Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:
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Date:
December 12, 2001

Legend:

LLC =

Corporation =

Sub =

Partnership =

A =

B =

C =

D =

E =

W =

X =

Y =

Z =

Trust1 =

Trust2 =

Trust3 =

Trust4 =

Trust5 =

Trust6 =

Trust7 =

Trust8 =

LP1 =

LP2 =

State =

D1 =

a% =

b% =

c% =

This responds to your letter dated July 3, 2001, submitted on behalf of LLC requesting a ruling under section 721 of the Internal Revenue Code.

FACTS

W, a corporation, formed LLC, a State limited liability company, on D1. LLC has represented that it will not check the box to be treated as an association taxable as a corporation for federal tax purposes.

A, B, C, D, Trust1, Trust2, Trust3, Trust4, Trust5, Trust6, Trust7, Trust8, W, X, Y, Z, LP1, and LP2 (collectively, "Transferors") are each involved in various business and investment activities. Transferors desire to have all of their collective business and investment activities managed by one holding company, rather than by smaller companies and individual members. To that end, Transferors plan to contribute business and investment properties to LLC in exchange for LLC membership interests.

Partnership owns a% of Corporation, which is the sole owner of Sub. A is the sole general partner of Partnership, and A, B, E, Trust1, Trust2, Trust3, Trust4, Trust5, Trust6, Trust7, Trust8, and LP1 (collectively, "Partners") are limited partners of

Partnership. As part of the planned transaction, all of the Partners except E will contribute their capital and profits interests in Partnership to LLC in exchange for LLC membership interests.

As a result of the planned contribution, LLC will own b% and E will own c% of Partnership. LLC represents that the fair market value of Sub's assets will equal approximately 80% of the fair market value of LLC's assets following the planned transaction.

LAW AND ANALYSIS

Section 721(a) of the 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 section 721(a) will not apply to gain realized on a transfer of property to a partnership which would be treated as an investment company (within the meaning of section 351 of the Code, if the partnership were incorporated).

Section 351(a) of the Code 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 such person or persons are in control of the corporation.

Section 351(e)(1) of the Code, as amended by section 1002 of the Taxpayer Relief Act of 1997, P.L. No. 105-34, 111 Stat. 788 (1997), provides that the non-recognition rule of section 351(a) does not apply to "a transfer of property to an investment company." The section further provides that for purposes of the preceding sentence, the determination of whether a company is an investment company shall be made by (A) taking into account all stock and securities held by the company, and (B) by treating as stocks and securities: money, stocks, other equity interests in a corporation and other listed items.

Section 1.351-1(c)(1) provides that a transfer of property will be considered to be "a transfer to an investment company" if (i) the transfer results in diversification of the transferor's interests and (ii) the transfer is made to a regulated investment company (RIC), a real estate investment trust (REIT), or a corporation more than 80% of the value of whose assets are held for investment and are readily marketable stocks or securities.

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

Section 1.351-1(c)(4) provides that in determining whether a corporation is an investment company, stock and securities in subsidiary corporations shall be

disregarded and the parent corporation shall be deemed to own its ratable share of its subsidiaries' assets. A corporation shall be considered a subsidiary if its parent owns 50 percent or more of (i) the combined voting power of all classes of stock entitled to vote or (ii) the total value of shares of all classes of stock outstanding. The legislative history to the Taxpayer Relief Act of 1997 amendment to section 351(e)(1) makes clear that the 1997 amendments to section 351(e) do not override § 1.351-1(c)(4). See Staff of the Joint Committee on Taxation, 105th Cong., General Explanation of Tax Legislation Enacted in 1997, 184 (1997).

CONCLUSION

Based on the information submitted and the representations made, we rule that the transfer of a b% interest in Partnership by the Transferors to LLC in exchange for interests in LLC is not a transfer to an investment company within the meaning of sections 351(e) and 721(b).

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 and to the taxpayer's second authorized representative.

Sincerely,
Carolyn Hinchman Gray
Acting Assistant to the Branch Chief, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):
Copy of this letter
Copy for section 6110 purposes

cc: