Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Telephone Number:

Refer Reply To:
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Date:
March 13, 2000

LEGEND

A   =

X   =

Dear

        This letter responds to a submission from your authorized representative, dated January 7, 2000, requesting rulings under section 7704 of the Code and the regulations thereunder.

Facts

        A proposes to operate a computerized matching service (Matching Service), described in detail below, designed to facilitate the purchase and sale of interests in publicly registered limited partnerships. A proposes to structure the Matching Service that will allow transfers of partnership interests (Units) to occur without the risk that thepartnership will be classified as a publicly traded partnership under the rules contained in section 7704.

        Under A's Matching Service proposal, a potential seller of Units calls a broker (Broker) who works for A and presents the Broker with a minimum price it would accept for each of its Units. The potential seller verbally indicates to the Broker its intent to sell its Units. The Broker requests from the potential seller information regarding the Units that the potential seller wishes to sell and enters such information into A's computer system (System). The Broker enters that information into the System noting that the potential seller desires to dispose of its Units through A's Matching Service procedures.

The Broker contacts the general partner (GP) or the transfer agent (TA) of the partnership to which the Units relate and confirms ownership, number of units, and registration for the potential seller. Once ownership is confirmed, a contract for the sale of the Units (Contract to Sell), a power of attorney, and other transfer forms are sent to the potential seller. Simultaneously, A sends a letter (Letter) to the potential seller confirming the potential seller's intention to sell the particular Units that are referenced in the Letter. The potential seller is asked to sign and return the Letter to the Broker. The Letter and the Contract to Sell provide that the potential seller may withdraw the Units from A's Matching Service on or prior to the 10th day following the matching of a bid from a qualified buyer for the potential seller's Units. The signed Letter serves as the written confirmation of the potential seller's intent to sell its Units and the notation of the date of receipt of the signed Letter in the System serves as a record of the potential seller's intent to sell and begins the 15-day period during which a binding agreement with respect to the sale of the Units cannot be entered into as required by the regulations promulgated under section 7704 (Period).

Once A is in receipt of the signed Letter or Contract to Sell, the System will place the Units on the list of units that are for sale to prospective buyers. The System will not allow bids to be posted on any of the Units nor will it allow matching of potential buyers with potential sellers of Units during the Period. After the Period, the System matches prospective buyers with the potential seller based on which prospective buyer is the top bidder for the Units, provided the potential seller's minimum price per Unit noted in the Letter and Contract to Sell has been met or exceeded, and sends to such prospective buyer a contract for the purchase of the Units (Contract to Buy), a power of attorney, and other forms necessary to consummate the sale. Once A receives the executed Contract to Buy, power of attorney, and other forms from the prospective buyer, it combines the relevant buy and sell paperwork with the appropriate X and general partner or transfer agent forms, if any, and provided that at least 10 days have lapsed since the date of matching the bid from the buyer for the potential seller's units, it sends the materials in the form of a transfer package to GP or TA. The transfer package is sent to the GP or TA on a date no earlier than the 45th day after the date that the signed Letter was received by A. A letter of instruction accompanies the transfer package which indicates that this transfer is occurring under A's Matching Service procedures and states the earliest permissible date on which the sale of the Units can be consummated is the date of receipt of the transfer package.

The System will not allow A to enter a closing date for the transfer of the Units, submit a transfer package and/or disburse funds to the potential seller until 45 calendar days after the date of receipt by A of the signed Letter and Contract to Sell. A calls the GP or TA and requests a closing date for the transfer of the Units and enters the date into the System. Pursuant to the Contract to Sell and Contract to Buy, the date must be a date that is at least 45 days from the date of receipt by A of the signed Letter, however such date may be later due to restrictions contained in the partnership agreement that relates to the Units being sold. After the effective date of the consummation of the sale of the Units, A will send the proceeds from the sale to the potential seller.

If no match is found, the System will remove the potential seller information from the Matching Service on the 120th day after receipt of the signed Letter. The System will note for 60 days after the potential seller information is removed that such removal was due to lack of finding a match within 120 days of receipt of the signed Letter to prevent the customer from once again offering the Units for sale during such 60-day period.

A will not offer the sale of Units through any method other than the ask and bid process set forth above. A will not make firm quotes to the public and will not stand ready to buy or sell interests for its own account. The sum of the percentage interests in partnership capital or profits transferred during any taxable year of each partnership that A provides matching services for will not exceed ten percent of the total interests in each partnership's capital or profits. A represents that Matching Service will operate in compliance with the requirements of § 1.7704-1(g).

Analysis

Section 7704(a) provides that a publicly traded partnership will be treated as a corporation.

Section 7704(b) provides that for purposes of section 7704, a publicly traded partnership means any partnership if interests in the partnership are (a) traded on an established securities market, or (b) readily tradable on a secondary market or the substantial equivalent thereof.

Section 1.7704-1(b) provides that for purposes of section 7704(b), an established securities market includes: (1) a national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (1934 Act); (2) a national securities exchange exempt from registration under section 6 of the 1934 Act because of the limited volume of transactions; (3) a foreign securities exchange that, under the law of the jurisdiction where it is organized, satisfies regulatory requirements that are analogous to the regulatory requirements under the 1934 Act; (4) a regional or local exchange; and (5) an interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers by electronic means or otherwise.

Section 1.7704-1(c)(1) provides that for purposes of section 7704(b), interests in a partnership that are not traded on an established securities market are readily tradable on a secondary market or the substantial equivalent thereof if, taking into account all of the facts and circumstances, the partners are readily able to buy, sell, or exchange their partnership interests in a manner that is comparable, economically, to trading on an established securities market.

Section 1.7704-1(c)(2) further clarifies that interests in a partnership are readily tradable on a secondary market or the substantial equivalent thereof if: (1) interests in the partnership are regularly quoted by any person, such as a broker or dealer, making a market in the interests; (2) any person regularly makes available to the public (including

customers or subscribers) bid or offer quotes with respect to interests in the partnership and stands ready to effect buy or sell transactions at the quoted prices for itself or on behalf of others; (3) the holder of an interest in the partnership has a readily available, regular, and ongoing opportunity to sell or exchange the interest through a public means of obtaining or providing information of offers to buy, sell, or exchange interests in the partnership; or (4) prospective buyers and sellers otherwise have the opportunity to buy, sell, or exchange interests in the partnership in a time frame and with the regularity and continuity that is comparable to that described in the other provisions of this § 1.7704-1(c)(2).

Section 1.7704-1 provides certain safe harbors (described in paragraphs (e), (f), (g), (h), and (j) of § 1.7704-1) that allow certain types of transfers of partnership interests to be disregarded in determining whether interests in the partnership are readily tradable on a secondary market or the substantial equivalent thereof. However, these safe harbors do not apply to any transfers of partnership interests on an established securities market.

Section 1.7704-1(g) provides a safe harbor for partnership interests transferred pursuant to the use of a qualified matching service. A matching service generally consists of a computerized or printed listing system that lists customers' non-firm bid and/or ask quotes in order to match partners who want to sell their interests in a partnership with persons who want to buy those interests. A matching service must meet several requirements to be a qualified matching service for purposes of this safe harbor, for example, maintaining waiting periods of 15 days between the date an interest is listed and the date a binding agreement is entered into, and 45 days between the date an interest is listed and the closing of the sale. In addition, the safe harbor requires that the sum of the percentage interests in partnership capital or profits transferred during the taxable year of the partnership (other than in private transfers described in § 1.7704-1(e)) does not exceed 10 percent of the total interests in partnership capital or profits.

Rulings

Accordingly, based solely on the facts as represented, we rule as follows:

1.   The Matching Service meets the requirements to be a qualified matching service under § 1.7704-1(g).

2.   Transfers of any Units made through to the Matching Service will be disregarded in determining whether interests in a partnership are readily tradable on a secondary

market or the substantial equivalent thereof for purposes of section 7704(b) provided that (1) the sum of the partnership interests transferred during the taxable year of the partnership (other than through private transfers) does not exceed ten percent of the total interests in partnership capital or profits determined as provided in § 1.7704-1(k) and (2) the Matching Service continues to operate in a manner consistent with the facts

as represented. Maintenance of information required to permit a partnership to make the calculations relating to qualification for any applicable safe harbor in § 1.7704-1 will be the responsibility of the partnerships whose interests are traded and not the responsibility of A or the Matching Service.

Except as specifically ruled upon above, we express no opinion concerning the federal income tax consequences of this transaction under any other provisions of the Code or Regulations.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,

William P. O'Shea
Chief, Branch 3
Office of the Assistant
 Chief Counsel
(Passthroughs and Special
 Industries)

Enclosures
    Copy of this letter
    Copy for Section 6110 purposes