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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
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Date:
October 17, 2005

LLC1 =
EIN:

LLC2 =
EIN:

LLC3 =
EIN

LLC4 =
EIN:

CorpA =

CorpB =

CorpC =

CorpD =

A =

B =

D1 =

State =

Dear :

This letter responds to your letter dated May 31, 2005, and subsequent correspondence, submitted on behalf of LLC1, LLC2, LLC3, and LLC4, requesting rulings regarding the classification of LLC1, LLC2, LLC3, and LLC4, the federal tax consequences of a State law merger of CorpA, CorpB, and CorpC into LLC3, and the federal tax consequences of a State law merger of CorpD into LLC4.

On D1, LLC1, a State limited liability company equally owned by A and B, acquired all the stock of CorpA, CorpB, CorpC, and CorpD. Prior to the acquisition of CorpA, CorpB, CorpC, and CorpD, A and B each contributed cash to LLC2, a State limited liability company, in exchange for interests in LLC2. LLC1 and LLC2 each contributed cash to LLC3, a State limited liability company and to LLC4, a State limited liability company, in exchange for membership interests in LLC3 and LLC4.

Following the acquisition by LLC1 of CorpA, CorpB, and CorpC, pursuant to State law CorpA, CorpB, and CorpC, each merged into LLC3 with LLC3 surviving. LLC1 received an interest in LLC3 for the shares of stock it owned in each of CorpA, CorpB, and CorpC.

Following the acquisition by LLC1 of CorpD, pursuant to State law CorpD merged into LLC4 with LLC4 surviving. LLC1 received an interest in LLC4 for the shares of stock it owned in CorpD.

LLC1, LLC2, LLC3, and LLC4 have not made, and do not intend to make, any elections to be taxed as associations under § 301.7701-3 of the Procedure and Administration Regulations.

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership. Section 301.7701-3(b)(1)(i) provides that unless a domestic eligible entity elects otherwise it is a partnership if it has two or more members.

Section 721(a) of the Internal Revenue Code 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 § 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 § 351, if the partnership were incorporated.

Section 722 provides that the basis of an interest in a partnership acquired by a contribution of property, including money, to the partnership shall be the amount of such money and the adjusted basis of such property to the contributing partner at the time of the contribution increased by the amount (if any) of gain recognized under § 721(b) to the contributing partner at such time.

Section 723 provides that the basis of property contributed to a partnership by a partner shall be the adjusted basis of such property to the contributing partner at the time of the contribution increased by the amount (if any) of gain recognized under § 721(b) to the contributing partner at such time.

Section 708(a) provides that for the purposes of subchapter K, an existing partnership shall be considered as continuing if it is not terminated.

Section 708(b)(1)(B) provides that an existing partnership shall be terminated if within a 12-month period there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits.

Section 761(e)(1) provides that for purposes of section 708, any distribution of an interest in a partnership (not otherwise treated as an exchange) shall be treated as an exchange.

Section 1.708-1(b)(1)(iv) of the Income Tax Regulations provides that if a partnership is terminated by a sale or exchange of an interest, the following is deemed to occur: The partnership contributes all of its assets and liabilities to a new partnership in exchange for an interest in the new partnership; and, immediately thereafter, the terminated partnership distributes interests in the new partnership to the purchasing partner and the other remaining partners in proportion to their respective interests in the terminated partnership in liquidation of the terminated partnership, either for the continuation of the business by the new partnership or for its dissolution and winding up.

Section 1.708-1(b)(ii) provides that the sale or exchange of the same partnership interest more than once in a 12-month period is counted only once.

Based solely on the information submitted, we conclude that each of LLC1, LLC2, LLC3, and LLC4 is a domestic eligible entity classified as a partnership, unless it elects otherwise under § 301.7701-3. Furthermore, we conclude that for federal income tax purposes, the mergers of CorpA, CorpB, and CorpC into LLC3 will be treated as (i) a transfer by CorpA, CorpB, and CorpC of all their respective assets to LLC3 in exchange for interests in LLC3 and the assumption by LLC3 of the liabilities of CorpA, CorpB, and CorpC, followed by (ii) the distributions of the interests of LLC3 to LLC1 in complete liquidation of LLC1's stock interests in CorpA, CorpB, and CorpC within the meaning of § 331 (see Rev. Rul. 69-6, 1969-1 C.B. 104). Provided that LLC3 is not an investment company under § 721(b), no gain or loss will result to CorpA, CorpB, CorpC, or LLC3 upon the contribution of assets to LLC3 by each of CorpA, CorpB, and CorpC. LLC3

will take a carryover basis in the assets under § 723. Pursuant to § 722, each of CorpA's, CorpB's, and CorpC's basis in the membership interests received pursuant to the merger shall equal the adjusted basis of their respective assets at the time of the contribution. Additionally, we rule that gain or loss will be recognized by each of CorpA, CorpB, and CorpC on their distribution of the interests in LLC3 to LLC1 in complete liquidation (§ 336(a)). We conclude that the units of LLC3 distributed by each of CorpA, CorpB, and CorpC to LLC1 in complete liquidation of CorpA, CorpB, and CorpC will be treated as received in full payment in exchange for LLC1's stock in CorpA, CorpB, and CorpC, respectively (§ 331(a)). CorpA, CorpB, and CorpC's distribution of their interests in LLC3 will be treated as a transfer that will cause a technical termination of LLC3 under § 708(b)(1)(B); however, CorpA, CorpB, and CorpC, and LLC3 will not recognize gain or loss under § 721 as a result of the deemed termination under § 1.708-1(b)(1)(iv). Under § 1.708-1(b)(1)(ii), the sale or exchange of the same partnership interest more than once in a 12-month period is counted only once.

Additionally, we conclude that for federal income tax purposes, the merger of CorpD into LLC4 will be treated as (i) a transfer by CorpD of all its assets to LLC4 for units of LLC4 and the assumption by LLC4 of the liabilities of CorpD, followed by (ii) the distribution of the interests in LLC4 to LLC1 in complete liquidation of LLC1's stock interest in CorpD within the meaning of § 331 (see Rev. Rul. 69-6, 1969-1 C.B. 104). Provided that LLC4 is not an investment company under § 721(b), no gain or loss will result to CorpD or LLC4 upon the contribution of assets to LLC4 by CorpD. LLC4 will take a carryover basis in the assets under § 723. Pursuant to § 722, CorpD's basis in the membership interests received pursuant to the merger shall equal the adjusted basis of its respective assets at the time of the contribution. Gain or loss will be recognized by CorpD on its distribution of the interests of LLC4 to LLC1 in complete liquidation (§ 336(a)). The interests in LLC4 distributed by CorpD to LLC1 in complete liquidation of CorpD will be treated as received in full payment in exchange for LLC1's stock in CorpD (§ 331(a)). CorpD's distribution of its interest in LLC4 will be treated as a transfer that will cause a technical termination of LLC4 under § 708(b)(1)(B), however, CorpD and LLC4 will not recognize gain or loss under § 721 as a result of the deemed termination under § 1.708-1(b)(1)(iv). Under § 1.708-1(b)(1)(ii), the sale or exchange of the same partnership interest more than once in a 12-month period is counted only once.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code.

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

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to LLC1.

Sincerely,

J. Thomas Hines
Chief, Branch 2
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

cc: