

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200414013**

Release Date: 4/2/04

Index Number: 708.00-00, 721.00-00,
752.00-00

Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B02 – PLR-147667-03

Date:

December 10, 2003

Legend:

X =

a =

Year =

State =

Dear :

This responds to a letter dated August 4, 2003, and subsequent correspondence, submitted by X's authorized representative on behalf of X, requesting a ruling on the federal income tax consequences of the conversion of X from a general partnership into a limited liability company (LLC).

The information submitted states that X is a State general partnership that proposes to convert to an LLC by filing articles of organization pursuant to the applicable State law. Each partner's total percentage interest in X's profits, losses and capital will remain the same when X is converted into an LLC. The business of X will continue in the same manner after the conversion. The partners of X have negative capital accounts through the end of Year.

At the end of Year, X held long-term debt in the amount of a. This debt is secured by X's property and all partners are jointly and severally liable for the debt. After the conversion into an LLC, each partner will personally guarantee the debt so that

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all partners will remain jointly and severally liable. The information submitted states that there will be no change in any partner's share of X's liabilities.

Section 708(a) of the Internal Revenue Code provides that a partnership is considered as continuing if it is not terminated. Under § 708(b), a partnership is considered as terminated only if (1) no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership, or (2) within a 12-month period, there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits.

Section 1.708-1(b)(2) of the Income Tax Regulations provides, in part, that a contribution of property to a partnership does not constitute a sale or exchange for purposes of section 708(b)(1)(B).

Section 721(a) provides that no gain or loss shall be recognized to a partnership or to any of its partners in the case of a contribution of property to the partnership in exchange for an interest in the partnership.

Section 752(a) provides that any increase in a partner's share of the liabilities of a partnership, or any increase in a partner's individual liabilities by reason of the assumption by such partner of partnership liabilities, shall be considered as a contribution of money by such partner to the partnership.

Section 752(b) provides that any decrease in a partner's share of the liabilities of a partnership, or any decrease in a partner's individual liabilities by reason of the assumption by the partnership of such individual liabilities, shall be considered as a distribution of money to the partner by the partnership.

Section 752(c) provides that for purposes of section 752, a liability to which a property is subject shall, to the extent of the fair market value of such property, be considered as a liability of the owner of the property.

Section 1.752-1(f) provides that if, as a result of a single transaction, a partner incurs both an increase in the partner's share of the partnership liabilities (or the partner's individual liabilities) and a decrease in the partner's share of the partnership liabilities (or the partner's individual liabilities) only the net decrease is treated as a distribution from the partnership and only the net increase is treated as a contribution of money to the partnership. Generally, the contribution to or distribution from a partnership of property subject to a liability or the termination of the partnership under section 708(b) will require that increases and decreases in liabilities associated with the transaction be netted to determine if a partner will be deemed to have made a contribution or received a distribution as a result of the transaction.

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Rev. Rul. 84-52, 1984-1 C.B. 157, considers the federal income tax consequences of converting a general partnership into a limited partnership. Each partner's total percentage interest in the partnership's profits, losses, and capital remained the same after the conversion. Further, the business of the general partnership continued to be carried on after the conversion.

Rev. Rul. 84-52 treats the conversion as an exchange under section 721 and no gain or loss is recognized by the partners under section 741 or section 1001. The Rev. Rul. holds that the general partnership is not terminated because the business of the general partnership will continue after the conversion and because, under section 1.708-1(b)(2), a transaction governed by section 721 is not treated as a sale or exchange for purposes of section 708.

Rev. Rul. 84-52 also holds that (1) if the partners' shares of partnership liabilities do not change, there will be no change in the adjusted basis of any partner's interest in the partnership, (2) if there is a change in the partners' shares of partnership liabilities, and such change causes a deemed contribution of money to the partnership by a partner under section 752(a), then the adjusted basis of that partner's interest shall, under section 722, be increased by the amount of such deemed contribution, (3) if the change in the partners' shares of the partnership's liabilities causes a deemed distribution of money by the partnership to a partner under section 752(b), then the basis of that partner's interest shall, under section 733, be reduced (but not below zero) by the amount of such deemed distribution, and gain will be recognized by that partner under section 731 to the extent the deemed distribution exceeds the adjusted basis of that partner's interest in the partnership. The Rev. Rul. further holds that under section 1223(1), there will be no change in the holding period of any partner's total interest in the partnership.

Rev. Rul. 95-37, 1995-1 C.B. 130, examines the conversion of a domestic partnership into a domestic LLC classified as a partnership for federal tax purposes. Rev. Rul. 95-37 holds that the federal income tax consequences described in Rev. Rul. 84-52 apply to the conversion of a domestic partnership into a domestic LLC that is classified as a partnership for federal tax purposes. The Rev. Rul. explains that these federal tax consequences are the same whether the resulting LLC is formed in the same state or in a different state than the converting domestic partnership.

Rev. Rul. 95-37 also holds that the taxable year of the converting domestic partnership does not close with respect to all the partners or with respect to any partner and the resulting domestic LLC does not need to obtain a new taxpayer identification number. The Rev. Rul. further concludes that its holdings apply regardless of the manner in which the conversion is achieved under state law.

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Based on the information submitted, and provided that X is classified as a partnership for federal tax purposes, we rule that the partners' capital accounts in the LLC will be the same as their capital accounts in the general partnership. In addition, the conversion will not cause X nor its partners to recognize gain or loss, provided that the partners' respective shares of liabilities under § 752 do not change upon the conversion.

Except as specifically ruled upon above, we express no opinion concerning the federal tax consequences of the facts described under any other provision of the Code or regulations.

Pursuant to a power of attorney on file with this office, a copy of this letter is being provided to X's authorized representative. X LLC should attach a copy of this letter to its first federal tax return.

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.

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