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Person To Contact:
, ID No.

Telephone Number:

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Date:
January 08, 2013

Legend

X =

Y =

Crop =

State =

a =

b =

Date1 =

Year1 =

Dear :

This letter responds to a letter, dated September 5, 2012, submitted on behalf of X by X's authorized representative, requesting a ruling under § 7704(g)(2) of the Internal Revenue Code.

FACTS

According to the information submitted, X is a publicly traded partnership within the meaning of § 7704(b). X is an electing 1987 partnership under § 7704(g). Y holds a a% general partner interest in X and serves as Managing Partner.

X is engaged in the business of acquiring, owning, managing, operating, developing, leasing, and disposing of Crop orchard properties, and processing and marketing Crop production from its orchards. X's orchards are located in State.

X currently engages in the planting of orchards, the cultivation of Crop trees, the harvesting of Crop, and husking, sorting and transporting wet-in-shell Crop to a buyer who dries, cracks, and shells Crop in order to produce bulk kernels. Wet-in-shell Crop will deteriorate and spoil if not dried and cracked within a limited amount of time. Crop cannot be transported from State until Crop is dried. Consequently, X can currently only market Crop to buyers within State.

X represents that all other majors growers of Crop in Location process their harvest into bulk kernel. X intends to undertake the drying, cracking, and shelling of Crop and will produce and market bulk kernels to non-retail buyers in packages of at least b pounds.

Drying, cracking, and shelling are the last steps necessary to transform Crop into an edible product. Under U.S. Customs Service regulations, shelling is not viewed as a process that substantially alters or transforms Crop. Similarly, X's pre-existing business of husking harvested Crop is classified under the same SIC and NAICS codes as drying, shelling, and selling bulk kernels to an intermediary user.

X requests a ruling that the drying and shelling process and the sale of the resulting bulk kernels are activities closely related to a pre-existing business of X, and therefore not the addition of a new line of business within the meaning of § 7704(g)(2).

LAW AND ANALYSIS

Section 7704(a) provides that, except as provided in § 7704(c), a publicly traded partnership will be treated as a corporation.

Section 7704(b) provides that the term "publicly traded partnership" means any partnership if (1) interests in that partnership are traded on an established securities market, or (2) interests in that partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

Section 7704(g)(1) provides that § 7704(a) shall not apply to an electing 1987 partnership. An electing 1987 partnership is any publicly traded partnership that was an "existing partnership" as defined in Section 1021(c)(2) of the Revenue Reconciliation Act of 1987 that elects to be treated as a partnership and agrees to pay the tax imposed by § 7704(g)(3).

Section 7704(g) also provides that an electing 1987 partnership shall cease be treated as a partnership as of the first day after December 31, 1997, on which there has been an addition of a substantial new line of business.

Section 1.7704-2(b)(1) provides, in relevant part, that the term "existing partnership" means any partnership if the partnership was a publicly traded partnership (within the

meaning of § 7704(b)(1)) on December 17, 1987, or a registration statement indicating that the partnership was to be a publicly traded partnership was filed with the Securities and Exchange Commission with respect to the partnership on or before December 17, 1987.

Section 1.7704-2(b)(2) provides that a partnership will not qualify as an existing partnership after a new line of business is substantial.

Section 1.7704-2(c) provides that a new line of business is substantial as of the earlier of (i) the taxable year in which the partnership derives more than 15 percent of its gross income from that line of business, or (ii) the taxable year in which the partnership directly uses in that line of business more than 15 percent (by value) of its total assets.

Section 1.7704-2(d)(1) provides that a new line of business is any business activity of the partnership not closely related to a pre-existing business of the partnership to the extent that the activity generates income other than "qualifying income" within the meaning of § 7704 and the regulations thereunder.

Section 1.7704-2(d)(2) provides, in relevant part, that a business activity is a pre-existing business of the partnership if the partnership was actively engaged in the activity on or before December 17, 1987.

Section 1.7704-2(d)(3) provides that all of the facts and circumstances will determine whether a new business activity is closely related to a pre-existing business of the partnership. The following factors, among others, will help to establish that a new business activity is closely related to a pre-existing business of the partnership and therefore is not a new line of business.

i. The activity provides products or services very similar to the products or services provided by the pre-existing business.

ii. The activity markets products and services to the same class of customers as that of the pre-existing business.

iii. The activity is of a type that is normally conducted in the same business location as the pre-existing business.

iv. The activity requires the use of similar operating assets of those used in the pre-existing business.

v. The activity's economic success depends on the success of the pre-existing business.

vi. The activity is of a type that would normally be treated as a unit with the pre-existing business in the business' accounting records.

vii. If the activity and the pre-existing business are regulated or licensed, they are regulated or licensed by the same or similar governmental authority.

viii. The United States Bureau of the Census assigns the activity the same four-digit Industry Number Standard Identification Code as the pre-existing business.

CONCLUSION

Accordingly, based solely on the facts submitted and the representations made, we conclude that the drying, cracking, and shelling of Crop and the sale of bulk kernels in packages of at least b pounds are activities closely related to a pre-existing business of X and will not constitute a new line of business within the meaning of § 7704(g)(2).

Except as specifically set forth above, no opinion is expressed or implied as to the federal income tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X is a partnership for federal tax purposes. Furthermore, this ruling does not cover (1) sales of Crop in amounts less than b pounds; (2) retail sales of Crop; or (3) roasting, salting, flavoring, or other further processing and packaging of Crop.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

David R. Haglund
David R. Haglund
Branch Chief, Branch 1
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: