Internal Revenue Service

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Person to Contact:

Telephone Number:

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Jan. 05, 2000

Legend:

TT =

TR1 =

TR2 =

TR3 =

LLC =

p1 =

p2 =

p3 =

p4 =

p5 =

PRS1 =

PRS2 =

This letter responds to your letter dated September 3, 1999, submitted on behalf of TT, as trustee of TR2, requesting a ruling concerning the federal income tax consequences of a proposed contribution of substantially all of the assets of three trusts to a limited liability company under section 721 of the Internal Revenue Code.

FACTS

TT is the trustee of TR1, TR2, and TR3. TT proposes to contribute substantially all of the assets of each trust to LLC, a newly formed limited liability company that will be taxed as a partnership. After contributing the assets of the three trusts to LLC, the members of LLC will be each trust.

The three trust's assets include cash, securities, foreign currency and evidences of indebtedness. In addition, TR1 and TR2 each own a p1% interest in PRS1, a limited partnership. The sole asset of the PRS1, except for a nominal amount of cash, is a p2% limited partnership interest in PRS2, a registered limited liability partnership. PRS2 owns a fee simple interest in two parcels of commercial real estate ("Real Estate"). The fee simple interest comprises p3% of PRS2's value. PRS2 is not a REIT or RIC. PRS1 and PRS2 are not publicly traded partnerships.

After the trusts contributions of assets to LLC, p4% of LLC's assets will be the interests in Real Estate. The remainder of LLC's assets, p5%, will be cash, securities, foreign currency and evidences of indebtedness.

The Service has been requested to rule that: (1) Section 721(b) will not apply to the transfers by TT of substantially all of the assets of T1, T2, and T3 to LLC; and (2) under section 721(a), no gain or loss will be recognized by T1, T2, T3 on the contribution by such trusts of their assets to LLC in exchange for interests in LLC.

LAW AND ANALYSIS

Section 721(a) provides that no gain or loss shall be recognized to a partnership or to any of its partners in the case of a contribution of property to the partnership in exchange for an interest in the partnership.

Section 721(b) provides that section 721(a) shall not apply to gain realized on a transfer of property to a partnership that would be treated as an investment company (within the meaning of section 351) if the partnership were incorporated.

Section 351(a) provides that no gain or loss will be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock in such corporation and immediately after the exchange the transferors are in control (as defined

in section 368(c)) of the corporation.

Section 351(e)(1) provides that section 351 will not apply to transfers of property to an investment company.

Under section 1.351-1(c)(1) of the Income Tax Regulations, a transfer of property after June 30, 1967, will be considered to be a transfer to an investment company if (i) the transfer results, directly, or indirectly, in diversification of the transferors' interests, and (ii) the transferee is (a) a regulated investment company, (b) a real estate investment trust, or (c) a corporation more than 80 percent of the value of whose assets (excluding cash and nonconvertible debt obligations) are held for investment and are readily marketable stocks or securities, or interests in regulated investment companies or real estate investment trusts.

Section 1.351-1(c)(2) provides that the determination of whether a corporation is an investment company is ordinarily made by reference to the circumstances in existence immediately after the transfer in question. However, section 1.351-1(c)(2) also provides that where circumstances change thereafter pursuant to a plan in existence at the time of the transfer, this determination will be made by reference to the later circumstances.

Less than 80 percent of the LLC' assets are readily marketable stocks or securities, or interests in regulated investment companies or real estate investment trusts. Accordingly, LLC is not an investment company under section 351(e)(1).

CONCLUSIONS

Based solely on the facts as presented in this ruling request, and viewed in light of the applicable law and regulations we conclude that the contribution of substantially all the assets of T1, T2, and T3 to LLC would not be treated as a transfer to an investment company within the meaning of section 351(e). Accordingly, no gain or loss will be recognized by T2 from the contribution of substantially all the assets of T2 to LLC in exchange for a partnership interest under section 721.

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.

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

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

Sincerely,

Signed/David R. Haglund

David R. Haglund
Senior Technical Reviewer
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes