

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Number: **200744004**

Release Date: 11/2/2007

Index Number: 7701.03-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:5

PLR-108333-07

Date: August 7, 2007

LEGEND

Taxpayer =

Corp 1 =

Corp 2 =

Trust 1 =

Trust 2 =

State 1 =

State 2 =

Trust 1 Trustee =

b =

c =

d =

e =

f =

g =

PLR-108333-07

h =

i =

k =

m =

n =

o =

Dear :

This responds to a letter dated February 9, 2007, and subsequent correspondence, submitted on behalf of Taxpayer and Corp 1, requesting rulings under § 7701(h) of the Internal Revenue Code.

According to the facts submitted and representations made, Taxpayer is a closely held State 1 corporation that is the common parent of an affiliated group of corporations filing a consolidated Federal income tax return. Corp 1, a principal operating subsidiary corporation of Taxpayer and member of the Taxpayer consolidated group, is engaged in a substantial motor vehicle fleet leasing and fleet management business initiated in c, involving g motor vehicles. Corp 1 provides the following services to its customers: 1) vehicle acquisitions for lease financing and fleet management customers; 2) vehicle customization services; 3) maintenance and collision services; 4) truck engineering and coordination services; 5) gasoline credit card administration; 6) rental replacement vehicles; 7) administration of factory incentives; 8) license, title, and tax administration services; 9) remarketing services; and 10) vehicle data processing services.

The motor vehicle fleet leasing business is highly competitive and requires Corp 1 to compete in terms of pricing as well as the services it provides. In order to provide competitive lease rates, Corp 1 manages its lessee default risks with extensive lessee credit policies. As a result, the vast majority of the customers of Corp 1 have high-quality credit, and rental defaults by customers of Corp 1 have been extremely low. Over the last d years, Corp 1 has experienced an average annual default rate between approximately e percent and f percent. Competitive pressures also have led Corp 1 to seek alternative sources of financing, under which Corp 1 has been able to accumulate motor vehicles in collateral pools in a manner that permits it to refinance eligible leased motor vehicles at a lower overall cost of financing.

PLR-108333-07

Corp 1 intends to continue to explore ways to reduce its overall financing costs. In connection with that effort, Corp 1 plans to enter into a revolving loan agreement with unrelated financial institutions using a wholly-owned State 2 limited liability company, Corp 2. The revolving loan agreement and related transactional documents are expected to be executed in b (the “Subsequent Refinancing”).

A substantial majority of the motor vehicles that Corp 1 purchases in its lease financing business are leased to customers pursuant to “open end” master lease agreements that incorporate a terminal rental adjustment clause (“TRAC”). A relatively small number of motor vehicles are leased pursuant to “closed end” leases that do not include a TRAC or functionally equivalent terms. Both types of leases may become eligible for refinancing, subject to additional concentration limits for closed end leases.

Each approved customer executes as “Lessee” a Master Lease Agreement with either Corp 1 or Corp 1’s titling trust (Trust 1) as “Lessor.” Most motor vehicles are acquired in the titling trust structure with Trust 1 designated as Lessor and Corp 1 participating as the “Servicer.” In either case, the Master Lease Agreement executed for each approved customer incorporates the credit limits applicable to the customer.

At the same time a Master Lease Agreement is entered, Lessee signs and provides to Lessor a separate written statement (i) under which Lessee certifies, under penalties of perjury, that it intends that motor vehicles leased from Lessor under any lease agreement to which § 7701(h) applies will be used more than 50 percent in the trade or business of Lessee, and (ii) which states that Lessee has been advised that it will not be treated as the owner of the property subject to the agreements for Federal income tax purposes (a “Lessee TRAC Certification”). A separate motor vehicle lease agreement (MVLA) is added to the Master Lease Agreement for each motor vehicle leased by the customer.

Corp 1 receives a customer order for a motor vehicle, either in its capacity as “Lessor” or, when a motor vehicle is acquired by the titling trust, in its capacity as “Servicer.” In either case, Corp 1 orders the motor vehicle from the manufacturer, and the manufacturer shortly thereafter issues a vehicle identification number (“VIN”). At that time, Corp 1 becomes unconditionally obligated to purchase the motor vehicle. Approximately h to j weeks after the order date (the “invoice and payment date”), Corp 1 receives an invoice from the manufacturer and pays for the motor vehicle.

Corp 1 funds all initial purchases of motor vehicles from operating capital or fully recourse loans from one or more unrelated financial institutions. For motor vehicles that are acquired by Trust 1 in the titling trust structure, Corp 1 loans funds in an amount equal to the acquisition cost to Trust 2. Trust 2 transfers the funds to Trust 1, which uses the funds to acquire motor vehicles in connection with the titling process. Corp 1

PLR-108333-07

finances all such loans in the same manner as it finances motor vehicles that it purchases outside the titling trust, that is, with operating capital or proceeds of loans under the terms of the k Intercreditor Agreement or other fully recourse loans.

At the end of the motor vehicle lease term, Lessor will take possession of the vehicle and will sell it for the best price obtainable. In open-end leases that have a TRAC, Lessor must pay Lessee, as a rental adjustment, an amount equal to the excess of m percent of the sales proceeds (net of sales and related costs) over the depreciated value of the motor vehicle. If the net sales proceeds are less than the depreciated value of the vehicle, Lessee must pay to Lessor, as a rental adjustment, an amount equal to m percent of the deficiency, subject to a Lessor guarantee. Lessor guarantees to Lessee minimum net resale proceeds equal to n percent of the "Capitalized Value" of the motor vehicle at the beginning of the initial lease term. This amount is adjusted if Lessee elects to extend the lease beyond the initial lease term. If the initial lease term is extended, Lessor guarantees o percent of the fair value of the vehicle at the inception of the concluding month's extension period, determined by reference to industry standards.

Only those motor vehicles and their related MVLAs held in the titling trust structure, with Trust 1 as Lessor, will be eligible for consideration of refinancing under the terms of the Subsequent Refinancing. The titling trust structure serves two important functions relevant to Corp 1's overall fleet leasing business and the Subsequent Refinancing. The titling trust, Trust 1, alleviates the need to re-title motor vehicles multiple times, and it accommodates the refinancing structure required to reduce Corp 1's overall financing costs. The Subsequent Refinancing also requires the formation of a special purpose borrower, Corp 2. Those entities are intended to be disregarded as entities separate from Corp 1 within the meaning of § 301.7701-3(b)(1)(ii) of the Procedure and Administration Regulations, such that all transactions among Corp 1, Trust 2, Trust 1, and Corp 2 will be disregarded for Federal income tax purposes.

Only motor vehicles and related MVLAs acquired by Trust 1 in the titling trust structure will be potentially eligible to be refinanced under the terms of the Subsequent Refinancing. The titling trust structure consists of two State 2 business trusts, Trust 2 and Trust 1. Corp 1 is the sole owner of Trust 2, and Trust 2 is the sole owner of Trust 1, which is the titling trust. The only beneficial interest of Trust 2 is held by Corp 1. The beneficial interests of Trust 2 in Trust 1 are represented by an undivided trust interest ("UTI") and one or more special units of beneficial interests ("SUBIs"). Trust 2 is the beneficial holder of the UTI, and all outstanding SUBIs are beneficially owned by Corp 1 or by entities wholly owned by Corp 1 that are disregarded as entities separate from Corp 1 for Federal income tax purposes. The UTI and SUBIs and their

PLR-108333-07

related assets constitute separate “Sub-trusts.” Under State 2 law, all liabilities of a Sub-trust generally are enforceable only against the assets designated to the Sub-trust.

Trust 2, as the sole beneficial holder of the UTI, will direct Trust 1 to establish a SUBI to be used in the Subsequent Refinancing (the “b SUBI”). The b SUBI generally will represent beneficial interests in designated motor vehicles and related MVLAs that can be transferred without having to re-title the motor vehicles.

Corp 1 created Trust 2 to hold a beneficial interest in the titling trust, to participate in one or more refinancings, and to undertake all actions relevant thereto. Corp 1 at all times has been and remains the sole Beneficiary of Trust 2, and there are no plans or expectations to issue any additional beneficial interests or to designate any additional beneficiaries.

Trust 2’s power, authority, and activities are limited to: 1) executing, delivering, entering into, and performing its obligations under the Trust 2 Trust Agreement, the Trust 2 Trust Certificate, the Trust 1 Trust Agreement, and the Transaction Documents (all documents relating to the transaction) to which it is a party (collectively, the “Relevant Documents”); 2) acquiring, owning, holding, and, as otherwise permitted in the trust documents, disposing of, or pledging beneficial interests in, cash capital, the certificate evidencing m percent beneficial ownership in the UTI in Trust 1, all such other assets of Trust 2, and all proceeds of the foregoing (“Trust Assets”), including the UTI and one or more SUBIs; 3) engaging in such activities as may be required to be taken by the UTI Beneficiary pursuant to the Relevant Documents, including, from time to time, directing the allocation of Trust 1’s assets to the UTI and one or more SUBIs and authorizing the issuance of related UTI and SUBI Certificates; 4) subject to compliance with the Relevant Documents, engaging in such other activities as may be required in connection with the preservation of the Trust Assets and the making of distributions to or upon the order of the Beneficiary or any related Holder; and 5) engaging in any and all activities that are necessary, appropriate, or incidental to carrying out the foregoing.

The Trustee has no discretionary duties other than performing ministerial acts that are necessary to accomplish the purposes of Trust 2, and looks to the direction of Corp 1, as the Beneficiary, for instructions regarding non-ministerial acts otherwise permitted under the Relevant Documents. In addition, the Trustee must maintain one or more trust accounts for the benefit of the Beneficiary in which all cash and proceeds from the Trust Assets are deposited. Corp 1, as the Beneficiary, has the power and authority to direct the Trustee to make deposits into, disbursements from, and investments of funds on deposit in any trust account.

Trust 1 was created as the titling trust to acquire and deal in cash capital, motor vehicles and related MVLAs, payments made under the leases, proceeds of sale or

PLR-108333-07

other disposition of motor vehicles following the end of the leases, motor vehicles certificates of title, and all other related rights and proceeds (collectively "Trust 1 Assets"). The only outstanding beneficial interests in Trust 1 consist of the UTI held by Trust 2 and SUBIs that have been issued in connection with prior refinancings, the beneficial interests of which are all held by Corp 1 or one or more special purposes entities that are wholly owned by Corp 1 and are disregarded as entities separate from Corp 1 for Federal income tax purposes. There are no plans or expectations to issue any beneficial interests to any entity or person, or designate any additional beneficiaries, other than Corp 1 or entities that are wholly owned by Corp 1 and disregarded as entities separate from Corp 1 for Federal income tax purposes.

Trust 1's power, authority, and activities are limited to: 1) at the direction of Trust 2, as the UTI Beneficiary, entering into motor vehicle lease agreements and holding in trust and releasing ownership interests in Trust 1 Assets as nominee holder of legal title for the benefit of the UTI Beneficiary, SUBI beneficiaries, and other Holders (persons listed in the Certificate Register which maintains records and pledges of UTT and SUBI certificates); 2) entering into and performing its obligations under the Certificate of Trust for Trust 1 or SUBI Supplements, the Servicing Agreement and the related UTI or SUBI Servicing Supplement (collectively, the "Trust 1 Documents"), all of which are consistent with and are intended to carry out the Subsequent Refinancing and other securitized financings; and 3) engaging in any and all activities that are necessary or appropriate to accomplish the foregoing or that are incidental thereto or connected therewith.

The Trust 1 Trustee has been authorized: 1) to accept the designation as the legal title holder to Trust 1 Trust Assets; 2) to enter and perform obligations and duties and to take actions required or authorized under the Relevant Documents; 3) at the direction of the UTI Beneficiary or the relevant SUBI Beneficiary, so long as no Servicer Default has occurred and is continuing and any additional requirements imposed under the Transaction Documents are met, i) to release, discharge, sell, assign, transfer, pledge, convey, or otherwise dispose of any interest in and to any portion of the Trust 1 Trust Assets represented by the directing beneficiary's interests ("Related trust Assets"), ii) to amend or revoke trust terms with respect to all or a portion of the Related trust Assets, and iii) to enter into any agreement or instruments affecting all or any portion of the Related trust Assets; and 4) to appoint the Servicer as attorney-in-fact for Trust 1 and direct the Servicer to perform administrative duties on behalf of the Trust. In addition, the Trust 1 Trustee must establish accounts and receive, maintain, invest, and disburse funds in accordance with the Amended and Restated Trust 1 Trust Agreement, the Servicing Agreement, and any applicable servicing supplement, and any related documents.

Corp 2 will be the "Borrower" in the Subsequent Refinancing. Corp 2 will be a special purpose entity because its activities generally will be limited to: 1) executing and

PLR-108333-07

performing its obligations and exercising its rights under the terms of the Subsequent Refinancing and related transactions; 2) acquiring, transferring, financing, pledging, and otherwise dealing with certificates representing beneficial interests in the b SUBI; 3) dealing with transactions involving the motor vehicles and related MVLAs that will be designated to the b SUBI; 4) borrowing money to the extent contemplated by the Subsequent Refinancing; 5) negotiating, executing, or performing the obligations under any agreement relating to the foregoing activities; and 6) engaging in any lawful act or activity and to exercise any powers permitted to limited liability companies organized under the laws of State 2 that are related or incidental to and necessary, convenient or advisable for the accomplishment of the foregoing purposes.

Corp 1, as the Servicer, will identify New Acquisitions (and other leased motor vehicles) that are eligible to be refinanced under the terms of the Subsequent Refinancing and New Acquisitions that are not eligible, based, in part, on customer and motor vehicle concentration limits that will be imposed by the lender. Limits will focus on lessee concentration, lessee credit ratings, motor vehicle type and location, and lease term, among other potential factors. When eligible New Acquisitions are identified, Corp 1 will direct Trust 2 to designate the eligible New Acquisitions acquired in that month to the b SUBI. Corp 2 will borrow funds under the Subsequent Refinancing and will use the funds, together with its equity capital, to acquire m percent of the beneficial interests in eligible motor vehicles and related MVLAs as they are designated to the b SUBI. Trust 2 will use the proceeds from the acquisition by Corp 2 to repay amounts borrowed from Corp 1.

Additional eligible New Acquisitions will be designated to the b SUBI, and motor vehicles coming off lease will be sold and settled with the sale proceeds. The rental and disposition proceeds of motor vehicles and their related MVLAs will be distributed among the Lender, Corp 1 as the Servicer, and Corp 2 in accordance with their interests. If disposition proceeds are such that a lessee is entitled to receive a payment at the termination of the lease under the TRAC, the obligation to make the TRAC payment will be satisfied out of funds held by Corp 2. Assuming that leased motor vehicles perform consistently with the experience of Taxpayer and Corp 1, amounts received in lease payments and from the disposition of the motor vehicles should be sufficient to satisfy all obligations and generate a profit.

Taxpayer and Corp 1 request rulings that: 1) the Master Lease Agreement and related MVLAs of each new TRAC Lease is a qualified motor vehicle operating agreement under § 7701(h)(2); 2) qualification of the Master Lease Agreement and the related MVLA(s) of each new TRAC Lease as a lease for Federal income tax purposes will be determined without regard to the TRAC provision of the Master Lease Agreement; and 3) Trust 2 and Trust 1 are business trusts as described in § 301.7701-4(b) and not trusts under § 301.7701-4(a). Under § 301.7701-3(b)(1)(ii), Trust 2 and

PLR-108333-07

Trust 1 (including the SUBI Sub-trusts) and Corp 2 are domestic eligible entities with a single owner that are disregarded as entities separate from their owner. Accordingly, Trust 2 and Trust 1 (including the SUBI Sub-Trusts) and Corp 2's activities will be treated in the same manner as those of a division of Corp 1, and their assets will be treated as those of Corp 1.

Rulings 1 and 2

Section 7701(h)(1) provides that in the case of a qualified motor vehicle operating agreement that contains a terminal rental adjustment clause, the agreement is treated as a lease if (but for such terminal rental adjustment clause) the agreement would be treated as a lease for Federal income tax purposes, and the lessee is not treated as the owner of the property subject to the agreement during the period the agreement is in effect.

Section 7701(h)(2) defines a qualified motor vehicle operating agreement as any agreement with respect to a motor vehicle (including a trailer) that meets the following requirements. First, under the agreement, the sum of the amount the lessor is personally liable to repay, and the net fair market value of the lessor's interest in any property pledged as security for property subject to the agreement, must equal or exceed all amounts borrowed to finance the acquisition of property subject to the agreement. Any property pledged that is property subject to the agreement or property directly or indirectly financed by indebtedness secured by property subject to the agreement is not taken into account. Second, the agreement must contain a separate written statement signed by the lessee that the lessee certifies, under penalty of perjury, that it intends that more than 50 percent of the use of the property subject to the agreement is to be in a trade or business of the lessee, and that clearly and legibly states that the lessee has been advised that it would not be treated as the owner of the property subject to the agreement for federal income tax purposes. Finally, the lessor must not know that the certification is false.

The facts and representations provided indicate that the Master Lease Agreement (and related MVLA(s) of each new TRAC Lease) will meet the definition of a "qualified motor vehicle operating agreement" under § 7701(h)(2). The Subsequent Refinancing will not affect the application of § 7701(h)(2) to the TRAC leases. Accordingly, based on the foregoing facts, representations, and law, we rule that the Master Lease Agreement (and related MVLA(s) of each new TRAC Lease) is a qualified motor vehicle operating agreement under § 7701(h)(2)). We also rule that qualification of the Master Lease Agreement (and related MVLA(s) of each new TRAC Lease) as a lease for Federal income tax purposes will be determined without regard to the TRAC provision of the Master Lease Agreement.

PLR-108333-07

Ruling 3

Section 301.7701-2(b) of the Procedure and Administration Regulations provides that the definition of a corporation includes an association as determined under § 301.7701-3.

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 a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(1)(ii) provides that a domestic eligible entity with a single owner is disregarded as an entity separate from its owner for federal tax purposes unless the entity elects to be treated as a corporation. If the entity is disregarded, its activities are treated in the same manner as those of a division of its owner, and its assets will be treated as those of the owner.

Section 301.7701-4(a) provides that in general, the term "trust" refers to an arrangement created either by a will or by an inter vivos declaration whereby trustees take title to property for the purposes of protecting or conserving it for the beneficiaries. Generally speaking, an arrangement will be treated as a trust under the Internal Revenue Code if it can be shown that the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in a joint enterprise for the conduct of business for profit.

Section 301.7701-4(b) addresses "business trusts" and provides that there are other arrangements which are known as trusts because the legal title to property is conveyed to trustees for the benefit of beneficiaries, but which are not classified as trusts for purposes of the Internal Revenue Code because they are not simply arrangements to protect or conserve the property for the beneficiaries. These trusts, which are often known as business or commercial trusts, generally are created by the beneficiaries simply as a device to carry on a profit-making business which normally would have been carried on through business organizations that are classified as corporations or partnerships under the Internal Revenue Code. However, the fact that the corpus of the trust is not supplied by the beneficiaries is not sufficient reason in itself for classifying the arrangement as an ordinary trust rather than as an association or partnership. The fact that any organization is technically cast in the trust form, by conveying title to property to trustees for the benefit of persons designated as beneficiaries, will not change the real character of the organization if the organization is more properly classified as a business entity under § 301.7701-2.

PLR-108333-07

Based on the foregoing facts, representations, and law, we conclude that Trust 2 and Trust 1 are business trusts as described in § 301.7701-4(b) and not trusts under § 301.7701-4(a). We further conclude that under § 301.7701-3(b)(1)(ii), Trust 2, Trust 1 (including the SUBI Sub-trusts), and Corp 2 are domestic eligible entities with a single owner that are disregarded as entities separate from their owner. Accordingly, the activities of Trust 2's, Trust 1 (including the SUBI Sub-trusts), and Corp 2 will be treated in the same manner as those of a division of Corp 1, and their assets will be treated as those of Corp 1.

Except as specifically set forth above, no opinion is expressed concerning the Federal income tax consequences of the above described facts under any other provision of the Code or regulations. Specifically, no opinion is expressed concerning whether or not the Master Lease Agreement and MVLAs are true leases for Federal income tax purposes.

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.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to the taxpayer's authorized representatives.

Sincerely,

/s/

Paul F. Handleman
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes