**Internal Revenue Service**

Department of the Treasury

Number: **200305025**
Release Date: 01/31/2003
Index Number: 761.01-03

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
PLR-126709-02/CC:PSI:B2
Date:
October 29, 2002

Legend

X =

A =

State =

Date 1 =

Dear :

This responds to your letter dated April 11, 2002, submitted by you as X's general partner, requesting permission to revoke an election made pursuant to § 761(a) of the Internal Revenue Code that was intended to exclude X from subchapter K of chapter 1 of the Code.

The information submitted states that X is a State limited partnership. On Date 1, X sent an election to the appropriate service center. The election stated that X qualified as an investment partnership under § 1.761-2 of the Income Tax Regulations and was electing to exclude itself from subchapter K pursuant to § 761(a). X requests permission to revoke that election.

Section 761(a) provides that under regulations the Secretary may, at the election of all the members of an unincorporated organization, exclude such organization from the application of all or part of subchapter K, if it is availed of for investment purposes only and not for the active conduct of a business, if the income of the members of the organization may be adequately determined without the computation of partnership taxable income.

Section 1.761-2(a)(1) provides that an unincorporated organization described in § 1.761-2(a)(2) may be excluded from the application of all or a part of the provisions of subchapter K. Such organization must be availed of for investment purposes only and not for the active conduct of a business. The members of such organization must be able to compute their income without the necessity of computing partnership taxable income. Any syndicate, group, pool, or joint venture which is classifiable as an association, or any group operating under an agreement which creates an organization classifiable as an association, does not fall within these provisions.

Section 1.761-2(a)(2) provides that where the participants in the joint purchase, retention, sale, or exchange of investment property-- (i) own the property as coowners, (ii) reserve the right separately to take or dispose of their shares of any property acquired or retained, and (iii) do not actively conduct business or irrevocably authorize some person or persons acting in a representative capacity to purchase, sell, or exchange such investment property, although each separate participant may delegate authority to purchase, sell, or exchange his share of any such investment property for the time being for his account, but not for a period of more than a year, then such group may be excluded from the application of the provisions of subchapter K under the rules set forth in paragraph (b) of this section.

The members of a limited partnership own an interest in the partnership; they are not coowners of the property owned by the partnership, and therefore, X is not an organization described in § 1.761-2(a)(2).

Based solely on the facts submitted and the representations made, we conclude that X's election was not valid because X did not meet the requirement set forth in § 1.761-2(a)(2)(i) that the participants own the property as coowners. Therefore, X is subject to subchapter K and is required to file as a partnership for federal tax purposes.

Except as specifically set forth above, no opinion is expressed or implied as to the federal income tax consequences of the transaction described above under any other provision of the Code.

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.

Sincerely,

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