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Date:
October 26, 2018

Re: Request for a Private Letter Ruling Under § 197

LEGEND

Partnership1 =

Partnership2 =

Partnership3 =

Partnership4 =

Partnership5 =

Partnership6 =

Partnership7 =

Corporation1 =

Corporation2 =

NewCo1 =

NewCo2 =

State =

Principals =

Intangible Asset =

A =

B =

C =

D =

E =

F =

G =

H =

I =

J =

Date1 =

Date2 =

Date3 =

Date4 =

Year1 =

Year2 =

Exchange =

Dear :

This letter ruling responds to a letter dated April 25, 2018, and subsequent correspondence, submitted by Partnership1, Corporation1, Partnership2, Partnership3, NewCo1, and NewCo2 (collectively, "Taxpayer"). Taxpayer is requesting a ruling regarding the federal income tax consequences of certain transactions under § 197 of the Internal Revenue Code.

FACTS

Taxpayer represents the facts are as follows:

Partnership1, a publicly traded partnership, is a State limited partnership that is managed by Partnership1's general partner, G, and classified as a partnership for federal income tax purposes. Partnership1 indirectly owns E through a tiered holding company structure. Specifically, Partnership1 owns (i) all of the outstanding stock of Coporation1, (ii) an interest in Partnership2, (iii) an interest in Partnership3, and (iv) other interests.

Corporation1, a State corporation, is classified as a corporation for federal income tax purposes and owns (i) an interest in Partnership4, (ii) an interest in Partnership2, and (iii) other interests.

Partnership2, a State limited partnership, is classified as a partnership for federal income tax purposes. Partnership2 owns an interest in Partnership3.

Partnership3 is an E limited partnership that is classified as a partnership for federal income tax purposes. Partnership3's assets include general partner interests in funds that are expected to produce qualifying income under § 7704(c). Partnership3 and Partnership4 directly and indirectly own C. Partnership3 and Partnership4 collectively own interests in all A and have the exclusive rights to sponsor future B. Partnership3 and Partnership4 are each responsible for the formation, operation, and management of current or future B.

Partnership6 and Partnership7 own, directly and indirectly through Partnership5, interests in Partnership3 and Partnership4 that the Principals have the right to exchange for the common units of Partnership1 (the D). Partnership7 owns, indirectly through Partnership5, Principals' rights to receive distributions attributable to H from Partnership3 and Partnership4.

The Intangible Asset is the right to any H issued by an existing or future A that is expected to produce qualifying income under § 7704(c). On Date1, Partnership5 contributed the Intangible Asset in the formation of Partnership3. Taxpayer represents that the Intangible Asset is a § 197(f)(9) intangible in the hands of Partnership3 before the conversion of Partnership1 to a corporation.

Each of these transactions is described below.

Formation of Partnership3

The following describes the manner in which Partnership1 and Partnership5 acquired their respective interests in Partnership3. On Date1, J was a disregarded entity of Partnership1 before the following transactions occurred:

1. On Date1, Partnership5 contributed (i) investments in A and H that were expected to produce qualifying income under § 7704(c), and (ii) the Intangible Asset to J, in exchange for an interest in J.
2. Also on that date, Partnership1 contributed investments in A and cash to J in exchange for interests in J.

As a result of Partnership5's contribution, J became classified as a partnership for federal income tax purposes (Partnership3). This transaction qualified for non-recognition under § 721(a).

Principals Transactions

Principals own the remaining interests in Partnership3 and Partnership4 indirectly through a tiered partnership structure consisting of Partnership6 and Partnership7, through an intermediate, Partnership5. Partnership1 and Partnership2 periodically have acquired interests in Partnership3 from Principals as a result of Principals exercising their respective D, beginning on Date2. The following steps describe the relevant transactions that occur when a Principal exercises their D:

1. Partnership5 distributes Partnership3 interests to Partnership6 in a distribution that does not result in a recognition of gain or loss under § 731(a).

2. Partnership6 distributes the Partnership3 interests that it received in Step 1, and interests in Partnership4, to the Principal who exercised their D in a distribution that does not result in a recognition of gain or loss under § 731(a).
3. The Principal transfers the Partnership3 interest to one or both of Partnership1 and Partnership2 and the Partnership4 interests to Corporation2 in exchange for cash or Partnership1 common units.

Taxpayer represents that no Principal exercised their D in connection with, or as part of a plan that included, the formation of Partnership3.

Public Trading of Limited Partner Interests of Partnership1

Since Year2, limited partnership interests of Partnership1 have been publicly traded on the Exchange. In a letter dated July 31, 2018, Taxpayer represents, subject to confirmation by ongoing diligence, Taxpayer reasonably estimates that as of Date3, through public trading and issuances of limited partnership interests, 95 percent or more of the economic interests in Partnership1 have changed ownership since Partnership1 acquired its interest in Partnership3 in Year1.

Conversion of Partnership1 to a Corporation ("Transaction")

On Date4, Partnership1 converted to a State corporation in a non-taxable transaction for federal income tax purposes. The steps taken to complete the Transaction are as follows:

1. Partnership1 transfers all of its assets to a new State corporation, NewCo2, in exchange for stock of NewCo2. NewCo2 is classified as a corporation for federal income tax purposes.
2. Subsequent to Partnership1's contribution to NewCo2, Partnership1 converts under State law to a corporation (NewCo1). NewCo1 is classified as a corporation for federal income tax purposes.

In this Transaction, Partnership1 transfers all of its interests in Partnership3 and Partnership2 to NewCo2. Taxpayer represents that these transfers cause actual and deemed transfers of Partnership3 interests resulting in increases to the tax basis of the Intangible Asset for the benefit of NewCo2 or Partnership2 under § 743(b).

Taxpayer makes the following additional representations:

1. Before the Transaction, the Intangible Asset is a § 197(f)(9) intangible that is not amortizable under the anti-churning rules of § 197(f)(9) and § 1.197-2(h) of the Income Tax Regulations in the hands of Partnership3.

2. Since Date1, Partnership3 has been the only direct user of the Intangible Asset.

3. Partnership5 has never been related to Partnership1 or its predecessor, or Partnership2, within the meaning of § 197(f)(9)(C)(i) and § 1.197-2(h)(6).

4. Partnership1 has had a § 754 election in effect since its inception.

5. The transferor and transferee of any actual or deemed transfer of interests in Partnership3 as a result of the Transaction will be related within the meaning of § 197(f)(9)(C)(i) and § 1.197-2(h)(6) immediately before and after the transaction.

RULING REQUESTED

Taxpayer has requested a ruling that the increases to the tax basis of the Intangible Asset, a §197(f)(9) intangible, under § 743(b) for the benefit of NewCo2 or Partnership2, that result from the Transaction will be amortizable under § 197(a) to the extent those basis adjustments relate to interests in Partnership3 that were (i) acquired from the Principals, or (ii) indirectly acquired by public investors after the formation of Partnership3.

LAW AND ANALYSIS

Section 197(a) provides that a taxpayer shall be entitled to an amortization deduction with respect to any amortizable § 197 intangible. The amount of such deduction shall be determined by amortizing the adjusted basis (for purposes of determining gain) of such intangible ratably over the 15-year period beginning with the month in which such intangible was acquired.

Section 197(b) provides that except as provided in § 197(a), no depreciation or amortization deduction shall be allowable with respect to any amortizable § 197 intangible.

Section 197(c)(1) provides that for purposes of § 197, except as otherwise provided in § 197, the term “amortizable § 197 intangible” means any § 197 intangible (A) which is acquired by the taxpayer after [August 10, 1993], and (B) which is held in connection with the conduct of a trade or business or an activity described in § 212.

Section 197(c)(2) provides that the term “amortizable § 197 intangible” shall not include any § 197 intangible (A) which is not described in § 197(d)(1)(D), (E), or (F), and (B) which is created by the taxpayer.

Section 197(c) shall not apply if the intangible is created in connection with a transaction (or series of related transactions) involving the acquisition of assets constituting a trade or business or substantial portion thereof.

Section 197(c)(3) provides that, for the exclusion of intangibles acquired in certain transactions, see § 197(f)(9) (anti-churning rules).

Section 197(f)(9)(A) provides that, for purposes of § 197, the term “amortizable § 197 intangible” shall not include any § 197 intangible which is described in § 197(d)(1)(A) or (B) (or for which depreciation or amortization would not have been allowable but for § 197) and which is acquired by the taxpayer after [August 10, 1993], if:

- (i) the intangible was held or used at any time after July 25, 1991, and on or before [August 10, 1993] by the taxpayer or a related person,
- (ii) the intangible was acquired from a person who held such intangible at any time on or after July 25, 1991, and on or before [August 10, 1993], and, as part of the transaction, the user of such intangible does not change, or
- (iii) the taxpayer grants the right to use such intangible to a person (or a person related to such person) who held or used such intangible at any time on or after July 25, 1991, and on or before [August 10, 1993].

For purposes of § 197(f)(9)(A), the determination of whether the user of property changes as part of a transaction shall be determined in accordance with regulations prescribed by the Secretary.

Section 197(f)(9)(C) provides that for purposes of § 197(f)(9) a person is related to any person if the related person bears a relationship to such person specified in § 267(b) or § 707(b)(1), or the related person and such person are engaged in trades or businesses under common control (within the meaning of § 41(f)(1)(A) and (B)). In applying § 267(b) or § 707(b)(1), “20 percent” shall be substituted for “50 percent”. A person shall be treated as related to another person if such relationship exists immediately before or immediately after the acquisition of the intangible involved.

Section 197(f)(9)(E) provides that with respect to any increase in the basis of partnership property under §§ 732, 734, or 743, determinations under § 197(f)(9) shall be made at the partner level and each partner shall be treated as having owned and used such partner’s proportionate share of the partnership assets.

Section 1.197-2(g)(3) provides that any increase in the adjusted basis of a § 197 intangible under ...§ 743(b) (relating to the optional adjustment to the basis of partnership property after transfer of a partnership interest) is treated as a separate § 197 intangible. For purposes of determining the amortization period under § 197 with

respect to the basis increase, the intangible is treated as having been acquired at the time of the transaction that causes the basis increase, except as provided in § 1.743-1(j)(4)(i)(B)(2) (dealing with an increase in the basis of the item of the partnership's recovery property under § 743(b) that is attributable to § 704(c) built-in gain when the partnership elects to use the remedial allocation method).

Section 1.197-2(h)(1)(i) provides that this paragraph (h) applies to § 197(f)(9) intangibles. For this purpose, § 197(f)(9) intangibles are goodwill and going concern value that was held or used at any time during the transition period and any other § 197 intangible that was held or used at any time during the transition period and was not depreciable or amortizable under prior law.

Section 1.197-2(h)(1)(ii) provides that the purpose of the anti-churning rules of § 197(f)(9) and § 1.197-2(h) is to prevent the amortization of § 197(f)(9) intangibles unless they are transferred after the applicable effective date in a transaction giving rise to a significant change in ownership or use. Special rules apply for purposes of determining whether transactions involving partnerships give rise to a significant change in ownership or use. See § 1.197-2(h)(12). The anti-churning rules are to be applied in a manner that carries out their purpose.

Section 1.197-2(h)(6)(i) provides, in pertinent part, that a person is related to another person for purposes of § 1.197-2(h) if the person bears a relationship to that person that would be specified (A) in § 267(b) (determined without regard to § 267(e)), and by substitution, § 267(f)(1), if those sections were amended by substituting 20 percent for 50 percent or (B) in § 707(b)(1) if that section were amended by substituting 20 percent for 50 percent.

Section 1.197-2(h)(6)(ii) provides that a person is treated as related to another person for purposes of § 1.197-2(h) if the relationship exists, in the case of a single transaction, immediately before or immediately after the transaction in which the intangible is acquired.

Section 1.197-2(h)(12)(i) provides that in determining whether the anti-churning rules apply to any increase in the basis of a § 197(f)(9) intangible under ...§ 743(b), the determinations are made at the partner level and each partner is treated as having owned and used the partner's proportionate share of partnership property. In determining whether the anti-churning rules apply to any transaction under another section of the Internal Revenue Code, the determinations are made at the partnership level, unless under § 1.701-2(e) the Commissioner determines that the partner level is more appropriate.

Section 1.197-2(h)(12)(v)(A) provides, generally, that the anti-churning rules do not apply to an increase in the basis of a § 197 intangible under § 743(b) if the person acquiring the partnership interest is not related to the person transferring the partnership

interest. In addition, the anti-churning rules do not apply to an increase in the basis of a § 197 intangible under § 743(b) to the extent that . . .

(2) The partnership interest being transferred was acquired after the partnership acquired the § 197(f)(9) intangible, provided -

(i) The § 197(f)(9) intangible was acquired by the partnership after August 10, 1993, and is not amortizable with respect to the partnership;

(ii) The partnership interest being transferred was held after the partnership acquired the § 197 intangible by a person or persons (the post-contribution person or persons) other than the person transferring the partnership interest or persons who were related to the person transferring the partnership interest; and

(iii) The acquisition of such interest by the post-contribution person or persons was not part of a transaction or series of related transactions in which the person transferring the partnership interest or persons related to the person transferring the partnership interest acquired such interest.

Section 1.197-2(h)(12)(v)(B) provides that, solely for purposes of § 1.197-2(h)(12)(v)(A)(1) and (2), a partner who acquires an interest in a partnership in exchange for a contribution of property to the partnership is deemed to acquire a pro rata portion of that interest in the partnership from each person who is a partner in the partnership at the time of contribution based on each such partner's proportionate interest in the partnership.

Rev. Rul. 87-115, 1987-2 C.B. 163, states that when an upper-tier partnership has a § 754 election in effect, the transfer of an interest in the upper-tier partnership is treated as a transfer of an interest in the upper-tier partnership's interest in the lower-tier partnership for purposes of § 743. Such an election shall apply with respect to all distributions of property by the partnership and to all transfers of interests in the partnership during the taxable year when such election was filed and all subsequent years, unless revoked by the partnership, subject to § 1.754-1(c).

Section 754 provides that if a partnership files an election in accordance with regulations prescribed by the Secretary, the basis of partnership property shall be adjusted ...in the case of a transfer of a partnership interest, in the manner provided in § 743. Such an election shall apply with respect to all distributions by the property by the partnership and to all transfers of interests in the partnership during the taxable year when such election was filed and all subsequent years, unless revoked by the partnership, subject to § 1.754-1(c).

Section 743(b) provides, in part, that in the case of a transfer of an interest in a partnership by sale or exchange, a partnership with respect to which the election provided in § 754 is in effect shall increase the adjusted basis of the partnership

property by the excess of the basis to the transferee partner of his interest in the partnership over his proportionate share of the adjusted basis of the partnership property.

Of the requirements for amortization under § 197, only the anti-churning rules are in question in this case. Special rules are provided for partnerships in § 1.197-2(h)(12), and specific rules for § 743(b) basis adjustments are provided in § 1.197-2(h)(12)(v).

On Date1 (after August 10, 1993), Partnership3 was formed by Partnership5 and Partnership1 in a transaction that qualified for non-recognition under § 721(a). Partnership5 contributed the Intangible Asset to Partnership3 in exchange for its interest in Partnership3, and Partnership1 contributed cash and other assets in exchange for its interest in Partnership3. Partnership3 has used the Intangible Asset since then in its trade or business. Under § 1.197-2(h)(12)(v)(B), each of the partners of Partnership3 was deemed to acquire their interest in Partnership3 from the other, and each was deemed to acquire a proportional interest in the assets of Partnership3. Since the Intangible Asset was not amortizable in Partnership5's hands, it is also not amortizable in the hands of Partnership3. Section 197(f)(2) and § 1.197-2(g)(2). This will continue to be true after the transactions subject to this ruling occur.

This ruling addresses the § 743(b) adjustments that are allocable to the Intangible Asset that result from the transfer of Partnership2 and Partnership3 interests to NewCo2, a newly formed corporation in a non-taxable transaction. Each § 743(b) adjustment results in a separate intangible asset that is analyzed under § 1.197-2(h)(12)(v) at the partner level. Sections 1.197-2(g)(3) and 1.197-2(h)(12)(i). Partners are treated as directly owning and using their proportionate share of partnership assets. Section 197(f)(9)(E).

In this case, the anti-churning rules do not apply to a § 743(b) adjustment if one of two tests is met, either (i) the transferee is not related to the transferor or (ii) the requirements of § 1.197-2(h)(12)(v)(A)(2) are met. The basis adjustments do not satisfy the first test because the transferor and the transferee of any actual or deemed transfer of Partnership3 interests as a result of the Transaction will be related within the meaning of § 197(f)(9)(C)(i) and § 1.197-2(h)(6) immediately before and after the Transaction. Thus, any transferee entitled to a basis adjustment will be related to the transferor for purposes of the anti-churning rules. Therefore, the basis adjustments will be amortizable under § 197(a) only if the requirements of § 1.197-2(h)(12)(v)(A)(2) are met.

Principals Transactions

In the case of the interests in Partnership3 that Partnership1 and Partnership2 acquired in the Principals transactions, the Partnership3 interests that are transferred to NewCo2 were originally owned by Partnership5 and distributed to the exercising

Principal through a series of non-recognition transactions. Taxpayer has represented that no Principal exercised their D in connection with, or as part of a plan that included, the formation of Partnership3.

With respect to the interests in Partnership3 acquired by Partnership1 and Partnership2 from the Principals, the requirements of § 1.197-2(h)(12)(v)(A)(2) are met because:

(i) The Principals transactions occurred after Partnership3 acquired the Intangible Asset and, therefore, the interests in Partnership3 that Partnership1 and Partnership2 acquired in the Principals transactions occurred after Partnership3 acquired the Intangible Asset. Also, Partnership3 acquired the Intangible Asset after August 10, 1993, and the Intangible Asset is not amortizable in the hands of Partnership3;

(ii) The Principals' interests in Partnership3 that are being transferred were held after Partnership3 acquired the Intangible Asset by Partnership5, a person other than Partnership1 or Partnership2. Further, Taxpayer has represented that Partnership5 has never been related to Partnership1 or its predecessor, or Partnership2, within the meaning of § 197(f)(9)(C)(i) and § 1.197-2(h)(6); and

(iii) The acquisition of the interests in Partnership3 by Partnership5 was not part of a transaction or series of related transactions in which Partnership1 and Partnership2 acquired its Partnership3 interest from the Principals. That is, the exercise of the D occurred in transactions independent from the formation of Partnership3.

Public Trading

With respect to the interests in Partnership3 acquired by Partnership1 upon the formation of Partnership3 on Date1, the requirements of § 1.197-2(h)(12)(v)(A)(2) are met because:

(i) Partnership1 acquired its interest in Partnership3 after Partnership3 acquired the Intangible Asset. Also, Partnership3 acquired the Intangible Asset after August 10, 1993, and the Intangible Asset is not amortizable in the hands of Partnership3; and

(ii) In its letter dated July 31, 2018, Taxpayer represents, subject to confirmation by ongoing diligence, Taxpayer reasonably estimates that as of Date3, through public trading and issuances of limited partnership interests, percent or more of the economic interests in Partnership1 have changed ownership since Partnership1 acquired its interests in Partnership3 in Year1.

As stated in Rev. Rul. 87-115, when an upper-tier partnership has a § 754 election in effect, any § 743(b) adjustment resulting from the deemed transfer is segregated and allocated solely to the transferee of the upper-tier partnership interest.

Further, with respect to any increase in the basis of partnership property under § 743, a partnership is treated as an aggregate of its owners under the anti-churning rules. Section 197(f)(9)(E).

Applying § 1.197-2(h)(12)(i), for purposes of § 1.197-2(h)(12)(v)(A)(2)(iii), the public owners of Partnership1 are treated as acquiring interests in Partnership3 when each public owner purchased an interest in Partnership1, subsequent to the formation of Partnership3 in Year1. Because the public owners of Partnership1 acquired interests in Partnership3 after those interests were held by unrelated owners in transactions independent from the formation of Partnership3, § 1.197-2(h)(12)(v)(A)(2)(ii) and (iii) are satisfied for those acquisitions.

Based on Taxpayer's representation in a letter dated July 31, 2018 that, Taxpayer reasonably estimates that as of Date3, which is one business day before Date 4, through public trading and issuances of limited partnership interests, percent or more of the economic interests in Partnership1 have changed ownership since Partnership1 acquired its interests in Partnership3 in Year1, the increases to the tax basis of the Intangible Asset for the benefit of Newco2 or Partnership2 under § 743(b) resulting from Partnership1's transfer of interests in Partnership3 to Newco2 are amortizable under § 197(a) to the extent those interests were treated as previously acquired by public investors since the formation of Partnership3 on Date1.

CONCLUSIONS

Based solely on the facts and representations submitted and the law and analysis as set forth above, we rule that the increases to the tax basis of the Intangible Asset, a §197(f)(9) intangible, under § 743(b) for the benefit of NewCo2 or Partnership2, that result from the Transaction will be amortizable under § 197(a) to the extent those basis adjustments relate to interests that (i) were previously acquired from the Principals or (ii) were treated as previously acquired by public investors subsequent to the formation of Partnership3 on Date1.

Except as expressly set forth above, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the Code or regulations. Specifically, no opinion is expressed or implied concerning the federal income tax treatment of any transactions described in this letter, including the Transaction that Taxpayer represents occurred on Date4.

This letter ruling is conditioned upon Taxpayer demonstrating the extent that the ownership of Partnership1's interests changed between Date1 and Date3.

The rulings contained in this letter ruling are based upon facts and representations submitted by Taxpayer accompanying penalty of perjury statements executed by appropriate parties. While this office has not verified any of the material

submitted in support of this letter ruling request, all material is subject to verification on examination.

A copy of this letter ruling must be attached to any federal income tax return to which it is relevant. A copy is enclosed for that purpose. Alternatively, a taxpayer filing its federal income tax return electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of the letter ruling.

This letter ruling is directed only to the taxpayers 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, we are sending a copy of this letter to Taxpayer's authorized representatives. We are also sending a copy of this letter to the appropriate operating division director.

Sincerely,

s/Kathleen Reed

KATHLEEN REED
Branch Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures (2):
copy of this letter
copy for section 6110 purposes