acquiring board of directors will not affect the determination of the total voting power or value of the stock of Controlled acquired within the meaning of Section 355(e).
15. In applying Treas. Reg. § 1.355-7(d)(7), the determination, with respect to a particular acquisition, sale, or disposition (a "stock transaction"), of whether an acquiror or seller that is a participant in the Distributing Savings Plan is a "Five-percent shareholder" or "Ten-percent shareholder" within the meaning of Treas. Reg. § 1.355-7(h)(8) and (14) is made solely by reference to the Filings and Actual Knowledge. For this purpose, (A) the Filings are the latest relevant Schedules 13D or 13G; and (B) Actual Knowledge is limited to (i) the ownership of stock and/or options listed in the latest relevant Forms 3, 4, or 10-K or in the

latest available Internal Distributing Ownership List updated as of the date of the Distribution, and (ii) if such stock transaction occurs less than k years after the Distribution, actual knowledge of those persons whose ownership of stock and/or options is listed in the latest relevant Forms 3, 4, or 10-K. The “latest relevant” schedules or forms are the latest schedules or forms filed with the Securities Exchange Commission (SEC) with respect to the issuing corporation on or prior to the date of such stock transaction.

Moreover, the aggregation rule of Section 355(e)(4)(C)(i) will not apply with respect to stock owned through the Distributing Savings Plan for purposes of determining whether an acquiror or seller “actively participates in the management or operation” of any corporation for purposes of the definition of “controlling shareholder” within the meaning of Treas. Reg. § 1.355-7(h)(3).

16. In applying Treas. Reg. § 1.355-7(d)(7), the determination, with respect to a stock transaction, of whether an acquiror or seller that is a participant in the Controlled Savings Plan is a “Five-percent shareholder” or “Ten-percent shareholder” within the meaning of Treas. Reg. § 1.355-7(h)(8) and (14) is made solely by reference to the Filings and Actual Knowledge. For this purpose, (A) the Filings are the latest Schedules 13D or 13G; and (B) Actual Knowledge is limited to (i) the ownership of stock and/or options listed in the latest relevant Forms 3, 4, or 10-K, and, (ii) if such stock transaction occurs less than k years after the Distribution, actual knowledge of those persons whose ownership of stock and/or options is listed in the latest relevant Forms 3, 4, or 10-K. The “latest relevant” schedules or forms are the latest schedules or forms filed with the SEC with respect to the issuing corporation on or prior to the date of such stock transaction.

Moreover, the aggregation rule of Section 355(e)(4)(C)(i) will not apply with respect to stock owned through the Controlled Savings Plan for purposes of determining whether an acquiror or seller “actively participates in the management or operation” of any corporation for purposes of the definition of “controlling shareholder” within the meaning of Treas. Reg. § 1.355-7(h)(3).

17. Any increase, directly or indirectly, in the percentage of either voting power or value of the stock of Acquiring owned by a shareholder by virtue of share repurchases or acquisitions of the stock of Acquiring, if any, as part of a plan (or series of related transactions) with the Distribution will be taken into account for purposes of Section 355(e) only after reducing such increase for any reduction in such percentage interest, directly or indirectly, resulting from the share repurchases and any disposition of stock of Acquiring by such shareholder or issuance of stock by Acquiring, if any, as part of a plan (or series of related transactions) with the Distribution.
18. Any payments made between any of Distributing and Controlled and their respective affiliates under any of the Continuing Arrangements regarding

liabilities, indemnities, or other obligations that (i) have arisen or will arise for a taxable period ending on or before the Distribution or for taxable year beginning before and ending after the Distribution and (ii) will not become fixed and ascertainable until after the Distribution will be characterized in a manner consistent with the proper treatment if such payments had occurred immediately before the Distribution. See *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952), and Rev. Rul. 83-73, 1983-1 C.B. 84.

19. Following the Distribution, Controlled will not be a successor of Distributing for purposes of Section 1504(a)(3). Therefore, immediately after the Distribution, Controlled and its direct and indirect subsidiaries that are “includible 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 US federal income tax return with Controlled as the common parent.

Caveats

Except as expressly provided in this letter, no opinion is expressed or implied concerning the tax treatment of the Proposed Transaction under any other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from the Proposed Transaction that is not specifically covered by the above ruling. In particular, no opinion is expressed on whether the Distributing Savings Plan's disposition of Acquiring stock is part of a plan (or series of related transactions) with the Distribution for purposes of Section 355(e).

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 returns that provides the date on and control number (PLR-113942-21) of this letter ruling.

Pursuant to a Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Julie T. Wang
Senior Counsel, Branch 2
Office of Associate Chief Counsel (Corporate)

cc: