

Internal Revenue Service

Number: **202441010**
Release Date: 10/11/2024

Index Number: 355.00-00, 355.01-00,
355.01-01, 361.00-00,
368.00-00, 368.01-00,
368.04-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:BO5
PLR-106495-24
Date:
July 05, 2024

Legend

External Distributing =

Internal Distributing =

Controlled =

Sub 1 =

Sub 2 =

Acquiring =

Merger Sub 1 =

Merger Sub 2 =

State A =

Business A =

Business B =

Business C =

Business D =

Date 1 =

Date 2 =

Term Loan =

Revolver =

Senior Notes 1 =

Senior Notes 2 =

Senior Notes 3 =

Senior Notes 4 =

Senior Notes 5 =

Senior Notes 6 =

Senior Notes 7 =

Senior Notes 8 =

Bonds =

Divestitures =

Substantial
Negotiations

=

a

=

b

=

c

=

d

=

e

=

f

=

g

=

h

=

i =

j =

k =

l =

m =

n =

o =

p =

q =

r =

s =

t =

Continuing
Arrangements =

Dear _____ :

This letter responds to your representative's letter dated March 28, 2024, as supplemented by additional letters dated May 9, 2024 and June 14, 2024, submitted on behalf of External Distributing, its affiliates, and its shareholders, requesting rulings under sections 355 and 368(a)(1)(D), section 368(a)(1)(A), and related provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and related regulations with respect to a series of proposed transactions (the "Proposed Transaction"). The material information submitted in that request and subsequent correspondence is summarized below.

This letter is issued pursuant to Rev. Proc. 2024-1, 2024-1 I.R.B. 1, Rev. Proc. 2024-3, 2024-1 I.R.B. 143, Rev. Proc. 2023-26, 2023-33 I.R.B. 486, 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 and Rev. Proc. 2024-3, 2024-1 I.R.B. 143. 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. 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 the Proposed Transaction satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b).

Summary of Facts

External Distributing, a publicly traded, widely held, State A corporation, is the parent of a worldwide group of foreign and domestic entities (the “External Distributing Group”). External Distributing and its domestic affiliates join in the filing of a consolidated U.S. federal income tax return. At the time of the Proposed Transaction, External Distributing will have a single class of voting common stock issued and outstanding. The External Distributing Group is actively engaged in multiple businesses on a domestic and global basis, including Business A, Business B, Business C, and Business D (Business B, Business C, and Business D, together, the “Retained Businesses”).

Ownership Structure – External Distributing Group

The following summary describes the relevant ownership structure of the External Distributing Group immediately prior to the Proposed Transaction. Except as described below, each entity is treated as a corporation for U.S. federal income tax purposes.

External Distributing directly owns all of the issued and outstanding stock of Internal Distributing, a State A corporation. Internal Distributing directly owns: (i) all of the issued and outstanding stock of Sub 1, a State A corporation; and (ii) all of the issued and outstanding stock of Sub 2, a State A corporation. Sub 1 and Sub 2 are each members of the External Distributing Group that directly conduct Business A and own various domestic and foreign entities that are engaged solely in Business A. Internal Distributing also directly holds certain Business A assets and liabilities.

For purposes of satisfying the active trade or business requirements of section 355(b) with respect to the Internal Spin-Off (defined below), Internal Distributing and the members of its “separate affiliated group” as defined in section 355(b)(3)(B) (“SAG”) will rely on Business B and Business C, and Controlled and the members of its SAG will rely on Business A, which will include any activities performed for Business A by employees of Internal Distributing and its SAG for each of the past five years.

For purposes of satisfying the active trade or business requirements of section 355(b) with respect to the External Distribution (defined below), External Distributing and the members of its SAG will rely on Business B and Business C, and Controlled and the members of its SAG will rely on Business A, which will include any activities performed

for Business A by employees of External Distributing and its SAG for each of the past five years.

External Distributing has submitted financial information in accordance with Rev. Proc. 2017-52 indicating that Business A, Business B, and Business C each had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Outstanding Debt

As of Date 1, Internal Distributing had outstanding a Term Loan in an aggregate amount of a, and a Revolver in an amount of up to b. Internal Distributing also had eight issuances of senior secured notes, including: (i) Senior Notes 1 in an aggregate principal amount of c; (ii) Senior Notes 2 in an aggregate principal amount of d; (iii) Senior Notes 3 in an aggregate principal amount of e; (iv) Senior Notes 4 in an aggregate amount of f; (v) Senior Notes 5 in an aggregate principal amount of g; (vi) Senior Notes 6 in an aggregate principal amount of h; (vii) Senior Notes 7 in the aggregate principal amount of i; and (viii) Senior Notes 8 in the aggregate principal amount of j (together with the Term Loan and the Revolver, the “Internal Distributing Historical Debt”). At such time, Internal Distributing also had outstanding Bonds in an aggregate principal amount of k.

Ownership Structure – Acquiring Group

Acquiring, a publicly traded, widely held, State A corporation, is the parent of a worldwide group of domestic and foreign entities (the “Acquiring Worldwide Group”) that is unrelated to the External Distributing Group. Acquiring is also the common parent of an affiliated group of domestic corporations that file a U.S. consolidated federal income tax return (the “Acquiring Consolidated Group”).

Immediately prior to the Proposed Transaction, Acquiring directly owns: (i) all of the issued and outstanding stock of Merger Sub 1, a State A corporation; and (ii) all of the issued and outstanding stock of Merger Sub 2, a State A limited liability company treated as a disregarded entity for U.S. federal income tax purposes. Acquiring formed Merger Sub 1 and Merger Sub 2 to facilitate the Proposed Transaction.

Proposed Transaction

For what are represented to be valid business reasons, External Distributing proposes to separate Business A from the Retained Businesses (the “Separation”) and combine the Business A operations with the business operations of Acquiring. Following the Proposed Transaction, Internal Distributing and External Distributing will conduct the Retained Businesses and Acquiring will conduct Business A. In the description of the Proposed Transaction below, any repayment or retirement of Internal Distributing

Historical Debt includes payments of principal, interest, market premiums, and associated legal fees.

On Date 2, External Distributing, Controlled, and Acquiring entered into a separation agreement (as amended, the "Separation Agreement") governing certain terms of the Proposed Transaction. On the same date, External Distributing, Controlled, Acquiring, Merger Sub 1, and Merger Sub 2 entered into a merger agreement (as amended, the "Merger Agreement") and various other agreements governing certain terms of the Proposed Transaction.

Pursuant to the Separation Agreement and the Merger Agreement, the relevant steps of the Proposed Transaction are set forth below.

The Internal Transactions

Step 1: Internal Distributing will form Controlled, a State A corporation.

Step 2: Internal Distributing will contribute all of its assets related to Business A to Controlled, including all of the issued and outstanding stock of Sub 1 and Sub 2, solely in exchange for: (i) all of the issued and outstanding shares of Controlled stock; (ii) the assumption by Controlled of liabilities associated with Business A (if any); and (iii) Controlled Cash (as defined below) (the "Contribution").

Step 3: Controlled will borrow cash in the approximate amount of m from third-party lenders through capital markets borrowing (the "Controlled Borrowing").

Step 4: Controlled will distribute approximately n of the proceeds of the Controlled Borrowing to Internal Distributing (the "Controlled Cash").

Step 5: Internal Distributing will distribute all of the issued and outstanding stock of Controlled to External Distributing (the "Internal Distribution," and, together with the Internal Contribution, the "Internal Spin-Off").

Step 6: Within o months following the Internal Distribution, Internal Distributing will use an amount of cash from its general accounts equal to the Controlled Cash to repay or repurchase Internal Distributing Historical Debt from third-party lenders (the "Internal Distributing Debt Repayment," and, together with the formation of Controlled, the Controlled Borrowing, the Contribution, and the Internal Distribution, the "Internal Transactions").

The External Transactions

Step 7: External Distributing will distribute all of the issued and outstanding stock of Controlled to its shareholders through: (i) a pro rata distribution (the "Pro-Rata Distribution"); and/or (ii) an offer to exchange shares of Controlled stock for outstanding shares of External Distributing (the "Split-Off"). If External Distributing chooses to

pursue a Split-Off, and the exchange offer is not fully subscribed, External Distributing will transfer as soon as practical, but not later than p days after the Split-Off, all the shares of Controlled not distributed in the Split-Off to its shareholders on a pro-rata basis in accordance with their stock ownership (the “Clean-Up Distribution,” and, together with the Pro-Rata Distribution and/or the Split-Off, as applicable, the “External Distribution”).

Step 8: Immediately following the External Distribution, Merger Sub 1 will merge with and into Controlled with Controlled surviving under State A law solely in exchange for Acquiring stock (the “First Merger”).

Step 9: Immediately following the First Merger, Controlled will merge with and into Merger Sub 2 with Merger Sub 2 surviving under State A law in exchange for no consideration (the “Second Merger,” and, together with the First Merger, the “Merger”). Following the Merger, the former shareholders of Controlled will own approximately q percent of the issued and outstanding stock of Acquiring on account of their former ownership in Controlled.

Step 10: Acquiring (or Merger Sub 2) will use proceeds from the Controlled Borrowing to repay or repurchase historical debt of Acquiring in the approximate amount of r from third-party lenders (the “Acquiring Debt Repayment,” and, together with the External Distribution and the Merger, the “External Transactions”).

On Date 2, in connection with the Proposed Transaction, External Distributing, Controlled, and Acquiring collectively with their affiliates, entered into certain agreements intended to govern their relationship following the consummation of the External Distribution and the Merger, including the Separation Agreement and a Transition Services Agreement, a Tax Matters Agreement, an Employee Matters Agreement, and a Supply Agreement (i.e., the Continuing Arrangements).

Representations

The Internal Transactions

Except as set forth below, External Distributing has made all of the representations in Section 3 of the Appendix to Rev. Proc. 2017-52 with respect to the Internal Transactions:

1. External Distributing has made the following alternative representations: 3(a), 8(a), 11(a), 15(a), 22(a), 31(a), and 41(a).
2. External Distributing has not made the following representations, which do not apply to the Internal Transactions: 7, 20, 24, 25, 35, and 39.
3. External Distributing has made the following modified representations:

Representation 32: No intercorporate debt will exist between Internal Distributing, Controlled, and Acquiring (and their respective subsidiaries, as applicable) at the time of, or subsequent to the Internal Distribution of Controlled stock, except for amounts arising by reason of the Continuing Arrangements or ordinary course receivables and payables.

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

Representation 34: Internal Distributing and Controlled each will pay its own expenses, if any, incurred in connection with the Internal Distribution, except that Internal Distributing and its affiliates may pay certain corporate-level expenses that are solely and directly related (within the meaning of Rev. Rul. 73-54, 1973-1 C.B. 187) to the Internal Distribution (such as legal, accounting, and other advisory fees and administrative expenses incurred in connection with the Internal Distribution).

4. External Distributing makes the following additional representations in lieu of Representations 14 and 15 in Rev. Proc. 2017-52:

Except with respect to any portion of the Controlled Borrowing retained by Controlled to be used for the Acquiring Debt Repayment, the fair market value of the business assets of each of Internal Distributing and Controlled will be greater than 80 percent of the fair market value of its total assets immediately after the Internal Distribution. For this purpose, the term "business assets" of a corporation means its gross assets used in one or more businesses. Such assets include cash and cash equivalents held as a reasonable amount of working capital for one or more businesses. Such assets also include assets required (by binding commitment or legal requirement) to be held to provide for exigencies related to a business or for regulatory purposes with respect to a business.

Except for the steps described in the Proposed Transaction and ordinary market trading, there is no plan or intention by the shareholders or security holders of Internal Distributing to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in, or securities of, either Internal Distributing or Controlled after the transaction.

There is no plan or intention by Internal Distributing or Controlled, directly or through any related person (within the meaning of section 267(b) or section 707(b)(1)), to purchase any of its outstanding stock after the transaction. For purposes of this representation, stock repurchases are not included if they meet the following requirements: (i) there is a sufficient business purpose for the stock purchase; (ii) the stock to be purchased is widely held; (iii) the stock purchases will be made in the open market; and (iv) there is no plan or intention that the

aggregate amount of stock purchases will equal or exceed 20 percent of the outstanding stock of the corporation.

Except as described in the Proposed Transaction, there is no plan or intention to liquidate either Internal Distributing or Controlled, to merge with any other corporation, or to sell or otherwise dispose of assets after the transaction, except in the ordinary course of business as part of each corporation's routine evaluation of its asset mix or pursuant to the Divestures.

5. External Distributing makes the following additional representation in lieu of Representation 29 in Rev. Proc. 2017-52:

Except as described in the Proposed Transaction and the Substantial Negotiations, there was not and will not be any agreement, understanding, arrangement, or substantial negotiations at any point during the two-year period ending on the date of the distribution regarding an acquisition of either Internal Distributing or Controlled (including a predecessor or successor within the meaning of Treas. Reg. § 1.355-8) or a similar acquisition.

Except as set forth below, External Distributing has made all of the representations in Section 3 of the Appendix to Rev. Proc. 2018-53 with respect to the Internal Transactions:

6. External Distributing has made the following modified representations:

Representation 6: There are one or more substantial business reasons for any delay in satisfying Internal Distributing Historical Debt with any Controlled Cash beyond days after the date of the first distribution of Controlled stock to Internal Distributing's shareholders. All the Internal Distributing Historical Debt that will be satisfied with any Controlled Cash will be satisfied no later than months after such distribution in connection with the plan.

The External Transactions

Except as set forth below, External Distributing has made all of the representations in Section 3 of the Appendix to Rev. Proc. 2017-52 with respect to the External Transactions:

7. External Distributing has made the following alternative representations: 3(a), 8(a), 11(a), 15(a), 31(a), and 41(a).
8. External Distributing has not made the following representations, which do not apply to the External Transactions: 17, 18, 19, 20, 22, 24, 25, 35, 39, and 40.
9. External Distributing has made the following modified representations:

Representation 32: No intercorporate debt will exist between External Distributing, Controlled, and Acquiring (and their respective subsidiaries, as applicable) at the time of, or subsequent to the External Distribution of Controlled stock, except for amounts arising by reason of the Continuing Arrangements or ordinary course receivables and payables.

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

Representation 34: External Distributing and Controlled each will pay its own expenses, if any, incurred in connection with the External Distribution, except that External Distributing and its affiliates may pay certain corporate-level expenses that are solely and directly related (within the meaning of Rev. Rul. 73-54, 1973-1 C.B. 187) to the External Distribution (such as legal, accounting, and other advisory fees and administrative expenses incurred in connection with the External Distribution).

10. External Distributing makes the following additional representations in lieu of Representations 14 and 15 in Rev. Proc. 2017-52:

Except with respect to any portion of the Controlled Borrowing retained by Controlled to be used for the Acquiring Debt Repayment, the fair market value of the business assets of each of External Distributing and Controlled will be greater than 80 percent of the fair market value of its total assets immediately after the External Distribution. For this purpose, the term "business assets" of a corporation means its gross assets used in one or more businesses. Such assets include cash and cash equivalents held as a reasonable amount of working capital for one or more businesses. Such assets also include assets required (by binding commitment or legal requirement) to be held to provide for exigencies related to a business or for regulatory purposes with respect to a business.

Except for the steps described in the Proposed Transaction and ordinary market trading, there is no plan or intention by the shareholders or security holders of External Distributing to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in, or securities of, either External Distributing, Controlled, or Acquiring after the transaction.

There is no plan or intention by External Distributing, Controlled, or Acquiring, directly or through any related person (within the meaning of section 267(b) or section 707(b)(1)), to purchase any of its outstanding stock after the transaction. For purposes of this representation, stock repurchases are not included if they meet the following requirements: (i) there is a sufficient business purpose for the stock purchase; (ii) the stock to be purchased is widely held; (iii) the stock

purchases will be made in the open market; and (iv) there is no plan or intention that the aggregate amount of stock purchases will equal or exceed 20 percent of the outstanding stock of the corporation.

Except as described in the Proposed Transaction, there is no plan or intention to liquidate either External Distributing, Controlled, or Acquiring, to merge with any other corporation, or to sell or otherwise dispose of assets after the transaction, except in the ordinary course of business as part of each corporation's routine evaluation of its asset mix or pursuant to the Divestures.

11. External Distributing makes the following additional representation in lieu of Representation 29 in Rev. Proc. 2017-52:

Except as described in the Proposed Transaction and the Substantial Negotiations, there was not and will not be any agreement, understanding, arrangement, or substantial negotiations at any point during the two-year period ending on the date of the distribution regarding an acquisition of either External Distributing or Controlled (including a predecessor or successor within the meaning of Treas. Reg. § 1.355-8) or a similar acquisition.

The Merger

With respect to the Merger, External Distributing makes the following representations:

12. At the time of the Second Merger, Merger Sub 2 will be a single member limited liability company that is disregarded as an entity separate from Acquiring (within the meaning of Treas. Reg. § 1.368-2(b)(1)(i)(A)) for U.S. federal income tax purposes.
13. The Second Merger will be effectuated pursuant to the laws of Delaware and will qualify as a statutory merger under applicable Delaware law. Pursuant to the plan of merger, by operation of law, the following will occur simultaneously at the effective time of the Second Merger: (i) all the assets and liabilities of Controlled immediately before the Second Merger will become the assets and liabilities of Acquiring (through Merger Sub 2); and (ii) Controlled will cease its separate legal existence for all purposes.
14. The Second Merger will be undertaken pursuant to a plan of reorganization, as described in Treas. Reg. §§ 1.368-1(c) and 1.368-2(g), that was adopted by the taxpayer and each of its affiliates as necessary, before the Second Merger.
15. The aggregate fair market value of Acquiring stock provided to Controlled Shareholders will be at least 40 percent of the fair market value, as of the relevant testing date, of the total consideration received by such Controlled Shareholders in exchange for their Controlled stock in connection with the Merger. For purposes of this representation cash or other property furnished by Acquiring (or any related person, as defined in Treas. Reg. § 1.368-1(e)(4)) for redemptions of Controlled stock (including Controlled stock surrendered by dissenters or exchanged for cash in

lieu of fractional shares), is treated as nonstock consideration received by such Controlled Shareholders, and is taken into account in determining the total consideration received by such Controlled Shareholders in exchange for their Controlled stock.

16. There is no plan or intention by Acquiring (or any related person, as defined in Treas. Reg. § 1.368-1(e)(4)) to acquire any of the Acquiring stock received by Controlled Shareholders in exchange for their Controlled stock in connection with the Merger that will reduce the former Controlled Shareholders' ownership of Acquiring stock to a number of shares having a value, of less than 40 percent of the fair market value, as of the relevant testing date, of the total consideration received by such Controlled Shareholders in exchange for their Controlled stock in connection with the Merger, except for acquisitions by Acquiring where: (i) there is a sufficient business purpose for the stock purchase; (ii) the stock to be purchased is widely held; (iii) the stock purchases will be made in the open market; and (iv) there is no plan or intention that the aggregate amount of stock purchases will equal or exceed 20 percent of the outstanding stock of Acquiring. For purposes of this representation cash or other property furnished by Acquiring (or any related person, as defined in Treas. Reg. § 1.368-1(e)(4)) for redemptions of Controlled stock (including Controlled stock surrendered by dissenters or exchanged for cash in lieu of fractional shares), is treated as nonstock consideration received by such Controlled Shareholders, and is taken into account in determining the total consideration received by such Controlled Shareholders in exchange for their Controlled stock.
17. Except for stock acquired in the Merger, neither Acquiring nor any related person of Acquiring as defined in Treas. Reg. § 1.368-1(e)(4) has acquired or will acquire any stock of Controlled in connection with the Merger.
18. Acquiring will continue the historic business(es) of Controlled or use a significant portion of Controlled's historic business assets in a business within the meaning of Treas. Reg. § 1.368-1(d).
19. There is no plan or intention to sell or otherwise dispose of any of the Controlled assets acquired in the Merger, except for dispositions made in the ordinary course of business or transfers of assets to which section 368(a)(2)(C) or Treas. Reg. § 1.368-2(k) applies.
20. The liabilities of Controlled that will be assumed by Acquiring, within the meaning of section 357(d), were incurred by Controlled in the ordinary course of business and are associated with the assets transferred.
21. Immediately before the Merger, the total fair market value of the assets of Controlled to be transferred to Acquiring will exceed the sum of: (i) the total amount of liabilities (if any) to be assumed (as determined under section 357(d)) by Acquiring, plus any liabilities to which the transferred assets will be subject; (ii) the total amount of liabilities (if any) owed by Controlled to Acquiring that will be discharged or

extinguished in connection with the Merger; and (iii) the amount of cash and the fair market value of any other property (other than property permitted to be received under section 361(a) without the recognition of gain) to be received by the Controlled shareholders in connection with the Merger.

22. Immediately after the Merger, the aggregate fair market value of the assets of Acquiring will exceed the sum of liabilities of Acquiring, plus the other liabilities, if any, to which the assets of Acquiring will be subject.
23. Controlled, Merger Sub 1, Merger Sub 2, and Acquiring will each pay their own expenses incurred in connection with the Merger.
24. There will be no intercorporate indebtedness existing between Controlled and Acquiring that will be issued, acquired, or settled at a discount.
25. Controlled has not made, and will not make, any dividend or other distribution with respect to its stock other than any regular, normal dividends, and neither Controlled nor any related person of Controlled, as defined in Treas. Reg. § 1.368-1(e)(4) (determined without regard to Treas. Reg. § 1.368-1(e)(4)(i)(A)), will acquire any stock of Controlled, in each case, in connection with the Merger.
26. The Merger is motivated, in whole or substantial part, by one or more bona fide nonfederal income tax purposes as described in this request for ruling.
27. At the time of the Merger, none of Controlled, Merger Sub 1, Merger Sub 2, or Acquiring will be under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).
28. No party to the Merger will be an investment company as defined in section 368(a)(2)(F) or section 351(e) and Treas. Reg. § 1.351-1(c)(1)(ii).
29. The receipt of cash in lieu of fractional shares of Acquiring will be solely for the purpose of avoiding the expense and inconvenience of issuing and maintaining fractional shares and will not represent separately bargained-for consideration. The total cash consideration that will be received in connection with the Merger in lieu of fractional shares of Acquiring stock will not exceed one percent of the total consideration that will be distributed to holders of Controlled stock in the Merger. Any fractional share interests of each Controlled shareholder will be aggregated, and no Controlled shareholder of record will receive cash in an amount equal to or greater than the value of one full share of Controlled stock.
30. Acquiring and its subsidiaries will properly elect to file a consolidated U.S. federal income tax return for the tax year beginning the day after the Merger.

31. All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to the Proposed Transaction for which the letter ruling is requested have been fully disclosed.
32. Except with respect to certain payments made pursuant to the Agreements, all exchanges effectuating the Proposed Transaction will be on a value-for-value basis under arm's length terms.
33. No party to the Proposed Transaction is an organization exempt from U.S. federal income tax within the meaning of section 501.
34. No party to the Proposed Transaction will be a "personal service corporation" within the meaning of section 269A.
35. No party to the Proposed Transaction will have any outstanding fast-pay stock as defined in Treas. Reg. § 1.7701(l)-3.
36. None of the steps of the Proposed Transaction will be undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to a transaction designated as a "listed transaction" for purposes of Treas. Reg. §§ 1.6011-4T(b)(2) and 301.6111-2T.

Rulings

Based solely on the information submitted and the representations made, we rule as follows with respect to the Proposed Transaction:

The Internal Transactions

1. The Contribution, together with the Internal Distribution, will qualify as a reorganization and distribution within the meaning of section 368(a)(1)(D) and section 355. Internal 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 Internal Distributing on the Contribution. Sections 361(a), 361(b), and 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 Internal Distributing immediately before the Contribution. Section 362(b).

5. The holding period in each asset received by Controlled in the Contribution will include the period during which such asset was held by Internal Distributing. Section 1223(2).
6. No gain or loss will be recognized by Internal Distributing on the Internal Distribution or the Internal Distributing Debt Repayment. Section 361(c).
7. No gain or loss will be recognized by (and no amount will be includible in the income of) External Distributing on the receipt of Controlled stock in the Internal Distribution. Section 355(a)(1).
8. External Distributing's aggregate adjusted basis in its Internal Distributing stock and Controlled stock immediately after the Internal Distribution will equal External Distributing's aggregate basis in its Internal Distributing stock immediately prior to the Internal Distribution. Section 358(a). The basis will be allocated between Internal Distributing stock and Controlled stock in proportion to the fair market values of each immediately after the Internal Distribution in accordance with Treas. Reg. § 1.358-2(a)(2). Sections 358(a) through (c).
9. External Distributing's holding period in the Controlled stock received in the Internal Distribution will include the holding period of the Internal Distributing stock held by External Distributing with respect to which the distribution is made, provided that such Internal Distributing stock is held as a capital asset on the date of the Internal Distribution. Section 1223(1).
10. Earnings and profits, if any, will be allocated between Controlled and Internal Distributing in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33.

The External Transactions

11. No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the External Distributing shareholders upon receipt of Controlled stock in the External Distribution. Section 355(a)(1).
12. No gain or loss will be recognized by External Distributing on the distribution of Controlled stock to its shareholders in the External Distribution. Section 355(c)(1).
13. Each participating shareholder's aggregate basis in the Controlled stock it receives in exchange for External Distributing stock pursuant to the Split-Off (including any fractional share interest in Controlled stock to which a shareholder may be entitled) will equal such shareholder's aggregate basis in the External Distributing stock surrendered in the Split-Off and will be allocated among the shares received in the manner described in Treas. Reg. § 1.358-2(a). Section 358(a)(1) and (b)(1).
14. If the Pro-Rata Distribution or Clean-Up Distribution is undertaken, the aggregate basis of the External Distributing stock and the Controlled stock in the hands of the

External Distributing shareholders immediately after the Pro-Rata Distribution or Clean-Up Distribution (including any fractional share interest in Controlled stock to which a shareholder may be entitled) will be the same as the External Distributing shareholders' basis in the External Distributing stock immediately before the Pro-Rata Distribution or Clean-Up Distribution, allocated between the External Distributing stock and the Controlled stock in proportion to the fair market value of each immediately following the Pro-Rata Distribution or Clean-Up Distribution. Sections 358(a)(1), (b), and (c); Treas. Reg. § 1.358-2(a)(2).

15. The holding period of the Controlled stock received by the External Distributing shareholders in the External Distribution will include the holding period of the External Distributing stock held by the External Distributing shareholders with respect to which the distribution will be made, provided that such External Distributing stock is held as a capital asset on the date of the External Distribution. Section 1223(1).
16. Earnings and profits, if any, will be allocated between External Distributing and Controlled in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(b) and 1.1502-33.
17. Following the External Distribution, Controlled will not be a successor of External Distributing for purposes of section 1504(a)(3). Therefore, 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 join in the filing of a consolidated U.S. federal income tax return.

The Merger

18. The Merger will constitute a reorganization under section 368(a)(1)(A), treated as: (i) the transfer by Controlled of all of its assets to Acquiring solely in exchange for stock of Acquiring and the assumption of Controlled's liabilities; followed by (ii) the distribution by Controlled of the Acquiring stock to its shareholders in cancellation of their Controlled stock. Acquiring and Controlled will each be a "party to a reorganization" within the meaning of section 368(b).
19. No gain or loss will be recognized by Controlled upon the transfer of its assets to Acquiring solely in exchange for Acquiring stock and the assumption of liabilities. Sections 357(a) and 361(a).
20. No gain or loss will be recognized by Acquiring on its receipt of Controlled's assets solely in exchange for Acquiring stock and the assumption of liabilities. Section 1032(a).

21. Acquiring's basis in each asset received from Controlled in the Merger will equal the basis of such asset in the hands of Controlled immediately before the Merger. Section 362(b).
22. Acquiring's holding period in each asset received from Controlled in the Merger will include the period during which such asset was held by Controlled. Section 1223(2).
23. No gain or loss will be recognized by Controlled upon the distribution of Acquiring stock to its shareholders in the Merger. Section 361(c).
24. No gain or loss will be recognized by the Controlled shareholders upon the surrender of their Controlled stock in exchange for Acquiring stock in the Merger. Section 354(a)(1).
25. The Controlled shareholders' basis in the Acquiring stock received in the Merger (including any fractional share interest in Acquiring stock to which a shareholder may be entitled) will be the same as the basis in the Controlled stock surrendered in exchange therefor. Section 358(a)(1).
26. If a holder of Controlled stock that purchased or acquired shares on different dates or at different prices is not able to identify which particular share of Acquiring stock is received in exchange for a particular share of Controlled stock, the holder may designate which particular share of Acquiring stock is received in exchange for a particular share of Controlled stock, provided the designation is consistent with the terms of the Merger. Treas. Reg. § 1.358-2(a)(2)(vii).
27. The Controlled shareholders' holding period in the Acquiring stock received in the Merger (including any fractional share interest in Acquiring stock to which a shareholder may be entitled) will include the holding period of the Controlled stock surrendered in exchange therefor, provided that the Controlled stock is held as a capital asset on the date of the Merger. Section 1223(1).
28. The receipt by the shareholders of Controlled of cash in lieu of fractional shares, if any, of Acquiring stock will be treated for U.S. federal income tax purposes as if the fractional shares had been issued to such shareholders as part of the Merger and then had been disposed of by such shareholders for the amount of such cash in a sale or exchange. The gain (or loss) recognized (if any), determined using the basis allocated to the fractional shares in Rulings 25-26, will be treated as capital gain (or loss) under section 1001, provided the stock was held as a capital asset by the selling shareholder. Such gain (or loss) will be short-term or long-term capital gain (or loss) (determined using the holding period provided in Ruling 27).
29. Acquiring will succeed to and take into account the items of Controlled enumerated in section 381(c), subject to the provisions and limitations of sections 381, 382, 383, 384, and 1502, and the regulations thereunder.

Caveats

No opinion is expressed or implied about 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 are not specifically covered by the above rulings.

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 ruling must be attached to any 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 and control number (PLR-106495-24) 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 representative.

Sincerely,

Brian R. Loss

Brian R. Loss
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel (Corporate)

cc: