

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

ID No.

Telephone Number:

Refer Reply To:  
CC:CORP:2  
PLR-115153-22

Date:  
November 7, 2022

**Legend**

Distributing =

Controlled =

Business A =

Business B =

Business C =

Continuing  
Agreements =

a =

Dear :

This letter responds to your authorized representatives' letter dated August 9, 2022, as supplemented by subsequent information and documentation, requesting rulings on certain federal tax consequences of a series of transactions (the "Proposed Transaction," as defined below). The material information submitted in that letter and 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 section 355 of the Internal Revenue Code (the "Code"); section 6.03(2) of Rev. Proc. 2022-1, 2022-1 I.R.B. 1, regarding one or more significant issues under section 368 of the Code; and Rev. Proc. 2022-10, 2022-6 I.R.B. 473. This Office expresses no opinion 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 penalties 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 the Distribution (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 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 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. § 1.355-8 (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

### **Facts**

Distributing is a publicly traded domestic corporation and the parent of an affiliated group of corporations that file a consolidated return for U.S. federal income tax purposes. Distributing is directly and indirectly engaged in the conduct of Business A, Business B, and Business C.

Among other entities, Distributing owns all the outstanding stock of Controlled, a domestic corporation. Controlled has one class of common stock outstanding and is directly and indirectly engaged in the conduct of Business B. Because Distributing acquired (or was deemed to acquire) Controlled shares at various times, its basis in its Controlled shares is not uniform.

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

### **Proposed Transaction**

For what are represented to be valid business reasons (the “Corporate Business Purposes”), Distributing proposes to engage in the following steps (collectively, the “Proposed Transaction”) to separate Business B:

- (i) In order to achieve desired leverage and establish appropriate capital structures, Controlled will make one or more distributions (consisting of cash, intercompany receivables, and/or proceeds of third-party borrowing) to Distributing (the “Controlled Cash Distributions”);
- (ii) To give Controlled a number of shares appropriate for a standalone public company, Distributing will exchange solely its existing shares of Controlled stock for new shares of Controlled stock (the “Exchange”); and
- (iii) Distributing will distribute the stock of Controlled to its public shareholders on a pro rata basis (the “Distribution”).

The fair market value of the property distributed pursuant to the Controlled Cash Distributions will not exceed Distributing’s aggregate basis in its Controlled stock.

In connection with the Proposed Transaction, Distributing and Controlled will enter into certain Continuing Agreements.

After the Proposed Transaction, Distributing and Controlled will have separate boards of directors, except for a overlapping board members. However, the overlapping directors will constitute a minority of each board and serve a corporate business purpose. The overlap of directors is not inconsistent with the Corporate Business Purposes of the Distribution.

### **Representations**

With respect to the Distribution, except as otherwise set forth below, Distributing has made all the representations in section 3 of the Appendix to Rev. Proc. 2017-52.

Distributing has made the following alternative representations:

Representations 3(a), 8(b), 11(a), 15(b), 22(a), 31(a), and 41(a).

Distributing has not made the following representations, which do not apply to the Distribution:

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

Distributing has made the following modified representations:

Representation 32: Other than intercompany loans or obligations that have arisen, or will arise, between Distributing and Controlled in the ordinary course of business or as a result of the Continuing Agreements described herein, no intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.

Representation 33: Except for certain payments made pursuant to the Continuing Agreements, payments made in connection with all continuing transactions, if any, between Distributing and Controlled after the Distribution will be for fair market value based on arm's-length terms.

Distributing has also made the following representations:

The Exchange will constitute a recapitalization which qualifies as a reorganization within the meaning of section 368(a)(1)(E).

### **Rulings**

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

1. The Controlled Cash Distributions will be treated as a distribution of property by Controlled to Distributing to which section 301 applies. Treas. Reg. § 1.301-1(j).
2. The Exchange and Distribution will each be treated as a separate transaction, because the only assets transferred in the Exchange are shares of Controlled stock.
3. As the Controlled Cash Distributions will be treated as a distribution to which section 301 applies, Treas. Reg. § 1.1502-13(f)(2) will apply to the Controlled Cash Distributions.
4. To the extent that the Controlled Cash Distributions create an excess loss account ("ELA") within the meaning of Treas. Reg. § 1.1502-19(a)(2) in certain shares of Controlled stock, Distributing's basis in its shares of Controlled stock at the time of the Exchange will be determined under Treas. Reg. § 1.1502-19(d) by allocating basis first to equalize and eliminate any ELA with respect to any share of Controlled stock.
5. No gain or loss will be recognized by (and no amount will be included in the income of) Distributing shareholders upon receipt of the Controlled stock in the Distribution. Section 355(a).

6. No gain or loss will be recognized by Distributing in the Distribution. Section 355(c)(1).
7. The aggregate basis of the Distributing stock and the Controlled stock in the hands of each Distributing shareholder immediately after the Distribution will equal the aggregate basis of the Distributing stock held by such shareholder immediately before the Distribution, allocated between the stock of Distributing and Controlled in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2). Section 358(a)(1), (b), and (c).
8. The holding period of the Controlled stock received by Distributing shareholders in the Distribution will include the holding period of the Distributing stock held by such shareholders with respect to which the Distribution will be made, provided that such Distributing stock is held as a capital asset on the date of the Distribution. Section 1223(1).
9. Earnings and profits of Distributing, if any, will be allocated between Distributing and Controlled in accordance with section 312(h), Treas. Reg. § 1.312-10(b), and Treas. Reg. § 1.1502-33(e)(3).
10. Immediately 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 eligible to file a consolidated U.S. 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 any provision of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the Proposed Transaction that is not specifically covered by the above rulings. In particular, no opinion is expressed on whether the Exchange qualifies as a reorganization within the meaning of section 368(a)(1)(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 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 representative.

Sincerely,

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

cc: