Internal Revenue Service

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Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.
Telephone Number:

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Date:
June 18, 2015

Legend

Company A =

Company B =

Company C =

Company D =

Operating Agreement =

State =

Dear :

This letter is in response to a request for a ruling, submitted on your behalf by your authorized representative on April 14, 2014, as supplemented by letters submitted on January 12, 2015, and June 11, 2015, concerning whether the unit shares of Company A constitute employer securities within the meaning of section 409(l)(2) of the Internal Revenue Code ("Code"). The following facts and representations have been submitted under penalty of perjury in support of the requested ruling:

Company B was incorporated under the laws of State in 1960 and elected, in accordance with section 1362, to be to be taxed as an S corporation for federal income tax purposes effective January 1, 1991. In December 1994, Company A, a limited liability company (LLC), was formed under State law and Company B merged into Company A with Company A surviving the merger under state law. Company A represents that the merger qualified as a reorganization under section 368(a)(1)(F). For federal tax purposes, Company A represents that it is classified as an association and has a valid S corporation election.

In 1973, Company B founded Company C as an expansion of one of its divisions. Company C was organized as a partnership between Company B and Company D on January 1, 1991, with Company D owning one unit share of Company C. In 1998, Company C, in a state law merger, converted from a partnership to a limited liability company taxable as a partnership for federal income tax purposes.

On December 29, 2014, the following events occurred, effective January 1, 2015: Company C elected to change its status from a limited liability company taxable as a partnership for federal income tax purposes to an association taxable as a corporation; Company A (the successor to Company B) purchased from Company D its one unit share of Company C; and Company A elected to treat Company C as a qualified subchapter S subsidiary (Q sub) under section 1361(b)(3).

Under section 2.1 of the Operating Agreement, ownership interest in Company A is represented by unit shares (“Unit Shares”). The Operating Agreement provides in section 2.4 that all profits and losses of Company A shall be allocated among the shareholders in proportion to the number of Unit Shares owned by them, and that all dividends shall be paid to shareholders in proportion to the number of Unit Shares owned by each shareholder.

Company A made the following representations in a letter dated June 11, 2015:
The Operating Agreement provides that all Unit Shares confer identical rights to distributions, dividends and liquidation proceeds, and will be amended to provide that all Unit Shares have the same voting rights and otherwise meet the requirements of section 409(l)(2). Company A further represented that it has no authorized, issued, or outstanding employer securities that are readily tradable on an established securities market within the meaning of section 409(l)(1).

Company A intends to adopt an employee stock ownership plan as described in section 4975(e)(7) (“ESOP”). Company A intends that employees of Company A and Company C will be eligible to participate in the ESOP.

Based on the above facts and representations, Company A requested a ruling that the Unit Shares of Company A are employer securities as described in section 409(l)(2) for the purposes of section 4975(e)(7).

Section 4975(e)(7) defines an ESOP as a defined contribution plan which is a stock bonus plan which is qualified, or a stock bonus and a money purchase plan both of which are qualified under section 401(a), and which are designed to invest primarily in qualifying employer securities; and which is otherwise defined in regulations prescribed by the Secretary.

Section 4975(e)(8) defines the term “qualifying employer security” as any employer security within the meaning of section 409(l).

Section 409(l)(1) generally defines “employer securities” as common stock issued by the employer (or by a corporation which is a member of the same controlled group) which is readily tradable on an established securities market. Where there is no readily tradable common stock within the meaning of section 409(l)(1), section 409(l)(2) states that the term “employer securities” means common stock issued by the employer (or by a corporation which is a member of the same controlled group) having a combination of voting power and dividend rights equal to or in excess of (A) that class of common stock of the employer (or of any other such corporation) having the greatest voting power, and (B) that class of common stock of the employer (or of any other such corporation) having the greatest dividend rights.

Section 7701(a) provides definitions of certain terms as they are used in the Code, where not otherwise distinctly expressed or manifestly incompatible with the intent of the Code section in which the term is used.

Section 7701(a)(3) states in pertinent part that the term “corporation” includes associations.

Section 7701(a)(7) states in pertinent part that the term “stock” includes shares in an association.

Company A represented that it has no employer securities within the meaning of section 409(l)(1). Therefore, the special rule of section 409(l)(2) becomes applicable. Company A is classified as an association for federal income tax purposes and, therefore, Unit Shares in Company A are treated as shares of stock. Company A represented that the Operating Agreement provides that all Unit Shares have identical dividend rights and, after it is amended, that it will provide that all Unit Shares have identical voting rights and otherwise meet the requirements of section 409(l)(2).

Accordingly, based on the facts and representations submitted by Company A, we conclude with respect to the requested ruling that the Unit Shares of Company A are

employer securities as described in section 409(l)(2) for the purposes of section 4975(e)(7).

This letter ruling is based on the assumption that the Operating Agreement will be amended to provide that all Unit Shares have the same voting rights and otherwise conform with the requirements of section 409(l)(2).

This letter 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.

The information contained in this letter ruling is based on the information and representations submitted by your authorized representative on your behalf and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the proposed transaction under any other provision of the Code or regulations.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to each of your authorized representatives.

Sincerely,

John T. Ricotta
Chief, Qualified Plans Branch 3
(Tax Exempt & Government Entities)

cc: