

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:

October 18, 2000

LEGEND

Program =

State =

Trust Fund =

LLC =

Manager =

x =

Dear

This letter responds to your letter dated October 25, 1999, as well as other correspondence on behalf of State, requesting a ruling that LLC will not be treated as a separate entity for Federal income tax purposes.

FACTS

According to the information submitted, the State Legislature enacted the Program to (1) enable residents of State and other states to benefit from the tax incentive provided for qualified tuition savings plans under the Internal Revenue Code and state law; and, (2) attract students to public and private colleges and universities within State.

Simultaneously with, and as part of, establishing the Program, the State Legislature also created the Trust Fund. The primary function of the Trust Fund is to hold the amounts contributed by participants in Program and the earnings thereon, in separate accounts in a trust fund of which the Comptroller of State is the sole trustee. The Trust Fund will invest the amounts it has for investment using LLC. LLC will

function in a manner similar to a regulated investment company as defined in § 851, but will act exclusively for the Program through Trust Fund. No interests in LLC will be traded on the secondary market.

Manager, the investment manager of LLC, has invested an aggregate amount of \$x in LLC. Manager made this investment to ensure that LLC will be classified as a partnership for federal tax purposes until the requested ruling is granted. Once the Service issues this ruling, LLC will redeem Manager's interest. At that point, the Comptroller will be the sole legal owner of LLC.

State requests a ruling that, after the redemption of Manager's interest, LLC will not be treated for federal tax purposes as an entity separate from its owner, Trust Fund.

LAW AND ANALYSIS

Section 301.7701-2(a) of the Procedure and Administration Regulations states that a business entity is any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under § 301.7701-3) that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Internal Revenue Code. Moreover, § 301.7701-2(a) states that a business entity with only one owner is classified as a corporation or is disregarded. If the entity is disregarded, its activities are treated in the same manner as a sole proprietorship, branch, or division of the owner.

Section 301.7701-2(c) provides, for federal tax purposes, that a business entity with a single owner that is not a corporation under § 301.7701-2(b) is disregarded as an entity separate from its owner.

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) provides default classifications for an eligible entity that does not make an election. A domestic eligible entity with a single owner, unless it elects otherwise, is disregarded as an entity separate from its owner. Section 301.7701-3(b)(1)(ii).

Here, after the redemption of Manager's interests, LLC will have a single owner, Trust Fund. LLC represents that it will not elect to be classified as an association under § 301.7701-3(b). Therefore, for federal tax purposes, LLC will be disregarded as an entity separate from its owner, Trust Fund, and be treated as a branch of Trust Fund.

CONCLUSION

Based on the facts submitted to us, we conclude that after the redemption of Manager, LLC will be disregarded as an entity separate from its owner, Trust Fund. 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. Specifically, no opinion is expressed under § 529 and no opinion is expressed concerning the federal tax consequences of LLC's conversion from a partnership to a disregarded entity.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination

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.

Pursuant to a Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer, the State Comptroller.

Sincerely,

/s/

Robert Honigman
Acting Assistant to the Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for § 6110 purposes