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Department of the Treasury

Washington, DC 20224

Person to Contact:

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Refer Reply To:
CC:PSI:1-PLR-119259-00
Date:
February 5, 2001

Legend:

FeederFund1 =

FeederFund2 =

LP =

Trust =

State1 =

State2 =

D1 =

D2 =

$X =

This responds to the letter dated September 29, 2000, submitted by your representative on behalf of Trust, requesting various rulings under sections 704, 721, 851 et seq., and 7704 of the Internal Revenue Code.

FACTS

FeederFund1 and FeederFund2 (the "Feeder Funds") were organized as corporations under the laws of State1 on D1. The Feeder Funds intend to qualify for and elect status as regulated investment companies ("RICs") under sections 851-855.

LP is a limited partnership and is in the business of providing investment management and related services, and is registered with the Securities and Exchange Commission as an investment adviser under the Investment Advisers Act of 1940.

To reduce expenses and provide different services and distribution schedules with respect to various investors, the following transactions were undertaken. LP established Trust under the laws of State2 on D2. Trust is registered as an open-end management company under the Investment Company Act of 1940 (the 1940 Act). FeederFund1 will contribute 100 percent of its gross assets, consisting of $X in cash, to Trust in exchange for an ownership interest in Trust. FeederFund2 will contribute 100 percent of its gross assets, consisting of $X in cash, to Trust in exchange for an ownership interest in Trust. LP will be the principal investment adviser of Trust. Trust will serve as an investment vehicle for FeederFund1 and FeederFund2. The investment objective of Trust will be identical to that of the Feeder Funds. All of the assets contributed to Trust will be managed by Trust.

FeederFund1, FeederFund2, and all future partners in Trust each will be registered as an open-end management company under the 1940 Act and will be a “publicly offered regulated investment company” as defined in section 67(c)(2)(B) and section 1.67-2T(g)(3)(ii) (a “Qualified Contributor”). The number of partners owning interests in Trust will be less than 100 calculated pursuant to section 1.7704-1(h).

Interests in Trust will be issued solely in private placement transactions that do not involve any “public offering” within the meaning of section 4(2) of the Securities Act of 1933, as amended (1933 Act). Trust will not register its shares under the 1933 Act, because shares in Trust may be issued solely in private placement transactions that do not involve any “public offering” within the meaning of section 4(2) of the 1933 Act.

Taxpayer represents that Trust will be classified as a partnership for federal tax purposes under section 301.7701-3(b)(1)(i) of the Procedure and Administration Regulations. Except as required by section 704(c) and section 1.704-1(b)(4), each partner will be allocated a pro rata share of partnership income, gain, loss, deduction and credit in accordance with the regulations under section 704(b). Each partner’s initial capital account balance will be the amount of money and the fair market value of the property contributed to Trust by the partner. Under section 1.704-1(b)(2((iv)(f), Trust will revalue its investment portfolio to fair market value as of the close of each day. Trust will adjust each partner’s capital account to reflect the partners share of the net change in the value of its portfolio of securities from the close of the prior day to the close of the current day.

Trust represents that it is a management company within the meaning of section 1.704-3(e)(3)(iii)(B) and will hold as assets only qualified financial assets, within the meaning of section 1.704-3(e)(3)(ii), and cash. For purposes of making reverse section 704(c) allocations, Trust will aggregate gains and losses from its financial assets as provided in section 1.704-3(e)(3) by using the full netting approach set forth in section 1.704-3(e)(3)(v).

FeederFund1, FeederFund2, and any other transferor who contributes assets to the Trust will transfer solely cash or a diversified portfolio of assets in exchange for an interest in Trust. For purposes of this representation, a portfolio of stocks and securities is diversified if it satisfies the 25 and 50-percent tests of section 368(a)(2)(F)(ii), applying the relevant provisions of section 368(a)(2)(F), except that, in applying section 368(a)(2)(F)(iv), government securities are included in determining total assets, unless the government securities are acquired to meet the requirements of section 368(a)(2)(F)(ii).

LAW AND ANALYSIS

Ruling 1

Trust and the Feeder Funds have requested a ruling that Trust will not be publicly traded partnership under section 7704.

Section 7704(a) provides that a publicly traded partnership is treated as a corporation. Section 7704(b) and section 1.7704-1(a) provide that, under section 7704, the term "publicly traded partnership" means any partnership if interests in the partnership are (i) traded on an established securities market, or (ii) readily tradable on a secondary market or the substantial equivalent thereof.

Section 1.7704-1(c)(1) provides that interests in a partnership 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(h)(1) provides that interests in a partnership are not treated as readily tradable on a secondary market or the substantial equivalent thereof within the meaning of section 7704(b) if (i) all interests in the partnership were issued in a transaction (or transactions) that was not registered under the 1933 Act; and (ii) the partnership does not have more than 100 partners at any time during the taxable year.

Section 1.7704-1(h)(3) provides that, for purposes of section 1.7704-1(h)(1) a person who owns an interest in a partnership, grantor trust, or S corporation (flow-through entities) that owns, directly or through other flow-through entities, an interest in the partnership is treated as a partner in the partnership only if (i) substantially all of the value of the beneficial owner's interest in the flow-through entity is attributable to the flow-through entity's interest (direct or indirect) in the partnership; and (ii) a principal purpose of the use of the tiered arrangement is to permit the partnership to satisfy the 100-partner limitation of section 1.7704-1(h)(1)(ii).

Based upon the facts presented and the representations made by Trust and the Feeder Funds, we rule that Trust will not be a publicly traded partnership under section 7704.

Ruling 2

Trust and the Feeder Funds have requested a ruling that each Feeder Fund will be deemed to own a proportionate share of the assets of Trust and will be deemed to be entitled to the income of Trust attributable to that share for purposes of determining whether each Feeder Fund satisfies the requirements of section 851(b)(2), 851(b)(3), 852(b)(5), 853(a), and 854.

Section 851(b) provides that certain requirements must be satisfied in order for a domestic corporation to be taxed as a RIC and thereby to be exempt from the corporate level tax on most income.

Section 851(b)(2) provides that, to qualify as a RIC, at least 90 percent of a corporation's gross income must be derived from dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), gains from the sale or other disposition of stocks, securities, foreign currencies, or other income derived with respect to its business of investing in such stocks, securities, or currencies.

Section 851(b)(3)(A) requires that, in order to qualify as a RIC, at the close of each quarter of the taxable year, at least 50 percent of the value of a corporation's total assets must be represented by cash and cash items (including receivables), Government securities, securities of other RICs, and other securities generally limited in respect of any one issuer to an amount not greater in value than 5 percent of the value of the total assets of the corporation and to not more than 10 percent of the outstanding voting securities of such issuer.

Section 851(b)(3)(B) provides that, in order to qualify as a RIC, not more than 25 percent of the corporation's total assets may be invested in the securities (other than Government securities and the securities of other RICs) of any one issuer, or of two or more issuers that the corporation controls and which are determined, under regulations, to be engaged in the same or similar trades or businesses or related trades or businesses.

Secton 852(b)(5) provides that a RIC at least 50 percent of the value (as defined in section 851(c)(4)) of whose total assets at the close of each calendar quarter consists of obligations described in section 103(a) is eligible to pay exempt-interest dividends, which are treated by the RIC's shareholders as interest excludable from gross income pursuant to section 103(a).

Section 853(a) provides that a RIC more than 50 percent of the value (as defined in section 851(c)(4)) of whose total assets at the close of the taxable year consists of stock or securities in foreign corporations and which meets the requirements of section 852(a) for the taxable year may elect to treat its shareholders as if they had paid certain foreign taxes incurred by the RIC for purposes of determining a shareholder's foreign tax credit under section 901.

Section 854(b)(1)(A) provides that a dividend, other than a capital gain dividend, received from a RIC qualifies for the dividends received deduction under section 243(a) to the extent so designated by the RIC provided that the RIC meets the requirements of section 852(a) for the taxable year during which it paid the dividend.

Section 854(b)(1)(B) provides that the aggregate amount that may be designated as dividends under section 854(b)(1)(A) shall not exceed the aggregate dividends received by the RIC for the taxable year.

Section 854(b)(3)(A) provides that the term “aggregate dividends received” includes only dividends received from domestic corporations.

Section 854(b)(4) provides, in part, that for purposes of determining an amount to be treated as a dividend eligible for the dividends received deduction under section 243 a payment to a RIC shall not be treated as a dividend unless, had it not been a RIC, it would have been allowed a dividends received deduction under section 243 with respect to the payment.

Section 702(b) provides with respect to a partnership that the character of items stated in section 702(a) that are included in a partner’s distributive share shall be determined as if such items were realized directly from the source from which they were realized by the partnership, or incurred in the same manner as incurred by the partnership. Section 702(c) provides that where it is necessary to determine the amount or character of the gross income of a partner, such amount shall include that partner’s distributive share of the gross income of the partnership.

Section 1006(n)(l) of the Technical and Miscellaneous Revenue Act of 1988 added a sentence to the flush language of section 851(b) that states that income derived from a partnership or trust shall be treated as satisfying the 90 percent requirement of section 851(b)(2) only to the extent that such income is attributable to items of income of the partnership or trust which would be described in section 851(b)(2) if earned directly by the RIC. The legislative history of that sentence indicates that it was intended to clarify the general rule used to characterize items of income, gain, loss, deduction, or credit includable in a partner’s distributive share, as applied to RICs that are partners. It therefore, explains the relationship of section 702 to the 90 percent test under section 851(b)(2). See S. Rep. No. 445, 100th Cong., 2d Sess. 93 (1988).

Under subchapter K, a partnership is considered to be either an aggregate of its members or a separate entity. Under the aggregate approach, each partner is treated as an owner of an undivided interest in partnership assets and operations. Under the entity approach, the partnership it treated as a separate entity in which partners have no direct interest in partnership assets and operations. See S. Rep. No. 1622, 83d Cong., 2d Sess. 89 (1954); H.R. Rep. No. 2543, 83d Cong., 2d Sess. 59 (1954).

In order for each Feeder Fund to qualify as a RIC under the diversification tests of section 851, the aggregate approach will have to be applied to each Feeder Fund’s partnership interest in Trust. As an aggregate, each Feeder Fund will be entitled to take into account its share of the individual items of income and assets of Trust.

Rev. Rul. 75-62, 1975-1 C.B. 188, concerns a life insurance company that contributed cash to a partnership in exchange for a 50 percent interest in the partnership. The partnership held real estate as its principal asset. For the taxable year in question, section 805(b) required life insurance companies to value their assets each taxable year. For this purpose, section 805(b)(4) required that shares of stock and real estate be valued at their fair market values and that other assets be valued at their adjusted bases. The issue presented in the ruling is whether, for purposes of section 805(b)(4), the life insurance company's interest in the partnership is considered to be an investment in the real estate held by the partnership (an aggregate approach) or an investment in other property (an entity approach).

Rev. Rul. 75-62 holds that the partnership interest held by the life insurance company must be accounted for as other property for purposes of section 805(b)(4). The ruling cites sections 705 and 741, both of which generally treat an interest in a partnership as an interest in an entity, as evidence of an intent in subchapter K to take the entity approach in questions concerning the nature of an interest in a partnership. The ruling states that the legislative history of section 805(b)(4) does not indicate that application of the entity approach to the facts of the ruling is inappropriate and that there is no compelling reason to take the aggregate approach.

The flush language of section 851(b) and its legislative history indicate that here, unlike the situation described in Rev. Rul. 75-62, Congress intended that an aggregate approach be taken in determining the nature of the partnership interests held by the partners. The flush language of section 851(b) mandates an aggregate approach in applying the 90 percent gross income test of section 851(b)(2) to RICs that hold partnership interests. It would be anomalous to suggest that Congress intended that a RIC's interest in a partnership be viewed as a direct investment in the partnership's assets for purposes of the section 851(b)(2) test but not be viewed as a direct investment in those assets for purposes of the test set out in section 851(b)(3).

The tax treatment accorded real estate investment trusts (REITs) lends further support to applying the aggregate approach to the present case. REITs were created to provide an investment vehicle similar to the RIC for small investors to invest in real estate and real estate mortgages. See H.R. Rep. No. 2020, 86th Cong., 2d Sess. 3 (1960). Like RICs, REITs are subject to restrictions on the type of assets they can hold if they want to retain the benefits accorded them under subchapter M and are subject to certain gross income source tests. REITs and RICs also have similar distribution and holding period requirements.

Section 1.856-3(g) provides that:

> In the case of a real estate investment trust which is a partner in a partnership, as defined in section 7701(a)(2) and the regulations thereunder, the trust will be deemed to own its proportionate share of each of the assets of the partnership and will be deemed to be entitled to the income of the

> partnership attributable to such share. For purposes of section 856, the interest of a partner in the partnership's assets shall be determined in accordance with his capital interest in the partnership. The character of the various assets in the hands of the partnership and items of gross income of the partnership shall retain the same character in the hands of the partners for all purposes of section 856. Thus, for example, if the trust owns a 30-percent capital interest in a partnership which owns a piece of rental property the trust will be treated as owning 30 percent of such property and as being entitled to 30 percent of the rent derived from the property by the partnership. Similarly, if the partnership holds any property primarily for sale to customers in the ordinary course of its trade or business, the trust will be treated as holding its proportionate share of such property primarily for such purpose. Also, for example, where a partnership sells real property or a trust sells its interest in a partnership which owns real property, any gross income realized from such sale, to the extent that it is attributable to the real property, shall be deemed gross income from the sale or disposition of real property held for either the period that the partnership has held the real property or the period that the trust was a member of the partnership, whichever is shorter.

Thus, the regulation adopts the aggregate "look-through" approach in determining how a REIT should account for its partnership interests for purposes of all of the income and asset qualification tests under section 856.

The legislative purpose underlying the creation of both RICs and REITs was to provide small investors a means of pooling their resources to invest in a particular type of assets without the imposition of corporate income tax. The qualification tests are similar for each. Therefore, although the RIC regulations do not specifically address the issue herein, it is appropriate to adopt an approach for RICs that parallels that set forth for REITs.

Based upon the facts presented and the representations made by Trust and the Feeder Funds, we rule that each Feeder Fund, assuming it qualifies as a RIC and is a partner in Trust, will be deemed to own a proportionate share of the assets of Trust and will be deemed to be entitled to the income of Trust attributable to that share for purposes of determining whether each Feeder Fund satisfies the requirements of section 851(b)(2), 851(b)(3), 852(b)(5), 853(a), and 854. For purposes of these sections, the interests of each Feeder Fund in Trust shall be determined in accordance with each Feeder Fund's respective capital interest in Trust.

Ruling 3

Trust and the Feeder Funds have requested a ruling that the transfers by FeederFund1 and FeederFund2 to Trust are not transfers of property to a partnership that would be treated as an investment company (within the meaning of section 351) if Trust were incorporated.

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

Section 721(b) provides that section 721(a) does not apply to gain realized on a transfer of property to a partnership that would be treated as an investment company (within the meaning of section 351) if the partnership were incorporated.

Section 351(a) states that no gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock in such corporation and immediately after the exchange such person or persons are in control (as defined in section 368(c)) of the corporation. Section 351(e)(1) provides that section 351(a) will not apply to a transfer of property to an “investment company.”

Section 1.351-1(c)(1) states that a transfer to an investment company will occur when (i) the transfer results, directly or indirectly, in diversification of the transferors' interests, and (ii) the transferee is a RIC, real estate investment trust ("REIT"), or a corporation more than 80-percent of the value of whose assets (excluding cash and nonconvertible debt obligations from consideration) are held for investment and are readily marketable stocks or securities, or interests in RICs or REITs.

Section 1.351-1(c)(6)(i) provides that a transfer of stocks and securities will not be treated as resulting in a diversification if each transferor transfers a diversified portfolio of stocks and securities. A portfolio of stock and securities is diversified if it satisfies the 25 and 50-percent tests of section 368(a)(2)(F)(ii), applying the relevant provisions of section 368(a)(2)(F). For this purpose, government securities are included in determining total assets, unless the government securities are acquired to meet section 368(a)(2)(F)(ii).

Section 368(a)(2)(F)(i) provides that a transaction between two “investment companies” otherwise qualifying as a reorganization will not qualify as a reorganization for any corporation in the transaction that is not a RIC, REIT, or corporation described in section 368(a)(2)(F)(ii). Section 368(a)(2)(F)(iii) defines an “investment company” as a RIC, REIT, or a corporation with at least 50 percent of its assets comprised of stock or securities and 80 percent of its assets held for investment. A corporation satisfies section 368(a)(2)(F)(ii) if not more than 25 percent of the value of its “total assets” is invested in the stock and securities of one issuer and not more than 50 percent of the value of its “total assets” is invested in the stock and securities of five or fewer issuers.

A person holding stock in an investment company (as defined by section 368(a)(2)(F)(iii)) is treated as holding its proportionate share of the assets held by the investment company. Section 368(a)(2)(F)(iv) provides that, in determining “total assets,” certain assets are excluded, including cash and cash items (including receivables) and government securities. Section 368(a)(2)(F)(vii) defines “securities” for purposes of clauses (ii) and (iii) of section 368(a)(2)(F).

Based upon the facts presented and the representations made by Trust and the Feeder Funds, we rule that the transfer of either cash or a portfolio of assets that meets the diversification requirements of section 368(a)(2)(F)(ii) from FeederFund1 to Trust will not result in a diversification of the portfolio transferred. As a result, the transfer will not be considered a transfer to an investment company. Accordingly, under section 721(a), no gain or loss will be recognized by FeederFund1 upon the transfer to Trust. Also, the transfer of either cash or a portfolio of assets that meets the diversification requirements of section 368(a)(2)(F)(ii) from FeederFund2 to Trust will not result in a diversification of the portfolio transferred. As a result, the transfer will not be considered a transfer to an investment company. Accordingly, under section 721(a), no gain or loss will be recognized by FeederFund2 upon the transfer to Trust.

Ruling 4

Trust and the Feeder Funds have requested a ruling that Trust may aggregate built-in gains and losses from qualified financial assets contributed by the Feeder Funds with built-in gains and losses from revaluations of qualified financial assets held by Trust for purposes of making section 704(c)(1)(A) and reverse section 704(c) allocations, and that Trust's method of making these allocations is reasonable within the meaning of section 1.704-3(e)(3).

Section 704(c)(1)(A) provides that income, gain, loss, and deduction with respect to property contributed to the partnership by a partner is shared among the partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution.

Section 1.704-3(a)(1) provides that the purpose of section 704(c) is to prevent the shifting of tax consequences among partners with respect to precontribution gain or loss. Under section 704(c), a partnership must allocate income, gain, loss, and deduction with respect to property contributed by a partner to the partnership so as to take into account any variation between the adjusted tax basis of the property and its fair market value at the time of contribution. Notwithstanding any other provision of section 1.704-3, the allocations must be made using a reasonable method that is consistent with the purpose of section 704(c).

Section 1.704-3(a)(6) provides that the principles of section 1.704-3 apply to allocations with respect to property for which differences between book value and adjusted tax basis are created when a partnership revalues partnership property pursuant to section 1.704-1(b)(2)(iv)(f) (reverse section 704(c) allocations). A partnership that makes allocations with respect to revalued property must use a reasonable method that is consistent with the purposes of section 704(b) and (c).

Section 704(c) generally applies on a property-by-property basis. Section 1.704-3(a)(2). Therefore, in determining whether there is a disparity between adjusted tax basis and fair market value, the built-in gains and built-in losses on items of contributed or revalued property generally cannot be aggregated.

Section 1.704-3(e)(3) sets forth a special rule allowing certain securities partnerships to make reverse section 704(c) allocations on an aggregate basis. Specifically, section 1.704-3(e)(3)(i) provides that, for purposes of making reverse section 704(c) allocations, a securities partnership may aggregate gains and losses from qualified financial assets using any reasonable approach that is consistent with the purpose of section 704(c). Once a partnership adopts an aggregate approach, the partnership must apply the same aggregate approach to all of its qualified financial assets for all taxable years in which the partnership qualifies as a securities partnership.

Section 1.704-3(e)(3)(iii)(A) of the regulations provides that a partnership is a securities partnership if the partnership is either a management company or an investment partnership, and the partnership makes all of its book allocations in proportion to the partners' relative book capital accounts (except for reasonable special allocations to a partner that provides management services or investment advisory services to the partnership). Under section 1.704-3(e)(3)(iii)(B)(1), a partnership is a management company if it is registered as a management company under the 1940 Act.

Section 1.704-3(e)(3)(ii) provides that a qualified financial asset is any personal property (including stock) that is actively traded as defined in section 1.1092(d)-1. For a management company, qualified financial assets also include the following, even if not actively traded: shares of stock in a corporation; notes, bonds, debentures, or other evidences of indebtedness; interest rate, currency, or equity notional principal contracts; evidences of an interest in, or derivative financial instruments in, any security, currency, or commodity, including any option, forward or futures contract, or short position; or any similar financial instrument.

Section 1.704-3(a)(10) provides that an allocation method (or combination of methods) is not reasonable if the contribution of property (or event that results in reverse section 704(c) allocations) and the corresponding allocation of tax items with respect to the property are made with a view to shifting the tax consequences of built-in gain or loss among the partners in a manner that substantially reduces the present value of the partner's aggregate tax liability.

Furthermore, section 1.704-3(e)(3)(vi) provides that the character and other tax attributes of gain or loss allocated to the partners under an aggregate approach must: (A) preserve the tax attributes of each item of gain or loss realized by the partnership; (B) be determined under an approach that is consistently applied; and (C) not be determined with a view to reducing substantially the present value of the partners' aggregate tax liability. Trust has represented that its allocations have complied and will comply with section 1.704-3(e)(3)(vi).

Section 1.704-3(e)(3) only applies to reverse section 704(c) allocations; thus, a securities partnership using an aggregate approach must generally account for any built-in gain or loss from contributed property separately. The preamble to section 1.704-3(e)(3) explains that the final regulations do not authorize aggregation of built-in gains and losses from contributed property with built-in gains and losses from revaluations because this type of aggregation can lead to substantial distortions in the character and timing of income and loss recognized by contributing partners. T.D. 8585, 1995-1 C.B. 120, 123. However, the preamble also recognizes that there may be instances in which the likelihood of character and timing distortions is minimal and the burden of making section 704(c) allocations is great. Id. Consequently, section 1.704-3(e)(4)(iii) authorizes the Commissioner to permit, by published guidance or letter ruling, aggregation of qualified financial assets for purposes of making section 704(c) allocations in the same manner as that described in section 1.704-3(e)(3).

In this case, it is represented that Trust's burden of making section 704(c) allocations separate from reverse section 704(c) allocations is substantial. In addition, the likelihood that this type of aggregation could be abused by Trust and its partners is minimal. Based upon the facts presented and the representations made by Trust and the Feeder Funds, we rule that Trust may aggregate built-in gains and losses from qualified financial assets contributed by the Feeder Funds with built-in gains and losses from revaluations of qualified financial assets held by Trust for purposes of making section 704(c)(1)(A) and reverse section 704(c) allocations, and that Trust's method of making these allocations is reasonable within the meaning of section 1.704-3(e)(3), provided that a contribution or revaluation of property and the corresponding allocation of tax items with respect to the property are not made with a view to shifting the tax consequences of built-in gain or loss among the partnership in a manner that substantially reduces the present value of the partners' aggregate tax liability.

Ruling 5

Trust and the Feeder Funds also have requested permission to use Trust's method for making section 704(c) allocations, including reverse allocations for Qualified Contributors that become partners in Trust.

It is anticipated that Qualified Contributors (as defined above) may become partners in Trust in the future. These new partners may contribute securities with built-in gain or loss to Trust, but only securities consistent with Trust's investment objective.

After applying the relevant law to the information and representations submitted, we rule that Trust's method of making section 704(c) allocations, including reverse allocations, for new partners who invest in Trust is a reasonable method within the meaning of section 1.704-3(a)(1), and is permitted by the Commissioner under section 1.704-3(e)(4)(iii), provided that: (i) a contribution or revaluation of property and the corresponding allocation of tax items with respect to the property are not made with a view to shifting the tax consequences of built-in gain or loss among the partnership in a manner that substantially reduces the present value of the partners' aggregate tax liability, (ii) the partner is a Qualified Contributor, and (iii) to the extent that Trust relies on this ruling with respect to the contribution, Trust will document any such contribution on its tax return filed subsequent to the contribution.

We express no opinion on the tax treatment of the transaction described above under any other provision of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction not specifically covered by the above rulings. In particular, we express no opinion as to whether either Feeder Fund qualifies as a RIC that is taxable under subchapter M, part I of the Code, or whether the transaction involving the transfers from the Feeder Funds is part of a plan to achieve diversification without recognition of gain under section 1.351-1(c)(5). Furthermore, we express no opinion as to the consequences of other transfers to Trust, either as to whether such other transfers would be "transfers to an investment company" or whether such other transfers would, when taken together with the transfers by the Feeder Funds , cause those transfers to be considered "transfers to an investment company," except for transfers solely of cash and/or a diversified portfolio of stocks and securities.

Rulings four and five are limited to allocations of gain or loss from the sale or other disposition of qualified financial assets made under section 704(b), section 704(c)(1)(A), and section 1.704-3(a)(6). Specifically, no opinion is expressed concerning (i) allocations of items other than items of gain or loss from the sale or other disposition of qualified financial assets, or (ii) the aggregation of built-in gains and losses from qualified financial assets contributed to Trust by any partner other than the Feeder Funds and future new partners that qualify as Qualified Contributors. In addition, Trust must maintain sufficient records to enable it and its partners to comply with sections 704(c)(1)(B) and 737.

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 will be sent to your authorized representative.

Sincerely,
/s/Matthew Lay
Assistant to the Branch Chief, Branch 1
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):
Copy of this letter
Copy for § 6110 purposes