

**Internal Revenue Service**

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Person To Contact:

Telephone Number:

Refer Reply To:  
CC:CORP:BO1  
PLR-122385-13  
Date:  
November 22, 2013

In Re:

Distributing =

Controlled =

Business A =

Business B =

Corp 1 =

Corp 2 =

Corp 3 =

Corp 4 =

Corp 5 =

LLC 1 =

LLC 2 =

Operating LLCs =

Joint Venture =

A Leases =

B Leases =

k =

m =

n =

State X =

Outlets =

C =

Collectibles =

Dear

This letter responds to your May 10, 2013 request for rulings on certain federal income tax consequences of a proposed transaction. Additional information was furnished in letters dated November 21, 2013 and November 22, 2013. The information submitted is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty 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 this information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the proposed transaction (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of earnings and profits of the distributing corporation(s), or the controlled corporation, or both (see section 355(a)(1)(B) of the Internal Revenue Code and § 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(s) or the controlled corporation (see section 355(e) and § 1.355-7).

### **Summary of Facts**

Distributing is a publicly traded State X corporation that is the common parent of a consolidated group and directly and through subsidiary entities conducts Business A and Business B.

Business B is conducted in multiple Outlets. Distributing leases some of the Outlets from third parties under A Leases and B Leases. Distributing owns the other Outlets, some of which Distributing leases to tenants who operate the Outlets.

Distributing also owns all the stock of Corp 1, Corp 2, and Corp 3, which conduct Business B. Distributing also owns k percent of Joint Venture, which conducts Business B. Distributing has entered into a letter of intent contemplating a purchase for cash of the Joint Venture interests not presently owned by Distributing. These interests may be purchased through a wholly-owned subsidiary of Distributing (“JV Holdco”).

Controlled is a State X corporation to be formed for purposes of the proposed transactions.

We have received financial information indicating that Business A and Business B have had gross income and operating expenses representative of the active conduct of a trade or business for each of the past five years.

The taxpayer represents that the proposed transactions will separate Business B from Business A for the following corporate business purposes (“Corporate Business Purposes”): (a) to allow Business A and Business B to focus on their differing strategic priorities; (b) to allow Business B greater financial flexibility to allocate its cash flows toward its growth opportunities; (c) to allow Business B to receive more focused coverage from equity research analysts; and (d) to allow Business A and Business B to each attract institutional investors that prefer more targeted investments.

For valid business purposes, Distributing plans to separate Business A and Business B by contributing Business B to Controlled and distributing Controlled stock to Distributing's shareholders and creditors as described below. The transaction will take the following steps.

(i) Distributing will form the Operating LLCs, each a State X LLC, which will be treated as disregarded entities for federal income tax purposes.

(ii) Distributing will contribute the Outlets it owns and certain real estate to, and novate the B Leases to, the Operating LLCs. Distributing will also enter into subleases regarding the A Leases with the Operating LLCs. Distributing may also contribute certain intellectual property to the Operating LLCs.

(iii) Distributing will form Controlled.

(iv) Controlled will form Corp 4, a State X corporation.

(v) Corp 4 will form Corp 5, a State X corporation.

(vi) Controlled will borrow up to m dollars from third-party lenders (the "Financing Transaction"). The amount borrowed is the "Cash Amount."

(vii) Distributing will contribute to Controlled all the ownership interests in LLC 1, LLC 2, the Operating LLCs, Corp 1, Corp 2, Corp 3, certain intellectual property (unless previously contributed to the Operating LLCs), JV Holdco (if applicable), and Distributing's interest in Joint Venture (the "Contributed Assets") in exchange for Controlled common stock, the Cash Amount, and the assumption of liabilities to which the Contributed Assets are subject (the "Contribution").

(viii) Controlled may contribute the Contributed Assets to Corp 4 and/or any other wholly owned subsidiaries of Controlled.

(ix) Distributing will distribute Controlled common stock that constitutes at least 80 percent of the total voting power of all Controlled common stock pro rata to holders of Distributing common stock (the "Public Shareholders"). This distribution is the "Public Distribution". There will be no class of nonvoting stock of Distributing outstanding.

(x) Distributing will distribute all of the Cash Amount as follows: (a) to Distributing's common shareholders in redemption of outstanding Distributing common stock, including pursuant to a stock repurchase program recently announced by Distributing (the "Stock Repurchase"), (b) to creditors to retire outstanding third-party indebtedness that was not incurred in anticipation of the Public Distribution (the "Debt Repurchase"), (c) to creditors that are members of Distributing's consolidated group (the "Related Creditors") to retire outstanding Distributing indebtedness (the "Distributed

Related Debt”) that was not incurred in anticipation of the Public Distribution (the “Related Creditors Debt Repurchase”), (d) to Distributing’s common shareholders by funding the payment of regular quarterly dividends, and/or (d) to one or more investment banks in exchange for Distributing Debt or Distributing Common Stock acquired by the investment bank in the open market (the “Investment Bank Repurchase”). Distributing intends to effect the transactions described in the preceding sentence as soon as practicable following the Public Distribution, consistent with sound business practices, and in any event no later than the n-month anniversary of the Public Distribution. Distributing will deposit the Cash Amount in a segregated account until it is used for the transactions described above.

(xi) Distributing will distribute the Controlled Common Stock, if any, held by Distributing after the Public Distribution (the “Retention” of the “Remaining Controlled Stock”) (a) to Public Shareholders in redemption of outstanding Distributing Common Stock (the “Stock-for-Stock Exchange”, (b) to creditors to retire outstanding Distributing debt (the “Stock-for-Debt Exchange”), (c) to the Related Creditors to retire outstanding Distributing debt, which the Related Creditors would dispose of such Distributing Common Stock within n months of the Public Distribution (the “Related Creditors Debt Exchange”), and/or (d) to one or more investment banks in exchange for Distributing debt or Distributing common stock acquired by an investment bank in the open market (the “Investment Bank Stock Exchange”). Distributing intends to effect the exchanges described in the preceding sentence as soon as practicable following the Public Distribution, consistent with sound business practices, and in any event no later than the n-month anniversary of the Public Distribution.

The Contribution, the Public Distribution, and the dispositions of the Remaining Controlled Stock after the Public Distribution together constitute the “Spin-Off.”

The payment of the Cash Amount to retire Distributing debt or to redeem Distributing common stock and the exchange of Remaining Controlled Stock for Distributing Debt or Distributing common stock may be effectuated either through a direct exchange with market holders of Distributing debt or Distributing stock or with investment banks that acquire Distributing debt or Distributing common stock in the market for their own account. Any Distributing debt will be acquired by these investment banks at least five days before entering into any agreement with Distributing to effectuate an Investment Bank Repurchase or an Investment Bank Stock Exchange, as applicable, with respect to such Distributing debt, and at least 14 days before effectuating these transactions with respect to such Distributing debt. Any Distributing common stock will be acquired by these investment banks at least five days before effectuating any such Investment Bank Repurchase or Investment Bank Stock Exchange with respect to the Distributing common stock. During (and perhaps before) the period the investment banks are acquiring Distributing debt or stock, the investment banks (including their affiliates) may solicit non-binding offers from third parties for the Controlled common stock. Distributing anticipates that, following any Investment Bank

Stock Exchange, the investment banks will sell any Controlled common stock received by them in a public or private offering pursuant to such non-binding offers.

To avoid administrative difficulties associated with issuance fractional shares of Controlled stock, Distributing may issue fractional shares to a distribution agent. The distribution agent will bundle the fractional shares, sell whole shares on the open market, and remit the proceeds to the Public Shareholders, Distributing's creditors, or the investment banks (as applicable), net of transaction costs, in proportion to their ownership of fractional shares.

In connection with the Spin-Off, Distributing and Controlled will enter into separation arrangements ("Separation Arrangements") under which (i) Distributing and Controlled will indemnify each other with respect to certain securities law, tax, and other matters, and (ii) under transition services agreements, Distributing employees will provide certain services for both Distributing and Controlled. This sharing of services is expected to continue until Controlled is able to hire employees to fill these functions.

### **Representations**

Distributing makes the following representations regarding the proposed transaction:

#### **The Contribution and the Public Distribution**

(a) Any indebtedness owed by Controlled (or any entity controlled directly or indirectly by Controlled) to Distributing (or any entity controlled directly or indirectly by Distributing) after the Public Distribution will not constitute stock or securities.

(b) No part of the consideration distributed by Distributing in the Public Distribution will be received by any shareholder of Distributing as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

(c) Distributing and Controlled each will treat all members of its Separate Affiliated Group (SAG) (as defined in section 355(b)(3)(B)) as one corporation in determining whether the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.

(d) The five years of financial information submitted for Business A conducted by the Distributing SAG and for Business B to be conducted by the Controlled SAG following the Contribution is representative of the present operations of each business, and there have been no substantial operational changes in either business since the date of the last financial statements submitted.

(e) Neither Business A conducted by the Distributing SAG nor control of any entity conducting the business will have been acquired during the five-year period ending on the date of the Public Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with (i) transfers between members of the affiliated group (as defined in section 1504(a), determined without regard to section 1504(b)) of which Distributing was the parent, (ii) the expansion of an existing five-year trade or business, or (iii) acquisitions that were immaterial relative to the overall size and scope of Business A. Except to the extent owned by joint ventures in which the Distributing SAG had a significant interest, the Distributing SAG will have been the sole owner of the goodwill and significant assets of Business A throughout the five-year period ending on the date of the Public Distribution and will continue to be the sole owner following the Public Distribution.

(f) Neither Business B to be conducted by the Controlled SAG following the Contribution nor control of any entity conducting this business will have been acquired during the five-year period ending on the date of the Public Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with (i) transfers between members of the affiliated group (as defined in section 1504(a), determined without regard to section 1504(b)) of which Distributing was the parent, (ii) the expansion of an existing five-year trade or business, or (iii) acquisitions that were immaterial relative to the overall size and scope of Business B. Except for certain Outlets that the Distributing SAG will lease to the Controlled SAG following the Spin-Off, certain office space that the Controlled SAG may lease to the Distributing SAG following the Spin-Off, certain intellectual property that will be licensed by the Distributing SAG to the Controlled SAG, certain rights relating to the design, manufacture, and sale of Collectibles (such leases, licenses, and rights, collectively the "Continuing Arrangements") and except to the extent any assets or goodwill have been owned by joint ventures in which the Controlled SAG had a significant interest, the Distributing SAG will have been the sole owner of the goodwill and significant assets of Business B throughout the five-year period ending on the date of the Contribution, and the Controlled SAG will be the sole owner following the Contribution.

(g) Apart from transitional services that may be provided under the Separation Arrangements, the Distributing SAG will continue the active conduct of Business A, independently and with its separate employees, following the Public Distribution.

(h) Apart from the Continuing Arrangements and transitional services that may be provided under the Separation Arrangements, the Controlled SAG will continue the active conduct of Business B, independently and with its separate employees, following the Public Distribution.

(i) The Spin-Off is being undertaken to accomplish the Corporate Business Purposes. The Spin-Off is motivated in whole or substantial part by the Corporate Business Purposes.

(j) The Spin-Off will not be used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(k) There is no plan or intention to liquidate any member of the Distributing SAG engaged in Business A or any member of the Controlled SAG engaged in Business B, to merge any member of either SAG with any other entity outside such SAG, or to sell or otherwise dispose of the assets or shares of any member after the Public Distribution to an extent that would cause the Distributing SAG to cease to be engaged in Business A or the Controlled SAG to cease to be engaged in Business B.

(l) The total adjusted basis and the fair market value of the assets transferred to Controlled in the Contribution each will equal or exceed the sum of (i) the total liabilities to be assumed (as determined under section 357(d)) by Controlled and (ii) the total amount of any money and the fair market value of any other property (within the meaning of section 361(b)) received by Distributing from Controlled and transferred to Distributing's creditors in connection with the reorganization.

(m) Any liabilities assumed (as determined under section 357(d)) by Controlled in the Contribution will have been incurred in the ordinary course of business and will be associated with the assets transferred.

(n) The total fair market value of the assets transferred to Controlled in the Contribution will exceed the sum of (i) the amount of any liabilities assumed (as determined under section 357(d)) by Controlled in connection with the Contribution, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the Contribution, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under section 361(a) without the recognition of gain) received by Distributing in connection with the Contribution. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.

(o) The aggregate fair market value of the assets transferred by Distributing to Controlled in the Contribution will equal or exceed the aggregate adjusted basis of those assets.

(p) Distributing will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the Contribution.

(q) No two parties to the Spin-Off are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).

(r) Immediately before the Public Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. §§ 1.1502-13 and -14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13 as published in T.D. 8597). Further, any excess loss account that Distributing has in the Controlled common stock or the stock of any direct or indirect subsidiary of Controlled will be included in income immediately before the Public Distribution to the extent required by regulations (see Treas. Reg. § 1.1502-19). At the time of the Public Distribution, Distributing will not have an excess loss account in the stock of Controlled or the stock of any direct or indirect subsidiary of Controlled.

(s) Apart from debt arising in connection with the Separation Arrangements, the Continuing Arrangements, and intercompany loans or other obligations that have arisen, or will arise, in the ordinary course of business, no intercorporate debt will exist between Controlled (or any entity controlled directly or indirectly by Controlled) and Distributing (or any entity controlled directly or indirectly by Distributing) at the time of, or after, the Public Distribution.

(t) Apart from payments for certain services that may be rendered under the Separation Arrangements and the Continuing Arrangements, payments made in connection with all continuing transactions between Distributing (or any entity controlled directly or indirectly by Distributing) and Controlled (or any entity controlled directly or indirectly by Controlled) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(u) For purposes of section 355(d), immediately after the Public Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Public Distribution.

(v) For purposes of section 355(d), immediately after the Public Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled common stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled common stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Public Distribution or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Public Distribution.

(w) The Public Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Controlled or Distributing (including any predecessor or successor of either corporation).

(x) Immediately after the transaction (as defined in section 355(g)(4)), (i) if any person holds a 50-percent or greater interest (within the meaning of section 355(g)(3)) in any disqualified investment corporation (within the meaning of section 355(g)(2)), such person will have held such interest in such corporation (either directly or through attribution) immediately before the Public Distribution, or (ii) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)).

(y) The payment of cash for fractional shares of Controlled, if any, is solely for the purpose of avoiding the expense and inconvenience of issuing fractional shares and does not represent separately bargained for consideration. The method used for handling fractional shares is designed to limit the amount of cash received by any one shareholder to less than the value of one full share of Controlled. The total amount of cash paid for fractional shares will not exceed one percent of the fair market value of Controlled common stock distributed in the Spin-Off.

(z) Any (i) Distributing debt redeemed in the Debt Repurchase, the Stock-for-Debt Exchange, the Investment Bank Repurchase, or the Investment Bank Exchange, or (ii) Distributing Related Debt redeemed in the Related Creditors Debt Repurchase will not have been issued in anticipation of the Spin-Off.

(aa) Controlled or entities controlled by Controlled will be the sole obligors in the Financing Transaction, and after the Public Distribution, neither Distributing nor any member of Distributing's affiliated group will be a guarantor of the Financing Transaction.

### The Retention

(bb) The business purposes for the Retention are to reduce Distributing's indebtedness or improve its capital structure or stock valuation pursuant to the Stock-for-Stock Exchange, the Stock-for-Debt Exchange, the Related Creditors Debt Exchange, and/or the Investment Bank Stock Exchange.

(cc) With one exception, none of Distributing's directors or officers will serve as a director or officer of Controlled as long as Distributing retains the Remaining Controlled Stock. C may serve as a director of Controlled.

(dd) Distributing will dispose of the Remaining Controlled Stock pursuant to the Stock-for-Stock Exchange, the Stock-for-Debt Exchange, the Related Creditors Debt Exchange, or the Investment Bank Stock Exchange as soon as practicable following the Public Distribution, consistent with sound business practices, and in any event no later than the n-month anniversary of the Public Distribution.

(ee) Distributing will vote the Remaining Controlled Stock in proportion to the votes cast by Controlled's other shareholders and will grant Controlled a proxy for the Remaining Controlled Stock requiring this manner of voting.

(ff) In no event will the Retention prevent Distributing from distributing stock of Controlled in the Public Distribution that represents control under section 368(c).

## **Rulings**

### The Contribution and the Public Distribution

(1) The Contribution, followed by the Public Distribution, will qualify as a "reorganization" under 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. Sections 361(a) and (b) and 357(a). Further, Distributing will not recognize income or gain upon the receipt of cash from Controlled, provided that Distributing distributes the entire amount of the cash to its shareholders or creditors within a n-month period beginning on the date of the Public Distribution. Section 361(b)(1)(A) and (b)(3).

(3) No gain or loss will be recognized by Controlled on the Contribution. Section 1032(a).

(4) Controlled's basis in each of the Contributed Assets will equal the basis of that asset in the hands of Distributing immediately before the Contribution. Section 362(b).

(5) Controlled's holding period of each of the Contributed Assets will include the period during which Distributing held that asset. Section 1223(2).

(6) No income, gain or loss will be recognized by Distributing on the distribution of the Controlled stock to the Public Shareholders pursuant to the Public Distribution and the dispositions of the Controlled stock to Distributing shareholders and creditors described in step (xi), above, other than deductions attributable to the redemption of any Distributing debt at a premium, income attributable to the redemption of any Distributing debt at a discount, and interest expense accrued with respect to any Distributing debt. Section 361(c).

(7) No gain or loss will be recognized by (and no amount will be included in the income of) the Public Shareholders upon their receipt of Controlled stock in the Public Distribution. Section 355(a)(1).

(8) Immediately following the Public Distribution, the basis that a Distributing shareholder had in a share of Distributing stock before the Public Distribution will be allocated between the share of Distributing stock with respect to which the Public Distribution is made and the share of Controlled stock received with respect to the share of Distributing stock (including any fractional share interest in Controlled stock to which the shareholder may be entitled) in proportion to the fair market value of each in accordance with section 358(a)(1) and § 1.358-2(a) (Section 358(a), (b), and (c)). If a Distributing shareholder that purchased or acquired shares of Distributing stock on different dates or at different prices is not able to identify which particular share of Controlled stock is received with respect to a particular share of Distributing stock, the shareholder may designate which share of Controlled stock is received with respect to a particular share of Distributing stock, provided the terms of the designation are consistent with the terms of the Public Distribution.

(9) The holding period of the Controlled stock received by a shareholder of Distributing in the Public Distribution (including any fractional share interest in Controlled stock to which the shareholder may be entitled) will include the holding period of the Distributing stock on which the Public Distribution is made, provided the Distributing stock is held by the shareholder as a capital asset on the date of the Public Distribution. Section 1223(1).

(10) Earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(b) and 1.1502-33(e)(3).

(11) The receipt by a Distributing shareholder of cash in lieu of fractional shares of Controlled stock will be treated for federal income tax purposes as if the fractional shares had been distributed to the Distributing shareholder as part of the Public Distribution and then had been disposed of by such shareholder for the amount of such cash in a sale or exchange. The gain (or loss), if any (determined using the basis allocated to the fractional shares in ruling (8) and the holding period attributed to the fractional shares in ruling (9)), will be treated as a capital gain (or loss), provided the stock was held as a capital asset by the selling shareholder. Section 1001.

### The Retention

(12) The Retention by Distributing of the Remaining Controlled Stock will not be in pursuance of a plan having as one of its principal purposes the avoidance of U.S. federal income tax within the meaning of section 355(a)(1)(D)(jj).

### **Caveats**

No opinion is expressed about the tax treatment of the proposed Spin-Off under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Spin-Off that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

(i) Whether the Spin-Off satisfies the business purpose requirement of § 1.355-2(b);

(ii) Whether the Spin-Off is used primarily as a device for the distribution of earnings and profits of Distributing or Controlled or both (see §§ 355(a)(1)(B) and 1.355-2(d));

(iii) Whether the Spin-Off 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 either Distributing or Controlled (see §§ 355(e)(2)(A)(ii) and 1.355-8);

(iv) The federal income tax consequences of steps (iii), (iv), (v), and (viii) of the Spin-Off; and

(v) The federal income tax consequences of any continuing transactions between Distributing (or any entity controlled directly or indirectly by Distributing) and Controlled (or any entity controlled directly or indirectly by Controlled), including payments made pursuant to the Separation Arrangements or the Continuing Arrangements.

### **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 (PLR-122385-13) of this letter ruling.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

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Mark S. Jennings  
Chief, Branch 1  
Office of Associate Chief Counsel  
(Corporate)