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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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PLR-100166-20

Date:
June 29, 2020

LEGEND

Taxpayer =
State =
Partnership =

Dear :

This is in response to your letter dated November 27, 2019, requesting that certain interests in partnerships be considered “similar evidence of interest in a similar pooled fund” within the meaning of section 1.163-5T(d)(1) of the Temporary Income Tax Regulations and that, if the requirements of section 5f.103-1(c)(1) are satisfied, those interests in partnerships be considered obligations in registered form.

FACTS

Taxpayer is an entity formed under the laws of State and treated as a partnership for federal income tax purposes. Taxpayer uses the calendar year as its accounting period for federal income tax purposes and the accrual method as its overall method of accounting. Partnership is an entity formed under the laws of State and treated as a partnership for federal income tax purposes. Taxpayer is treated for federal income tax purposes as directly owning a capital interest in Partnership.

Taxpayer is a holding company owned in part by a family of investment funds, some of which are not United States persons within the meaning of section 7701(a)(30) of the Internal Revenue Code (the “Code”). These investment funds will make capital

contributions to Taxpayer, and Taxpayer will invest all such contributions, net of expenses and reserves, into Partnership. Taxpayer principally holds its interest in Partnership and may, in the future, hold interests in other entities that are treated for federal income tax purposes as partnerships or disregarded entities and that principally hold debt instruments. Partnership will use the amounts received as capital contributions from Taxpayer to acquire beneficial interests in certain loans, including but not limited to residential mortgage loans and structured loans collateralized by certain leases and other types of receivables (the "Underlying Loans"). Some of the Underlying Loans will not be in registered form within the meaning of section 5f.103-1(c). Partnership may hold the Underlying Loans directly or through one or more entities disregarded for federal income tax purposes. Partnership will principally hold debt instruments and beneficial interests in debt instruments.

Taxpayer represents that all interests in Taxpayer and Partnership will be transferable only pursuant to procedures described in section 5f.103-1(c). Specifically, the right to receive distributions of principal and interest on the assets held by the Taxpayer or Partnership will be transferable only through a book entry system maintained by each entity in accordance with the requirements of section 5f.103-1(c)(2).

Taxpayer's business reasons for the transaction include providing investors in the Taxpayer with a return on investment that is above-market on a risk-adjusted basis. Taxpayer represents that neither Taxpayer nor Partnership operates in a manner that will cause either entity to be engaged in the conduct of a trade or business in the United States within the meaning of section 871(b) or section 882(a)(1).

LAW AND ANALYSIS

Section 163(f)(1) disallows a deduction for interest on any registration-required obligation unless the obligation is in registered form. Section 163(f)(2) defines the term "registration-required obligation" as any obligation (including any obligation issued by a governmental entity) other than an obligation which (i) is issued by a natural person, (ii) is not of a type offered to the public, or (iii) has a maturity (at issue) of not more than one year.

Section 1.163-5T(d)(1) provides that a pass-through or participation certificate evidencing an interest in a pool of mortgage loans which under Subpart E of Subchapter J of the Code is treated as a trust of which the grantor is the owner (or similar evidence of interest in a similar pooled fund or pooled trust treated as a grantor trust) ("pass-through certificate"), is considered to be a "registration-required obligation" under section 163(f)(2)(A) and section 1.163-5(c) if the pass-through certificate is described in section 163(f)(2)(A) and section 1.163-5(c) without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates is described in section 163(f)(2)(A) and section 1.163-5(c).

Section 1.871-14(a) of the Income Tax Regulations provides that no tax shall be imposed under section 871(a)(1)(A), 871(a)(1)(C), 881(a)(1), or 881(a)(3) on any portfolio interest as defined in sections 871(h)(2) and 881(c)(2) received by a foreign person. Under sections 871(h)(2) and 881(c)(2), interest must be paid on an obligation that is in registered form to qualify as portfolio interest. The term “registered form” has the same meaning given such term by section 163(f). Sections 871(h)(7) and 881(c)(7). Section 1.871-14(c)(1)(i) provides that the conditions for an obligation to be considered in registered form are identical to the conditions described in section 5f.103-1.

Section 1.871-14(d)(1) provides in part that interest received on a pass-through certificate qualifies as portfolio interest if the interest satisfies the conditions in section 1.871-14(c)(1) without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates is described in section 1.871-14(c)(1)(ii). This paragraph only applies to payments made to the holder of the pass-through certificate from the trustee of the pass-through trust and does not apply to payments made to the trustee of the pass-through trust.

Section 5f.103-1(c)(1) provides generally that an obligation is in registered form if (i) the obligation is registered as to both principal and any stated interest with the issuer (or its agent) and transfer of the obligation may be effected only by surrender of the old instrument and either the reissuance by the issuer of the old instrument to the new holder or the issuance by the issuer of a new instrument to the new holder, (ii) the right to the principal of, and stated interest on, the obligation may be transferred only through a book entry system maintained by the issuer (or its agent) as described in section 5f.103-1(c)(2), or (iii) the obligation is registered as to both principal and stated interest with the issuer (or its agent) and may be transferred through both of the methods described in (i) and (ii) above.

Section 5f.103-1(c)(2) provides that an obligation will be considered transferable through a book entry system if the ownership of an interest in the obligation is required to be reflected in a book entry, whether or not physical securities are issued. A book entry is a record of ownership that identifies the owner of an interest in the obligation.

Neither Taxpayer nor Partnership is a trust that is treated as a grantor trust. However, Taxpayer and Partnership are both entities treated as partnerships for federal income tax purposes. Taxpayer principally holds its interest in Partnership, and Partnership principally holds the Underlying Loans, which are a pool of debt instruments and beneficial interests in debt instruments. Taxpayer represents that Taxpayer and Partnership will each maintain a book entry system in accordance with section 5f.103-1(c)(2) and that the right to receive distributions from each entity with respect to principal and interest on the Underlying Loans will be transferable only through such book entry system.

CONCLUSION

We conclude that the interests in both Taxpayer and Partnership are “similar evidence of interest in a similar pooled fund” within the meaning of section 1.163-5T(d)(1) and that, if the requirements of section 5f.103-1(c)(1) are satisfied, the interests in Taxpayer and Partnership will be considered obligations in registered form.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer 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 rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed or implied regarding whether any payment of interest on the interests in Taxpayer or Partnership will qualify as portfolio interest for purposes of sections 871 and 881. Furthermore, no opinion is expressed or implied as to whether Taxpayer or Partnership is engaged in a trade or business within the United States or whether any payment of interest is effectively connected with that trade or business.

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,

Spence Hanemann
Senior Counsel, Branch 1
Office of the Associate Chief Counsel
(Financial Institutions and Products)

Enclosure:
Copy for section 6110 purposes

cc: