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Person To Contact:

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LEGEND

Corp	=
Corp1	=
League	=
Team	=
City A	=
State B	=
Proceeds	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
LLC	=
LLC1	=
LLC2	=
LLC3	=
LLC4	=
Individual	=
Owner	=
<u>m</u>	=
<u>n</u>	=
<u>p</u>	=
<u>r</u>	=
Team 1	=
Team 2	=
W	=
X	=
Y	=

Dear _____ :

This letter responds to your request for a private letter ruling and supplemental information that the Proceeds that Corp receives from its members under certain terms and conditions will not be includable in Corp's gross income under section 61 of the Internal Revenue Code (Code).

FACTS

The League recently approved the relocation of Team to City A. As part of this approval and relocation, Team will be a tenant in a new stadium to be built in City A. Corp and its Proceeds program described below are a significant component of the proposed financing for the construction of this new stadium. It is currently expected that the new stadium will have approximately 65-75,000 seats available for each Team game.

Description of the Parties

Corp is a State B taxable nonprofit, nonstock corporation that was incorporated on Date 1 to be a membership organization for fans of the Team. Its annual accounting period ends December 31 and its overall method of accounting for maintaining the accounting books and filing its federal income tax return is the cash method.

The initial member of Corp will be LLC, a State B limited liability company, which is owned by Individual. LLC will be the sole voting member of Corp and will appoint a three-member Board of Directors to manage Corp. Corp provides no dividend rights for its members, and no members other than LLC will have voting rights.

LLC1, a State B limited liability company, owns the Team. Its annual accounting period ends December 31 and its overall method of accounting for maintaining the accounting books and filing its federal income tax return is the accrual method. LLC1 is owned: (1) m% by LLC2 and (2) n% by LLC3, which is wholly-owned by Owner, an individual. LLC2 is owned: (1) p% by Corp1, which is wholly-owned by Owner and (2) r% by Owner.

The new stadium will be constructed and owned by LLC4, a State B limited liability company. Its annual accounting period ends December 31 and its overall method of accounting for maintaining the accounting books and filing its federal income tax return is the cash method. LLC4 will be owned directly by Owner.

Corp Membership Program

On Date 2, the League approved the relocation of the Team to City A. As part of this approval and relocation, the Team will be a tenant in a new stadium to be built in City A and owned by LLC4. The League also conditionally approved an option for either Team 1 or Team 2 to relocate to City A and become a tenant in the same stadium subject to certain terms and conditions.

The new stadium to be built in City A is projected to cost approximately \$W and will be privately financed, privately owned, and privately maintained. It is anticipated that a portion of the cost of the stadium construction will be funded by Proceeds received by Corp and loaned to LLC4, as described below. The stadium is contemplated to be the anchor of a private multi-billion dollar residential and commercial real estate and entertainment complex located a few miles from downtown City A. Accordingly, there will be a significant economic incentive to maintain the stadium. Taking into consideration the cost of the stadium, its ownership, its central location in City A, and the economic incentive to maintain the stadium, it is anticipated and expected that the life of the stadium will exceed X years.

Regarding the relocation of the Team to City A and the proposed construction of a new stadium, Corp and its membership program will be a strategic and significant part of the building and strengthening of a Team fan base in the team's new home city, as well as the financing for the construction of the new stadium. Accordingly, Corp will enter into a contract (Contract) with LLC1 pursuant to which Corp will receive and have certain benefits for Corp's members, including the right of members to enter into a limited number of personal seat license (PSL) agreements with Corp. The Corp PSL agreements will be assigned by Corp to LLC1, and LLC1 will assume all obligations under the PSL agreements. This Contract is being entered into by LLC1 as an inducement to LLC4 to build the stadium. The Contract will provide that the Proceeds transferred by members with each PSL agreement will be segregated from other assets through the use of a trust established for the benefit of Corp (Corp Trust). In turn, Corp Trust, will loan the total amount of the Proceeds to LLC4 to be unequivocally dedicated and used exclusively for stadium construction. The Corp Trust will be treated for tax purposes as a grantor trust of Corp.

An individual or an entity (e.g., corporation or partnership) may become a member of Corp. Each member of Corp will become a member by executing a Membership Agreement with Corp and paying a one-time nonrefundable initiation fee. The initiation fee will be treated as fully taxable income by Corp upon receipt; the initiation fee is expected not to exceed \$Y per member. Upon certain terms and conditions outlined in the Membership Agreement and discussed below, each member will receive the following special Member Benefits for each inheritable and transferable membership interest in Corp (Corp Interest) held by the member:

- Corp will host a year round schedule of events and activities for its members, including for example: special tours of the stadium and other facilities outside of normal opening times, BBQs, cruises, a League draft party and other draft weekend activities, flag football tournaments, tailgating, meet-and-greet events with team players, skills events, field day passes, and fantasy camps;
- Corp will have an affinity program in which members can accumulate affinity program points through Corp and sponsorship activities that are redeemable for Corp and sponsorship merchandise and access to limited attendance events, such as concerts and sports camps;
- Members will have exclusive access to Corp's website (*e.g.*, live interviews and videos of the players and coaches, podcasts, information and access to player and coaching details) and the opportunity to be featured on Corp's website;
- Nominated representatives of Corp will be entitled to attend twice yearly meetings with coaches, executives, and other officials of the team;
- Corp will make available special limited edition merchandise (*e.g.*, clothing, pennants, and other souvenirs) for purchase by its members;
- Members will be involved in nominating and presenting the Corp "Player of the Year" award; and
- Corp will circulate to its members emails, newsletters, and monthly calendars of these events, activities, and opportunities.

Corp Interests will be in several classes. Every member will receive a Corp Interest with the rights and benefits described above included as a result of paying the one-time nonrefundable initiation fee (Basis Corp Interest). Certain Corp Interests will include the right to enter into a PSL agreement. Members who transfer Proceeds will be given the right to enter into an initial PSL agreement for a limited number of PSLs, with the specific PSL being offered to a member depending upon the class of Corp Interest held by the member. The different classes of Corp Interests may, for example, be entitled "Bronze Interests," "Silver Interests," "Gold Interests," and "Platinum Interests," ranking in this order based on the amount of the Proceeds transferred by the member. The seat location of the Team tickets available for priority purchase by a member under the terms of their PSL will depend upon the class of the Corp Interest held by the member. Members who enter into a PSL agreement will have the priority right to purchase season tickets to Team games at the stadium at the face amount ticket price, any playoff tickets to Team games at the stadium at the face amount ticket price, and limited tickets for certain other events at the stadium (*e.g.*, concerts) at the face amount ticket price (Ticket Option).

Each Corp Interest, other than a Basis Corp Interest, will permit that member priority access to acquire one (1) ticket (e.g., one set of season tickets to Team games at the stadium at the face amount ticket price). If a fan desires priority access to more than one (1) ticket, the member will need to have a concomitant number of additional Corp Interests and related PSLs. All tickets will be purchased by members for the same prices charged for similar seats to those who are not members (except that those who are not members will not have priority access to purchase tickets). Members, under the terms of their Member Benefits, including the PSL, will have priority rights to purchase tickets for each Team game. Tickets for each Team game will remain available for purchase by public, non-members of Corp at the same face amount ticket price that a member purchased the ticket.

Each member who desires to become a member and enter into a PSL agreement will be required to pay: (1) the nonrefundable initiation fee and (2) fully refundable Proceeds¹ as described below. It is currently anticipated that members will be able to elect to transfer their Proceeds once or over a period of time. If a member elects the multiple-installment option, the amount of the total Proceeds transferred by the member will increase (as will the amount repaid to the member at the end of the term). For example, a member might elect to make a single transfer of \$5x on Date 3 or a fixed annual transfer of \$1.2x starting on Date 3, and each year thereafter for four years. The member who paid \$5x in a single installment will receive \$5x at the end of the term; the member who paid five annual payments of \$1.2x will receive \$6x at the end of the term.

The underlying documentation will provide for repayment of the Proceeds to the member after an X year period (Term) without interest. As a matter of simplicity, a fixed date will be set as the Term repayment date. For example, if the Corp begins accepting members (and their Proceeds) on Date 3, all Proceeds not previously repaid will be repaid on Date 3 plus X years. Thus, if an individual or entity becomes a member at a later date, the member will be repaid at the same time as the initial members. Corp may, at its option, repay all of the Proceeds to the members prior to the end of the Term.

A Corp Interest will be inheritable and transferable, subject to all of the applicable non-tax legal requirements, but the Corp Interest will not be divisible in any manner. All of the Member Benefits will be inherent in the Corp Interest and not in any manner separable or transferable apart from the Corp Interest. A member will not be able to separately sell, transfer, or assign any Member Benefit, including the inseparable PSL and related Ticket Option or the right to receive repayment of the Proceeds after the Term.

Corp Interests, including associated PSL rights (if applicable), will be transferrable only with the written approval of Corp in its sole discretion, except that no approval of Corp

¹ The Proceeds will be transferred to a lockbox for the benefit of the Corp Trust.

will be required in the following limited circumstances: (1) a transfer required because of an occurrence of a circumstance beyond the control of the member (e.g., death or disability or similar event as determined by Corp); (2) in the case of members that are natural persons, a transfer to an immediate family member; and (3) in the case of members that are entities (other than entities, the primary asset of which is the PSL), a transfer to: (A) an entity resulting from a merger or consolidation with the member, (B) an entity succeeding to all or substantially all of the business or assets of the member, or (C) an entity controlled by, controlling, or under common control with the member. Transfers under the limited circumstances described in clauses (1) through (3) above are referred to herein as "Related Party Transfers;" all other transfers are referred to herein as "Third-Party Transfers." Transfers are referred to collectively as "Transfers." Under no circumstance will Corp be obligated to redeem a member's Corp Interest.

No Transfer of any Corp Interest (including any Related Party Transfer) will be effective until the member and the prospective transferee have submitted an application to Corp, have paid all applicable administrative fees (for the transfer of the Corp Interest) and facilitation fees (for the transfer of the Ticket Option in the case of any Corp Interest with PSL rights), and, in the case of Third-Party Transfers, have received the written approval of Corp. Corp has the right in its sole discretion to withhold consent to Third-Party Transfers (as determined in its discretion on a case-by-case basis), though it expects to permit privately-arranged Third-Party Transfers by members that are otherwise made in accordance with Corp's policies and applicable laws. The policies will provide, among other terms, that Corp may decline to permit a Transfer if the Transfer would result in an unacceptable concentration of PSLs held by one member or related members, as determined by Corp in its sole discretion.

The election of a member with PSL rights not to purchase Team regular season tickets and any Team playoff tickets by dates designated from time-to-time will not result in the termination of membership in Corp or the forfeiture of all Member Benefits, but will result in the forfeiture of the member's PSL and related Ticket Option. The member otherwise will retain all Member Benefits and other membership privileges in Corp, including the right to repayment of the Proceeds on the repayment date. However, after the termination of the member's PSL and related Ticket Option, the member will only be entitled to make Related Party Transfers of its Corp Interest; no Third Party Transfers will be permitted for a member who is entitled to receive a repayment of its Proceeds but no longer has a PSL or Ticket Option.

The Membership Agreement will provide that a member, at any time, is entitled to voluntarily terminate a Corp Interest. If the Corp Interest is the only (or the last) Corp Interest of a member, then upon the termination, the member's membership status in Corp will also be terminated. Upon a voluntary termination of a member's membership in Corp with an associated PSL, the terminating member will continue to be entitled to receive a repayment of its Proceeds at the end of the Term. After the termination of the Corp Interest, the terminating member will only be entitled to make Related Party Transfers of its right to repayment of its Proceeds at the end of the Term.

In addition, a member's violation of certain rules specified in the Membership Agreement, including rules prohibiting certain egregious behavior, will result in the involuntary termination of a member's membership in Corp. The involuntarily terminated member will lose the Member Benefits and other membership privileges in Corp, and will lose its PSL and Ticket Option, but will generally not lose the right to repayment of its Proceeds on the repayment date. Because the former member's Corp Interest, PSL, and Ticket Option have been terminated, the former member will only be entitled to make Related Party Transfers, and will not be able to engage in a Third Party Transfer, of the right to receive its Proceeds at the end of the Term.

Financing the Stadium

The cost of the development, construction, and maintenance of the stadium will be privately financed by the Owner through a combination of debt and equity. A portion of the financing will include the loan from Corp as described below.

The Proceeds are expected to be received by Corp Trust through a lockbox account, the contents of which are to be segregated and unequivocally dedicated to the construction costs of the stadium. The terms of the lockbox account maintained by Corp Trust will be explicit in dedicating the Proceeds for the construction of the stadium.

Corp Trust will lend the total amount of the Proceeds to LLC4. The loan will be made at an interest rate that is anticipated to be sufficient to permit the operation of Corp, including payment of salaries for its employees and other costs of operation. Loan proceeds will be segregated into an account that is explicitly segregated and unequivocally dedicated to construction of the stadium.

Corp Trust's loan to LLC4 is expected to remain outstanding for the Term although LLC4 may prepay the loan in full at any time (and if the loan were prepaid, Corp would repay the Proceeds to the members). An amount will be contributed by the Owner to a Defeasance Fund (described below), and that amount will be sufficient, in all reasonably-foreseeable scenarios, to equal or exceed on an after-tax basis the amount required to provide for full repayment of the Corp Trust loan and the repayment by Corp of all of the Proceeds to the members at the end of the Term. The Defeasance Fund will contract with a national investment banking or fund management firm or firms. The Defeasance Fund will issue to LLC4 and Corp quarterly unaudited financial statements and an annual audited financial statement, with a written report of the Defeasance Fund activities and performance. All amounts in the Defeasance Fund used to repay the loan will be transmitted to the Corp Trust and used to repay the Proceeds.

REPRESENTATIONS

1. Neither Owner nor any immediate family member of Owner: (1) has, or will have, any ownership or voting interest in either Corp or LLC or (2) will be a director of Corp, provided that Owner and family members of Owner

may become members of Corp (with the same rights and privileges as other members) and will pay the initiation fee and receive repayment of the Proceeds like other members of Corp.

2. Given the cost of the stadium, its central location in City A, and its private ownership, there will be a significant economic incentive to maintain the stadium, and as a result, it is anticipated and expected that the life of the stadium will greatly exceed X years.
3. None of the Member Benefits for the Corp Interest will be separable or transferable. As a result, a member will not be able to separately sell, transfer, or assign any Member Benefit, including the PSL and related Ticket Option or the right to receive repayment of the Proceeds.
4. Tickets at the stadium for each Team game will remain available for purchase by public, non-members of Corp at the same face amount ticket price that a member purchased the ticket.
5. If Corp rents space from the Team or any entity affiliated with the Team, Corp will pay a fair market rent for the rental arrangement.
6. The Corp Trust will be treated for tax purposes as a grantor trust of Corp.
7. All members electing a membership class providing a PSL will be required to execute a PSL agreement with Corp, along with their transfer of the Proceeds. The PSL agreement will be a legally enforceable and binding document that will provide that the member's Proceeds are being received by Corp subject to a legally enforceable and binding obligation of Corp to repay the Proceeds to the member, and the agreement will clearly and explicitly inform the member that the Proceeds are not deductible by a member for federal income tax purposes. The Proceeds are to be placed in a lockbox account maintained by Corp Trust immediately upon receipt. Corp Trust will loan the Proceeds to LLC4 pursuant to legally enforceable and binding documentation.
8. LLC4 and/or the Owner will set aside cash into a legally separate Defeasance Fund, held and managed by an independent and reputable major U.S. financial institution pursuant to legally enforcement and binding documentation. The Defeasance Fund will ensure repayment of the Proceeds to the members at the appropriate time. The Defeasance Fund will not be legally accessible by any party for any purpose except for the repayment of the Proceeds to members. The amount contributed by LLC4 and/or the Owner to the Defeasance Fund will be that amount which is sufficient, in all reasonably-foreseeable scenarios, to equal or exceed on an after-tax basis the amount required to provide for full repayment of the

Corp Trust loan and the return by Corp of all of the Proceeds to the members at the end of the Term. The principal payments made on the loan upon its maturity, or otherwise, will be unconditionally used to repay the Proceeds.

9. Corp will use every commercially reasonable means available, including legally enforceable and binding agreements, to ensure that the Proceeds will be used solely for the construction of the stadium and not in any way misused or misdirected from this sole purpose. This will include segregated lockbox accounts at an independent and reputable major U.S. financial institution, which accounts will be subject to legally enforceable and binding documentation providing for the unequivocal use of the funds for the construction costs of the stadium.
10. On Date 4, Team 1 announced their intention to relocate to the stadium. As of Date 5, Corp does not know whether Team 1 will: (1) form a membership entity that will obtain Proceeds in connection with the issuance of PSLs or (2) receive nonrefundable payments in connection with the sale of PSLs to their fans.

LAW AND ANALYSIS

Section 61 of the Code and the underlying regulations provide that gross income means all income from whatever source derived unless excluded by law.

The Supreme Court in *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955), defined gross income as any item that increases a taxpayer's net worth. The Supreme Court specifically referred to gross income as "undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion."

In *James v. United States*, 366 U.S. 213 (1961), the Supreme Court explained that, in order for gain (e.g., money) to be includible in gross income, there must be a claim of right to the alleged gain and the absence of a definite, unconditional obligation to repay or return that which would otherwise constitute a gain. *See also Commissioner v. Tufts*, 461 U.S. 300 (1983) (indicating that when a taxpayer receives the proceeds of a loan, the taxpayer incurs an obligation to repay the loan at some future date and, therefore, the loan proceeds are not gross income to the taxpayer).

The facts submitted and the representations made that are the subject of this ruling request are governed by, and within the parameters of, the Supreme Court's decisions in *Glenshaw Glass* and *James*. A taxpayer does not have an accession to wealth, nor complete dominion over an item, if received subject to a legally enforceable and binding obligation to repay the item. If a taxpayer receives money or other property with a legally enforceable and binding obligation to return or repay it, the taxpayer is not enriched by the transaction and, therefore, does not realize gross income within the

meaning of section 61 of the Code.

In the present case, Taxpayer represents that the Proceeds received by Corp from members are subject to a legally enforceable and binding obligation of Corp to repay members and will be treated for all purposes, including for accounting purposes, as a liability of Corp. In addition, the implementation of the Defeasance Fund mechanism will ensure that this liability of Corp to repay the Proceeds to members will be satisfied. Because of this, Corp does not have the requisite complete control over the Proceeds required for the Proceeds to be gross income to Corp within the meaning of section 61 of the Code.

CONCLUSION

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

The Proceeds that Corp receives from members are not gross income to Corp for federal income tax purposes because the Proceeds are received by Corp subject to Corp's legally enforceable and binding obligation to repay the Proceeds to members.

CAVEATS

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. Specifically, this ruling is based on the representation that the Membership Agreement between Corp and its members will clearly and explicitly inform members that their Proceeds are being received by Corp subject to a legally enforceable and binding obligation of Corp to repay the Proceeds to the member. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, this ruling is limited to only Proceeds received by Corp from its members

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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

Sincerely,

Donna J. Welsh
Senior Technician Reviewer, Branch 4
(Income Tax & Accounting)