

DRE 3 =

Business A =

Business B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

State A =

a =

b =

c =

d =

e =

f =

Continuing Arrangements =

Transition Services Agreements =

Controlled Equity Awards =

Debt-for-Equity Exchange Agreement =

Distributing Equity Awards =

Equity Awards =

Distributing Third Party Debt =

DRE 1 Bonds =

Sub 3 Third Party Debt =

Historic Distributing Debt =

Sub 1 Intercompany
Receivables =

Term Loan =

Sub 2 Assets =

Dear :

This letter responds to your representatives' letter dated May 30, 2024, on behalf of Distributing, as supplemented by subsequent information and documentation, requesting rulings on certain federal income tax consequences of a series of transactions (the "Proposed Transactions"). The material information provided 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, and Rev. Proc. 2017-52, 2017-41 I.R.B. 283, as amplified and modified by Rev. Proc. 2018-53, 2018-43 I.R.B. 667, regarding one or more "Covered Transactions" under Section 355 and Section 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 upon information 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 Distribution (as defined below) satisfies the business purpose requirement of Treas. Reg. §1.355-2(b).

Summary of Facts

Distributing is a publicly traded domestic corporation and the common parent of a consolidated group for federal income tax purposes (the “Distributing Group”).

Distributing wholly owns DRE 1 and DRE 2, each an entity disregarded as separate from Distributing for federal income tax purposes (a “disregarded entity”).

DRE 2 wholly owns Sub 1, a State A corporation. DRE 2 also wholly owns DRE 3, a disregarded entity. DRE 3 wholly owns Sub 2, a State A corporation.

On Date 1, Sub 3, a State A corporation wholly owned by Distributing, merged with and into DRE 2 with DRE 2 surviving.

The Distributing Group currently conducts Business A and Business B. Business B is conducted by Sub 1 and other subgroup entities.

As of Date 2, the Distributing Group, in relevant part, had outstanding: (a) Distributing Third Party Debt including the DRE 1 Bonds, and (b) Sub 3 Third Party Debt (collectively, the “Distributing Group Debt”). On Date 3, the Distributing Group refinanced a portion of the Sub 3 Third Party Debt with a portion of the Term Loan. References to Historic Distributing Debt include references to (i) the Term Loan and (ii) the DRE 1 Bonds.

For purposes of satisfying the active trade or business requirements of Section 355(b) with respect to the Distribution, Distributing and members of its “separate affiliated group” within the meaning of Section 355(b)(3) will rely on Business A, and Controlled and members of its separate affiliated group will rely on Business B. Distributing has submitted financial information in accordance with Rev. Proc. 2017-52 indicating that Business A and Business B have had gross income and employee wages 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 corporate business purposes, Distributing proposes to undertake the following Proposed Transactions, the steps of which may occur in a different order than described below, and some of the steps of which have already been completed:

Step 1: Distributing forms Controlled, a State A corporation.

Step 2: Sub 1 changes its legal entity name.

Step 3: Controlled issues bonds (the “Controlled Bonds”), if desired, and may deposit the proceeds into an escrow account (the “Escrow Account”). Alternatively, or in addition, Controlled may obtain a financing commitment with respect to one or more term loans (collectively, the “Controlled Term Loan”) and revolving credit facilities (together with the Controlled Term Loan, the “Bank Facilities”).

Step 4: Sub 2 transfers (i) Sub 2 Assets in one or more transactions to which Section 1001 applies and (ii) cash to Sub 1 in settlement of certain intercompany balances, if any.

Step 5: DRE 2 distributes all of the stock of Sub 1 and any other assets held by DRE 2 related to Business B, excluding any Sub 1 Intercompany Receivables to be repaid in Step 10 below (collectively, the “Sub 1 Assets”) to Distributing.

Step 6: Distributing contributes (i) the Sub 1 Assets and (ii) certain assets held by Distributing related to Business B (together with the Sub 1 Assets, the “Transferred Assets”) to Controlled in exchange for additional Controlled common stock, the assumption of liabilities, if any, associated with the Transferred Assets (the “Assumed Liabilities”), and any cash received in Step 9 (the “Contribution”).

Step 7: Controlled (i) to the extent it deposited the proceeds from the Controlled Bonds into the Escrow Account, receives the cash from the Escrow Account and/or (ii) draws down on the Bank Facilities (collectively, the “Debt Proceeds”).

Step 8: Controlled contributes or lends all or a portion of the Debt Proceeds to Sub 1 in an amount not in excess of the sum of the Sub 1 Intercompany Receivables and working capital needs of Sub 1 and its subsidiaries, but not exceeding the aggregate issue price of the Controlled Bonds and Bank Facilities.

Step 9: Controlled distributes any remaining Debt Proceeds to Distributing (the “Distributed Debt Proceeds”).

Step 10: Sub 1 repays the Sub 1 Intercompany Receivables owed to DRE 2 in an amount equal to the amount transferred to Sub 1 in Step 8 less any working capital needs (the “Intercompany Debt Repayment Proceeds”). DRE 2 will not segregate or otherwise trace the use of the Intercompany Debt Repayment Proceeds received in this Step 10. In addition, to the extent Sub 1 holds receivables of other members of the Distributing Group, Sub 1 may transfer such intercompany receivables to DRE 2 in repayment of amounts due under the Sub 1 Intercompany Receivables.

Step 11: DRE 2 repays certain intercompany debt due to Distributing with the Intercompany Debt Repayment Proceeds or distributes Intercompany Debt Repayment Proceeds to Distributing. Distributing will not segregate or otherwise trace the use of the Intercompany Debt Repayment Proceeds received in this Step 11.

Step 12: Distributing distributes at least a percent of the Controlled stock pro rata to its shareholders (the “Distribution”). Distributing retains up to b percent of the Controlled

stock (the “Remaining Shares”) for purposes of any Debt-for-Equity Exchange or Clean-Up Distribution.

Step 13: Within c months following the Distribution, Distributing repays Historic Distributing Debt, including principal, interest, premium (if any), and associated fees, in an amount equal to the Distributed Debt Proceeds received in Step 9 (the “Creditor Purge”) and not used to make a Shareholder Purge (as defined below) pursuant to Step 14. In addition, an amount equal to the Intercompany Debt Repayment Proceeds received in Step 11 and not used to make Additional Shareholder Payments (as defined below) pursuant to Step 14 will be used to repay all or a portion of any Historic Distributing Debt, including principal, interest, premium (if any), and associated fees (the “Additional Debt Repayments”).

Distributing will not segregate or otherwise trace the use of the Distributed Debt Proceeds or the Intercompany Debt Repayment Proceeds.

Step 14: Within c months following the Distribution, Distributing makes payments to its shareholders in the form of one or more cash distributions or repurchases of outstanding Distributing shares, including potentially pursuant to one or more customary accelerated share repurchase programs (“Shareholder Purge Share Repurchases”) in an amount equal to any remaining Distributed Debt Proceeds (the “Shareholder Purge,” and together with the Creditor Purge, the “Boot Purge”).

In addition, if the amount of Intercompany Debt Repayment Proceeds exceeds the Historic Distributing Debt repaid out of Intercompany Debt Repayment Proceeds pursuant to Step 13 above, Distributing will make payments equal to such excess to its shareholders in the form of one or more cash distributions or repurchases of outstanding Distributing shares, including potentially pursuant to one or more customary accelerated share repurchase programs (the “Additional Shareholder Payments”).

Step 15: One or more investment banks (the “Intermediaries”) purchase Historic Distributing Debt from parties unrelated to Distributing.

Step 16: No sooner than Date 4, Distributing enters into the Debt-for-Equity Exchange Agreement pursuant to which Distributing will exchange some or all of the Remaining Shares (the “Transferred Shares”) in satisfaction of the Historic Distributing Debt held by the Intermediaries (such exchange, the “Debt-for-Equity Exchange”). Following the Debt-for-Equity Exchange, the Intermediaries may sell some or all of the shares received in the exchange to third party investors.

Step 17: Distributing distributes any Remaining Shares not exchanged in the Debt-for-Equity Exchange via a pro rata distribution to Distributing’s shareholders (the “Clean-Up Distribution”). During the period that Distributing holds any Remaining Shares, Distributing intends to vote the Remaining Shares in proportion to the votes cast by Controlled’s other shareholders.

Term Loan

The Term Loan matures on Date 5. Under the terms of the Term Loan, the Term Loan must be repaid within d business days following the Distribution.

If a Debt-for-Equity Exchange is anticipated at the time of the Distribution, then Distributing expects to seek an extension of the Term Loan prior to the repayment date.

Continuing Arrangements

In connection with the Proposed Transaction, Distributing and Controlled (or their respective affiliates) will enter into certain Continuing Arrangements and Transition Services Agreements. The Transition Services Agreements will last no longer than e years. In addition, Controlled may issue Controlled Equity Awards, including pursuant to the conversion of Distributing Equity Awards.

Share Repurchases

Following the Proposed Transaction, Controlled may institute a share repurchase program, and Distributing will continue its share repurchase program ("Post Transaction Repurchase Program" and together with Shareholder Purge Share Repurchases, the "Share Repurchases").

Representations

The following representations have been made with respect to the Proposed Transactions:

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

Distributing has not made the following representations, which do not apply to the Proposed Transaction: 7, 20, 24, 25, 39, and 40.

Distributing has made the following alternative representations: 3(a), 22(a), 31(a), and 41(a).

Distributing has made the following modified representations:

Representation 2: In the Distribution, Distributing will distribute to its shareholders on the same day at least a% of the stock of Controlled outstanding immediately before the Distribution (determined without regard to any Controlled Equity Awards or any Controlled shares underlying, or issued following the Distribution pursuant to, any Controlled Equity Awards).

Representation 5: Other than the Remaining Shares transferred in the Debt-for-Equity Exchange and the Distributed Debt Proceeds transferred in the Creditor Purge, none of the Controlled stock, Controlled securities, or other property to be distributed in the Distribution will be received in any capacity other than that of a shareholder of Distributing (e.g., as a creditor or employee).

Representation 8(b): Distributing may have securities outstanding, but it will not distribute Controlled stock, Controlled securities, or other property to any holder of such securities in the Proposed Transaction, in satisfaction thereof, except potentially in satisfaction of a portion of the Historic Distributing Debt pursuant to the Debt-for-Equity Exchange or Creditor Purge, if any.

Representation 11(a): Following the Distribution, Distributing or the Distributing SAG and Controlled or the Controlled SAG each will continue, independently and with its separate employees, the active conduct of the business on which it relies to meet the active trade or business requirement of Section 355(b), except with respect to activities performed pursuant to the Continuing Arrangements and Transition Services Agreements.

Representation 14: Immediately after the Distribution, the fair market value of the business assets of each of Distributing and Controlled will be greater than 80% of the fair market value of its total assets. For this purpose, the term “business assets” of a corporation means its gross assets used in one or more businesses and all members of such corporation’s separate affiliated group, within the meaning of Section 355(b)(3)(B), are treated as one corporation. 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.

Representation 15:

- a) To the knowledge of Distributing’s management, there is no plan or intention by the shareholders or security holders of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in, or securities of, either Distributing or Controlled after the transaction, other than (i) through the public trading of their stock on an established market, (ii) sales by the distribution agent in the Distribution of aggregated fractional shares that Distributing’s shareholders would otherwise be entitled to receive, (iii) sales or other dispositions in connection with the Debt-for-Equity Exchange, and (iv) a disposition or purchase of Distributing or Controlled stock by any institutional investor or any shareholder who owns five percent or more of the stock of Distributing or Controlled in the normal course of its business based upon market conditions and investment needs in existence at that time.
- b) There is no plan or intention by 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, other than through stock purchases meeting the requirements of section 4.05(1)(b) of Rev. Proc. 96-30.

- c) There is no plan or intention to liquidate either Distributing or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the transaction, except (i) in the ordinary course of business or (ii) sales and other dispositions of assets to members of each corporation's separate affiliated group, within the meaning of Section 355(b)(3)(B).

Representation 29: There was no 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 more than f% of either Distributing or Controlled (including a predecessor or successor within the meaning of Treas. Reg. §1.355-8) or a similar acquisition, except for negotiations that have otherwise terminated.

Representation 32: No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution of Controlled stock, except for any debt arising under the Continuing Arrangements and Transition Services Agreements and/or ordinary course payables and receivables.

Representation 34: Except as described in connection with the Continuing Arrangements and Transition Services Agreements, Distributing and Controlled each will pay its own expenses, if any, incurred in connection with the Distribution.

Representation 35: The payment of cash in lieu of fractional shares of Controlled 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 Controlled (with the possible exception of shareholders who hold Controlled stock in multiple accounts or with multiple brokers).

Representation 37: There is no net loss subject to Treas. Reg. §1.1502-13 that will be taken into account as a result of a transaction related to the Distribution.

Representation 46: Other than any issuance of the Controlled Bonds or the Bank Facilities, Controlled will not issue stock or securities to a person other than Distributing in anticipation of the Distribution.

Except as set forth below, Distributing has made all the representations in Section 3 of Rev. Proc. 2018-53.

Distributing has made the following modified representations:

Representation 1: For federal income tax purposes, Distributing is in substance the obligor of any Assumed Liabilities constituting Distributing Debt that will be assumed in the Contribution and Historic Distributing Debt that will be satisfied in the Creditor Purge or Debt-for-Equity Exchange.

Representation 3: The holder of any Assumed Liabilities constituting Distributing Debt that will be assumed in the Contribution and the Historic Distributing Debt that will be satisfied in the Debt-for-Equity Exchange or Creditor Purge will not hold the debt for the benefit of Distributing, Controlled, or any Related Person.

None of Distributing, Controlled, or any Related Person will participate in any profit gained by the Intermediaries upon an exchange of Section 361 Consideration; nor will any such profit be limited by agreement or other arrangement with Distributing or Controlled, except as otherwise provided pursuant to the Debt-for-Equity Exchange Agreement.

The value of the Section 361 Consideration received by the Intermediaries in satisfaction of the Historic Distributing Debt will not exceed the amount to which the holder is entitled under the terms of the Historic Distributing Debt, except as otherwise provided pursuant to the Debt-for-Equity Exchange Agreement.

Representation 4: Except with regard to the Term Loan or Assumed Liabilities that were incurred in the ordinary course of business, Sub 3 or Distributing (or DRE 1) incurred the Historic Distributing Debt for federal income tax purposes that will be assumed in Step 6, repaid in Step 13, or exchanged in Step 16 (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 Treas. Reg. §1.355-7(h)(10)) of the divisive reorganization or a similar transaction, (ii) the date of the entry by Distributing into a binding agreement to engage in the divisive reorganization or a similar transaction, and (iii) the date of approval of the divisive reorganization or a similar transaction by the board of directors of Distributing.

Representation 6: There are one or more substantial business reasons for any delay in satisfying Historic Distributing Debt with Section 361 Consideration beyond 30 days after the Distribution. All the Historic Distributing Debt that will be satisfied with Section 361 Consideration will be satisfied as soon as practicable following the Distribution and, in any event, no later than c months after the Distribution.

Representation 7: Distributing will not replace any Assumed Liabilities constituting Distributing Debt that will be assumed in the Contribution and Historic Distributing Debt that will be satisfied in the Creditor Purge or Debt-for-Equity Exchange with previously committed borrowing, other than borrowing in the ordinary course of business pursuant to a revolving credit agreement or similar arrangement.

Distributing has made the following additional representations:

1. If the term of the Term Loan is extended (in whole or in part), Distributing will not treat the refinanced Term Loan (or any portion thereof) as Historic Distributing Debt unless such extension does not result in a deemed exchange of the Term Loan (or any portion thereof) under Treas. Reg. §1.1001-3(a).
2. The Share Repurchases were or will be motivated by a corporate business purpose, were or will be made with respect to widely held shares, and were not or will not be motivated by a desire to increase or decrease the ownership percentage of any particular shareholder or group of shareholders.
3. At the time that a Share Repurchase was or will be consummated, the relevant issuing corporation did not or will not know the identity of any beneficial shareholder (i) from which the stock is repurchased in the open market; (ii) in the case of an accelerated share repurchase program, from which the third-party investment bank borrows such stock or purchases such stock to fulfill the bank's obligation to return borrowed shares; or (iii) that participates in a tender offer (except to the extent that the shareholder is the record holder of the tendered shares or provides an identifying tax-related form or statement to the issuer in connection with such participation).

Rulings

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

1. The Contribution, together with the Distribution, will be a "reorganization" within the meaning of Section 368(a)(1)(D) and Section 355. Distributing and Controlled will each be a "party to a reorganization" within the meaning of Section 368(b).
2. Distributing will recognize no gain or loss on the Contribution. Section 361 and Section 357(a).
3. Controlled will recognize no gain or loss on the Contribution. Section 1032(a).
4. Controlled's basis in each asset received from Distributing in the Contribution will be the same as the basis of the asset in the hands of Distributing immediately before the Contribution. Section 362(b).
5. Controlled's holding period for each asset received in the Contribution will include the period during which Distributing held such asset. Section 1223(2).
6. Distributing's shareholders will recognize no gain or loss (and no amount will be includible in income) upon the receipt of Controlled stock in the Distribution or any Clean-Up Distribution under Section 355(a).

7. Distributing will recognize no gain or loss upon the Distribution or any Clean-Up Distribution. Section 361(c).
8. For purposes of Section 361(b) and Section 361(c), the Intercompany Debt Repayment Proceeds will be treated as received by Distributing as Distributed Debt Proceeds in Step 9. The Sub 1 Intercompany Receivables owed to DRE 2 will be treated as Transferred Assets received by Controlled in the Contribution.
9. The Boot Purge will be treated as being distributed pursuant to the plan of reorganization. Sections 361(b)(1) and (b)(3).
10. Distributing will recognize no gain or loss, or deductions or items of income, on the Debt-for-Equity Exchange other than (i) deductions attributable to the fact that the Historic Distributing Debt may be redeemed at a premium, (ii) income attributable to the fact that the Historic Distributing Debt may be redeemed at a discount, and (iii) interest expense accrued with respect to the Historic Distributing Debt. Section 361(c).
11. The aggregate basis of the Distributing common stock and the Controlled stock in the hands of Distributing's shareholders immediately after the Distribution or any Clean-Up Distribution (including any fractional share interest in Controlled stock to which a shareholder may be entitled) will equal the aggregate basis of the Distributing common stock held by such Distributing shareholder immediately before the Distribution or Clean-Up Distribution, respectively, allocated between Distributing stock and Controlled stock in proportion to the fair market value of each in accordance with Treas. Reg. §1.358-2(a)(2). Section 358(a) through (c).
12. The holding period of the Controlled stock received by each Distributing shareholder in the Distribution (including any fractional share interest in Controlled stock to which shareholders may be entitled) will include the holding period of the Distributing common stock with respect to which the distribution of Controlled stock will be made in the case of the Distribution, provided that the Distributing common stock is held as a capital asset on the date of the distribution. Section 1223(1).
13. Earnings and profits will be allocated between Distributing and Controlled in accordance with Section 312(h), Treas. Reg. §1.312-10(a), and Treas. Reg. §1.1502-33(e).
14. The receipt by Distributing shareholders of cash in lieu of fractional shares, if any, of Controlled stock will be treated for federal income tax purposes as if the fractional shares had been distributed to the Distributing shareholders as part of the Distribution 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 (determined using the basis allocated to the fractional shares in Ruling 11), if any, 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 12.

15. Following the Distribution, Controlled will not be a successor of 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)(4) will be members of an affiliated group of corporations eligible to file a consolidated federal income tax return with Controlled as the common parent.
16. Equity Awards currently outstanding and any Equity Awards issued in connection with or after the Distribution (and any Controlled shares underlying, or issued following the Distribution pursuant to, any such Equity Awards) will not be taken into account (i.e., will not be included in the numerator or the denominator) for purposes of determining whether Distributing distributed an amount of Controlled stock constituting control under Section 368(c).
17. To the extent the Share Repurchases are treated as part of a plan (or series of related transactions) with the Proposed Transaction for purposes of Section 355(e), such Share Repurchases will be treated as being made from all public shareholders (defined as any shareholder who is not a “controlling shareholder” or “ten-percent shareholder” within the meaning of Treas. Reg. §§1.355-7(h)(3) and (14)) of Distributing or Controlled, as applicable, on a pro rata basis for purposes of testing the effect of the Share Repurchases on the Proposed Transaction under Section 355(e) and Treas. Reg. §1.355-7.
18. Any increase, directly or indirectly, in the percentage of either voting power or value of the stock of Distributing or Controlled (as applicable) owned by a shareholder by virtue of the Share Repurchases or acquisitions of the stock of Distributing or Controlled, 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 in the applicable corporation by such shareholder or issuance of stock by Distributing or Controlled (as applicable), if any, as part of a plan (or series of related transactions) with the Distribution.
19. The effect of the Share Repurchases will be taken into account under Section 355(e) and these rulings only to the extent such Share Repurchases are otherwise treated for purposes of Section 355(e) as part of a plan (or series of related transactions) with the Distribution.
20. For purposes of Section 355(e), the sale of fractional shares of Controlled common stock in connection with the Distribution will not be treated as an acquisition that is part of a plan (or series of related transactions) that includes the Distribution.

Caveats

Except as expressly provided herein, no opinion is expressed or implied as to the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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, a taxpayer filing its return electronically may satisfy this requirement by attaching a statement to its return that provides the date on 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 representatives.

Sincerely,

Kelton P. Frye
Assistant to the Branch Chief, Branch 2
Office of Associate Chief Counsel (Corporate)

cc: