Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:2-PLR-116192-03
Date:
June 24, 2003

A =

B =
P1 =

P2 =

P3 =

P4 =

P5 =

P6 =

Dear :

This responds to a letter dated December 3, 2002, and subsequent correspondence, submitted on behalf of P2, requesting rulings concerning the federal income tax consequences of the transactions described below.

Facts

According to the information submitted, for various business reasons, six partnerships, P1, P2, P3, P4, P5, and P6 will consolidate into a single limited liability company that will be treated as partnership for federal income tax purposes by undertaking the following transactions. First, P1, P2, P3, P4, P5, and P6 will each contribute all of their assets and liabilities to a newly formed limited liability company (LLC) in exchange for an interest in LLC. Each partnership will receive a capital interest in LLC equal to the fair market value (net of liabilities) of the property contributed by that partnership. Following its contribution of assets and liabilities to LLC, each partnership will liquidate and distribute its membership interests in LLC to its partners.

Each of the partnerships holds commercial real estate. P1, P3, P4, and P5 hold depreciable assets with a remaining basis. The assets of P1 and P6 have been fully depreciated and have an adjusted basis of zero. The assets of each partnership include certain depreciable property that was placed in service before 1981. A, B, and related persons own 100% of the six partnerships. A and B directly own more than 50% of P1, P2, P3, P4, and P5. A and B represent that P3 will contribute the assets having the greatest fair market value (net of liabilities) to LLC.

Law and Analysis

Section 708(b)(2)(A) of the Internal Revenue Code provides that in the case of a merger or consolidation of two or more partnerships, the resulting partnership shall, for purposes of § 708, be considered the continuation of any merging or consolidating partnership whose members own an interest of more than 50 percent in the capital and profits of the resulting partnership. Under § 1.708-1(c)(1), if the resulting partnership can be considered a continuation of more than one of the merging or consolidating partnerships, it shall, unless the Commissioner permits otherwise, be considered the continuation solely of that partnership which is credited with the contribution of assets having the greatest fair market value (net of liabilities) to the resulting partnership. Any other merging or consolidating partnerships shall be considered as terminated.

Section 1.708-1(c)(3)(i) provides that when two or more partnerships merge or consolidate into one partnership under the applicable jurisdictional law without undertaking a form for the merger or consolidation or undertake a form that is not described in § 1.708-1(c)(3)(ii), any merged or consolidated partnership that is considered terminated under § 1.708-1(c)(1) is treated as undertaking the assets-over form for Federal income tax purposes. Under the assets-over form, each merged or consolidated partnership that is considered terminated under § 1.708-1(c)(1) contributes all of its assets and liabilities to the resulting partnership in exchange for an interest in the resulting partnership, and immediately thereafter, the terminated partnership distributes interests in the resulting partnership to its partners in liquidation of the terminated partnership.

Because the members of more than one of the partnerships, including P3, will own an interest of more than 50 percent in the capital and profits of LLC, and because P3 is credited with the contribution of assets to LLC having the greatest fair market value (net of liabilities), LLC will be considered the continuation of P3. Accordingly, the transfer of assets from P3 to LLC will be disregarded and LLC will be treated as the historic owner of those assets. P1, P2, P4, P5, and P6 will be considered as having contributed all of their assets and liabilities to LLC in exchange for an interest in LLC. Thereafter, P1, P2, P4, P5, and P6 will be considered terminated and the partners in P1, P2, P4, P5, and P6 will be considered to have received interests in LLC in liquidation of these partnerships.

Generally, § 168 applies to depreciable, tangible property placed in service after December 31, 1986.

Section 168(f)(5)(A)(i) provides that § 168 does not apply to property described in § 168(e)(4) (as in effect before the amendments made by the Tax Reform Act of 1986).

Section 168(f)(5)(C) provides that, in the case of any property to which § 168 would apply but for § 168(f)(5), the depreciation deduction under § 167 is determined by the provisions of § 168 as in effect before the amendments made by § 201 of the Tax Reform Act of 1986.

Section 168(e)(4)(C), prior to the amendments made by the Tax Reform Act of 1986, provided, in part, that the term “recovery property” does not include property placed in service by the transferor or distributor before January 1, 1981, that is acquired by the taxpayer after December 31, 1980, in a transaction described in § 721 (among other Code sections) to the extent that the basis of the property is determined by reference to the basis of the property in the hands of the transferor or distributor. In the case of property to which §168(e)(4)(C) applies, rules similar to the rules described in § 381(c)(6) shall apply.

Section 381(c)(6) provides that the acquiring corporation is treated as the distributor or transferor corporation for purposes of computing the depreciation allowance under §§ 167 and 168 on property acquired in a distribution or transfer with respect to so much of the basis in the hands of the acquiring corporation as does not exceed the adjusted basis in the hands of the distributor or transferor corporation.

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 723 provides that the basis of property contributed to a partnership by a partner shall be the adjusted basis of such property to the contributing partner at the time of the contribution, increased by the amount (if any) of gain recognized under § 721(b).

Conclusions

Because LLC is considered to be the continuation of P3 under § 1.708-1(c)(1), the depreciation methods and useful lives of the property that was placed in service before January 1, 1981 by P3 and that will be transferred to LLC by P3 will be unaffected by the consolidation.

Under § 723, LLC will take a carryover basis in the properties contributed to LLC from P1, P2, P4, P5, and P6. Therefore, the properties that were placed in service by these partnerships before January 1, 1981, and that will be transferred to LLC by these partnerships, will be properties described in former § 168(e)(4)(C). Under § 168(f)(5), the provisions of former § 168(e)(4)(C) will apply. Accordingly, the depreciation deduction under § 167 applicable to the properties transferred to LLC by P2, P4, and P5 will be determined in accordance with the rules of § 381(c)(6). Consequently, the depreciation methods and useful lives of the property that was placed in service before January 1, 1981 by these partnerships will be unaffected by the consolidation.

Except as specifically ruled above, we express no opinion concerning the Federal tax consequences of the transactions described above under any other provision of the Code.

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

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to P2.

Sincerely yours,

MATTHEW LAY
Senior Technician Reviewer, Branch 2
Associate Chief Counsel
(Passthroughs and Special Industries)

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