

PLR-151099-03

L = EIN:
M = EIN:
Officer =
Project =
Year 1 =
Year 2 =
Year 3 =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
U% =
V% =
W% =
\$W =
\$X =
\$Y =
\$Z =
State X =
State Y =
State Z =
Country X =
Dear :

PLR-151099-03

This responds to a letter dated August 12, 2003, together with subsequent correspondence, submitted on behalf of Partnership by Partnership's authorized representative, requesting a ruling that Partnership will not recognize any discharge of indebtedness income under § 61 of the Internal Revenue Code as a result of the following transaction.

The information submitted states as follows. Partnership was formed under the laws of State X under a general partnership agreement effective in Year 1. Partnership was created to construct and operate Project. On Date 1, A, a State Y corporation, withdrew from Partnership. On Date 2, B, a State Y corporation, withdrew from Partnership. In Year 2, as part of a consolidated return, A claimed a § 165 loss with respect to its investment in Partnership. In Year 3, as part of a consolidated return, B claimed a § 165 loss with respect to its investment in Partnership. These § 165 losses were reported in closed years more than ten years prior to this ruling request, and the validity of the losses is not considered as part of this request. On Date 3, B was dissolved and liquidated pursuant to which its entire right, title and interest held in Partnership in and under the Partnership Agreement was transferred to C, a State Y corporation, in a transaction to which §§ 332 and 337 applied.

Pursuant to Section 4.4.4 of the Partnership Agreement, Withdrawn Partners shall not be entitled to any return of their contributions to the capital of the Partnership except that: a partner shall be entitled to receive, after Project has become operational and at a time when Partnership determines that payment may be made without undue hardship to the Partnership (a) an amount equal to its adjusted capital account (as adjusted under Section 4.1.4) on the date of the withdrawal, and (b) return on such amount, from the date of withdrawal to the date of payment, calculated at a U% rate (the Withdrawn Partner Obligations). The capital account balance of a withdrawing partner shall be recorded as a contingent liability of the Partnership, and not as a Partner's capital account, from and after the date of withdrawal. This right of reimbursement shall be subordinate to the rights of any creditor of Partnership.

As of Date 4, Partnership had Withdrawn Partner Obligations totaling \$W. As of Date 4, A and C (as successor to B) had contingent rights to receive \$X and \$Y as payment of their share of the Withdrawn Partner Obligations. Partnership did not issue a promissory note or any other evidence of indebtedness to A, B, or C (as successor to B). Partnership has not paid any amount of the Withdrawn Partner Obligations, claimed a deduction for any amount of the Withdrawn Partner Obligations, or claimed that the obligations created or increased the basis of any of the Partnership's assets (including cash). Neither A, B, nor C have claimed a deduction for any amount of the Withdrawn Partner Obligations. At no time have A, B, C, D, and E included in their bases of their Partnership interests any amount of the Withdrawn Partnership Obligations. Moreover, Project has never become operational.

PLR-151099-03

Officer, Vice President, Taxation of E, the Tax Matters Partner, represents that as the Withdrawn Partner Obligations continue to increase based on the U% rate, it becomes more improbable that the economics of the Project would ever justify payment of the Withdrawn Partner Obligations. Moreover, it is extremely unlikely that a partner would make additional capital contributions or that a third party would lend money to the Partnership to pay the Withdrawn Partner Obligations.

The current partners of Partnership are D, a State Y corporation with a V% partnership interest, and E, a State Z corporation with a W% partnership interest. D is a wholly-owned subsidiary of F, a State Y corporation, which is in turn a wholly-owned subsidiary of G, a Country X corporation. Prior to Date 6, G had two 50% shareholders, H and I, each a Country X corporation. H is now a wholly-owned subsidiary of J, a Country X corporation.

On Date 5, a Purchase and Sale Agreement was entered into between A, C, and I (the Sellers) and H, K (a Country X corporation), L (a State Y corporation), and M (a State Y corporation) (the Purchasers). L and M are wholly-owned subsidiaries of H. Pursuant to the Purchase and Sale Agreement, L and M, respectively, agreed to acquire A's and C's (as successor to B) respective Withdrawn Partner Obligations for \$Z (a nominal amount) each. H and K agreed to purchase certain assets of I, including I's interest in G. After the purchase of the Withdrawn Partner Obligations, L will be entitled to receive any and all sums of money that may become due to A under Section 4.4.4 of the Partnership Agreement, and M will be entitled to receive any and all sums of money that may become due to C (as successor to B) under Section 4.4.4 of the Partnership Agreement. If § 108(e)(4) applied, L and M would bear a relationship to the Partnership specified in §§ 267(b) or 707(b)(1).

Section 61(a)(12) provides that gross income means all income from whatever source derived, including (but not limited to) income from the discharge of indebtedness.

Based on the facts and the representations submitted, the Withdrawn Partner Obligations are in the nature of contingent equity interests and, therefore, such obligations are not indebtedness subject to § 61(a)(12). Accordingly, the sale of the Withdrawn Partner Obligations by the Sellers for \$Z, a nominal amount, to the Purchasers will not give rise to discharge of indebtedness income.

Except as specifically ruled upon above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provisions of the Code. No opinion is expressed as to any of the values ascribed to the exchanges subject to the Purchase and Sale Agreement, including but not limited to the value of the Withdrawn Partner Obligations. Moreover, no opinion is expressed regarding any

PLR-151099-03

tax consequences relating to Withdrawn Partner Obligations of withdrawn partners other than A and C (as successor to B).

This ruling is directed only to the taxpayer who requested 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 Partnership's authorized representatives.

Sincerely yours,

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

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