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Date:
November 09, 2004

LEGEND

X =

Y =

State =

Dear :

This letter responds to a letter dated January 30, 2004, and subsequent correspondence by Y's authorized representative, requesting rulings under § 7704 of the Internal Revenue Code on behalf of X and Y. As requested in a letter dated October 7, 2004, from your authorized representative, this letter responds to rulings numbered 1, 3, 4, and 5 of X's original letter. Rulings numbered 2, 6, 7, and 8 are still under consideration by this office.

FACTS

According to the information submitted, X is a State limited liability company and the sole owner of Y (together referred to hereinafter as "Y"). Y is a licensed broker-dealer and operates two separate services -- the Qualifying Service and the NonQualifying Service (collectively "Services") -- that facilitate the buying and selling of third party partnership interests. Listings on the Qualifying Service are separate from listings on the NonQualifying Service. The same interests in a partnership will not be simultaneously listed on both the Qualifying Service and the NonQualifying Service.

The Qualifying Service operates in a manner designed to satisfy the qualified matching service requirements set forth in § 1.7704-1(g) of the Procedure and Administration Regulations. The NonQualifying Service fails to satisfy one or more of the requirements in § 1.7704-1(g).

The Services are not available to the public. In order to access one of the Services, a potential seller or buyer of a partnership interest must become a member by submitting a completed member application, be 21 years old or older, and be a "Qualified Client" as defined in Rule 205-3 of the Investment Advisors Act of 1940. The Services provide transfer services through Y's password protected website online and also offline.

Y represents that neither of the Services is: 1) a national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) (the '34 Act); 2) a national securities exchange exempt from registration under section 6 of the '34 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 '34 Act; (4) a regional or local exchange; (5) an interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers by electronic means or otherwise.

DESCRIPTION OF THE QUALIFYING SERVICE

A partner of a partnership may request that the Qualifying Service serve as a qualified matching service under § 1.7704-1(g) for transfers of partnership interests. The seller may list the interest on Y's Qualifying Service by having the interest listed on Y's website, or by having the interest listed offline. Based upon historical information, Y explains to the selling partner how the process works and what an estimated price range might be for the seller's interest. If the estimated price range is acceptable to the seller, then the seller will list the interest on the Qualifying Service, indicating the seller's acceptable price range to Y.

The Qualifying Service displays only quotes that do not commit any person to buy or sell an interest at a quoted price (nonfirm price quotes) or quotes that express an indication of interest in an interest without an accompanying price (nonbinding indications of interest), and does not display quotes at which any person is committed to buy or sell a partnership interest at the quoted price (firm quotes). No binding contract may be entered into until after the 15th calendar day after the date information regarding an offering of a partnership interest is made available to potential buyers. Such time period is evidenced by contemporaneous records maintained by the Qualifying Service at a central location. For listings on the Qualifying Service, Y also enters into its records the 45th day after the date of the initial entry, which is the earliest date that the closing for the sale of interests through the Qualifying Service will occur.

During the 15-day period following listing, members of Y have the opportunity to view the interests on the Qualifying Service, together with a nonbinding “asking price,” through Y’s website. These potential buyers may make nonbinding bids on the interests on the service. The selling partner has the opportunity to lower the asking price in order to obtain a price match. However, any price match will not become binding until after the 15th day. During this 15-day period, bidders may continue to make bids, including bids higher than the asking price. Accordingly, it is possible that an on-line auction could occur through Y’s website. In such case, the most favorable bid would become binding after the 15-day period.

In addition, both for interests that are listed on the website and for interests that are listed offline, Y may affirmatively contact potential buyers with information about interests listed on the Qualifying Service, soliciting bids that remain nonbinding until after the 15-day period has expired. During this process, Y conveys indications of interest from potential buyers to the seller, and then conveys to the potential buyer the response of the seller. This process continues until either the buyer or the seller terminates the negotiation or until a price match is obtained. In such case, the most favorable bid would become binding after the 15-day period has expired.

Subsequent to the 15th day after listing on the Qualifying Service, any existing price match through the bid-ask price on Y’s website that has not been withdrawn becomes binding. Similarly, in the case of negotiations conducted offline through personal contacts, any existing price match becomes binding on or after the 15th day.

If no match is found for listings on the Qualifying Service, the Qualifying Service will remove information specific to the potential seller from it on the 120th day after the waiting period commenced. The Qualifying Service 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 the date of the Waiting Period to prevent the potential seller from once again offering the interests for sale through the Qualifying Service during such 60-day period.

DESCRIPTION OF THE NONQUALIFYING SERVICE

The NonQualifying Service will execute transactions that do not satisfy the requirements set forth in § 1.7704-1(g). The NonQualifying Service will display only indications of interest that do not commit any person to buy or sell interests at the indicated price. Y undertakes to operate the NonQualifying Service in compliance with Example 2 of § 1.7704-1(j)(2). Contracts between buyer and seller are made only through personal contact and negotiation, and are intended to meet the requirements of § 1.7704-1(j).

RULINGS REQUESTED

X requests the following rulings:

- 1) The Qualifying Service and the NonQualifying Service are not established securities markets for the purpose of § 7704 and § 1.7704-1(b).
- 2) The Qualifying Service meets the requirements to be a qualified matching service under § 1.7704-1(g).
- 3) A partnership whose interests are displayed or offered for purchase or sale on the Services will not be considered to be publicly traded solely by reason of being offered for purchase or sale and/or sold through the Services.
- 4) Other matching services which otherwise qualify as qualified matching services will not be disqualified as qualified matching services solely by listing interests on the NonQualifying Service as long as all of the requirements for a qualified matching service continue to be satisfied by and through that qualified matching service.

LAW AND ANALYSIS

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

Section 7704(b) provides that for purposes of § 7704, the term “publicly traded partnership” means any partnership if (1) interests in such partnership are traded on an established securities market, or (2) interests in such partnerships are readily tradable on a secondary market (or the substantial equivalent thereof).

Section 1.7704-1(b) provides, in part, that for purposes of § 7704(b) and § 1.7704-1, an established securities market includes (1) a national securities exchange registered under section 6 of the '34 Act; (2) a national securities exchange exempt from registration under section 6 of the '34 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 '34 Act; (4) a regional or local exchange; (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 § 7704(b) and § 1.7704-1, 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 the 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 § 1.7704-1(c)(2).

Sections 1.7704-1 allows 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. One of these safe harbors is a qualified matching service under § 1.7704-1(g).

Section 1.7704-1(g)(1) provides that for purposes of § 7704(b) and § 1.7704-1, the transfer of an interest in a partnership through a qualified matching service is disregarded in determining whether interests in the partnership are readily tradable on a secondary market or the substantial equivalent thereof.

Section 1.7704-1(g)(2) provides that a matching service is a qualified matching service only if (i) the matching service consists of a computerized or printed listing system that lists customers' bid and/or ask quotes in order to match partners who want to sell their interests in a partnership (the selling partner) with persons who want to buy those interests; (ii) matching occurs either by matching the list of interested buyers with the list of interested sellers or through a bid and ask process that allows interested buyers to bid on the listed interest; (iii) the selling partner cannot enter into a binding agreement to sell the interest until the 15th calendar day after the date information regarding the offering of the interest for sale is made available to potential buyers and such time period is evidenced by contemporaneous records ordinarily maintained by the operator at a central location; (iv) the closing of the sale effected by virtue of the matching service does not occur prior to the 45th calendar day after the date information regarding the offering of the interest for sale is made available to potential buyers and such time period is evidenced by contemporaneous records ordinarily maintained by the operator at a central location; (v) the matching service displays only quotes that do not commit any person to buy or sell a partnership interest at the quoted price (nonfirm price quotes) or quotes that express interest in partnership interest without an accompanying price (nonbinding indications of interest) and does not display quotes at which any person is committed to buy or sell a partnership interest at the

quoted price (firm quotes); (vi) the selling partner's information is removed from the matching service within 120 calendar days after the date information regarding the offering of the interest for sale is made available to potential buyers and, following any removal (other than removal by reason of a sale of any part of such interest) of the selling partner's information from the matching service, no offer to sell an interest in the partnership is entered into the matching service by the selling partner for at least 60 calendar days; and (vii) 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.

Section 1.7704-1(g)(4) provides that a qualified matching service may be sponsored or operated by a partner of the partnership (either formally or informally), the underwriter that handled the issuance of the partnership interests, or an unrelated third party. In addition, a qualified matching service may offer the following features -- (i) the matching service may provide prior pricing information, including information regarding resales of interests and actual prices paid for interests; a description of the business of the partnership; financial and reporting information from the partnership's financial statements and reports; and information regarding material events involving the partnership, including special distributions, capital distributions, and refinancings or sales of significant portions of partnership assets; (ii) the operator may assist with the transfer documentation necessary to transfer the partnership interest; (iii) the operator may receive and deliver funds for completed transactions; and (iv) the operator's fee may consist of a flat fee for use of the service, a fee or commission based on completed transactions, or any combination thereof.

Section 1.7704-1(j) provides a safe harbor for partnerships that have a lack of actual trading. Section 1.7704-1(j) provides that interests in a partnership are not readily tradable on a secondary market or the substantial equivalent thereof if the sum of the percentage interests in partnership capital or profits transferred during the taxable year of the partnership (other than in transfers described in § 1.7704-1(e), (f), or (g)) does not exceed 2 percent of the total interests in partnership capital or profits.

CONCLUSIONS

Accordingly, based solely on the submitted facts and representations, we rule as follows:

- 1) The Qualifying Service and the NonQualifying Service are not established securities markets under § 1.7704-1(b).
- 2) The Qualifying Service meets the requirements to be a qualified matching service under § 1.7704-1(g).

3) A partnership whose interests are displayed or offered for purchase or sale on the Services will not be considered to be publicly traded solely by reason of being offered for purchase or sale and/or sold through the Services and may rely on this ruling provided (a) it is not revoked, (b) with respect to the Qualifying Service, that the sum of the partnership interests transferred during the taxable year of the partnership (other than through private transfers described in § 1.7704-1(e)) does not exceed 10 percent of the total interests in partnership capital or profits determined as provided in § 1.7704-1(k), and with respect to the NonQualifying Service, the sum of the partnership interests transferred during the taxable year of each partnership (other than in transfers described in § 1.7704-1(e), (f), or (g)) does not exceed 2 percent of the total interests in partnership capital or profits determined as provided in § 1.7704-1(k), and (c) the Services continue to operate in a manner consistent with the facts as represented. Maintenance of information required to permit a partnership to make the calculations, and the actual making of the calculations, relating to qualification for any applicable safe harbor in § 1.7704-1 will be the sole responsibility of the partnerships whose interests are traded and not the responsibility of Y.

4) Although the NonQualifying Service does not meet the requirements to be a qualified matching service under § 1.7704-1(g), other matching services eligible for participation in the NonQualifying Service may utilize it to list nonfirm prices and unpriced indications of interest without disqualifying themselves as a qualified matching service, provided they otherwise meet all requirements for a qualified matching service under § 1.7704-1(g). Compliance with the requirements for a qualified matching service will be the sole responsibility of the matching service, and not Y.

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

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to Y's authorized representative.

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,

/s/

James A. Quinn
Senior Counsel, Branch 3
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes