Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Date:
December 20, 1999

Re:

Partnership 1=

Partnership 2=

Partnership 3=

General Partner =

Corporation A =

Corporation B =

Corporation C =

Corporation D =

Corporation E =

Corporation F =

Corporation G =

Corporation H =

New LLC =

Target =

Transferee =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

Business Y =

State X =

Dear :

This letter is in reply to your request for rulings, dated August 4, 1999, on a proposed transaction. Additional information was submitted in letters dated October 28, and December 3, 1999. The information submitted for consideration is summarized below.

Summary of Facts

Partnership 1 is a limited partnership organized under State X law, and is a publicly traded partnership within the meaning of § 7704(b). Partnership 1 qualifies for the exception to § 7704(a), and is taxed as a partnership for federal income tax purposes. Partnership 1 is engaged in Business Y.

General Partner and Corporation A are the general partners of Partnership 1. General Partner, a limited partnership and the managing general partner of Partnership 1, owns a a percent interest in Partnership 1. Corporation A is the special general partner of Partnership 1 with a b percent interest. The remaining interests in

Partnership 1 are limited partner interests representing an aggregate c interest, of which approximately d percent are common units that are publicly traded on the New York Stock Exchange and e percent are subordinated units that are held by Corporation A indirectly and by the principal owners of General Partner. Corporation A's wholly owned subsidiary, Corporation B, is a limited partner of Partnership 1 with an f percent interest.

Partnership 1 has two wholly-owned subsidiaries, Corporation C and Corporation D. Corporation C has two wholly-owned subsidiaries, Corporation E and Corporation F. Partnership 1 is in the process of acquiring Target, a closely held unrelated corporation. In the acquisition, Partnership 1 will form a new corporation, Corporation G, Target will merge into Corporation G, and Partnership 1 will contribute Corporation G to Corporation C. Partnership 1 expects to complete the acquisition and drop down of Corporation G before the proposed transaction described below occurs.

Partnership 1 also owns interests in two "subsidiary" limited partnerships, Partnership 2 and Partnership 3. Partnership 1 is the limited partner of Partnership 2, and General Partner is the general partner. Partnership 1, Corporation E, and Corporation F, are the limited partners of Partnership 3, and General Partner is the general partner. The assets of Partnership 1 consist primarily of its interests in these subsidiary partnerships and corporations.

Partnership 2 is a limited partnership. Partnership 1 owns a g percent limited partner interest in Partnership 2, and General Partner owns an h percent managing general partner interest.

Partnership 3 is a limited partnership. General Partner is the managing general partner and owns an h percent interest. The limited partner interests in Partnership 3 are owned as follows: Partnership 1, i percent; Corporation E, j percent and Corporation F, k percent.

Partnership 1 believes the equity market for a real estate investment trust (REIT) is more favorable than for a publicly traded partnership. Partnership 1 proposes to transfer all its assets that a REIT is eligible to own to a new corporation that will elect to be treated as a REIT under § 856 of the Code. After the transaction, the new REIT will seriously consider undertaking a public offering of its stock to raise additional capital (the "Offering"). If the Offering occurs, the stock in the REIT will be issued solely in exchange for cash.

Partnership 1 and General Partner engage indirectly through their affiliates in Business Y. The taxpayers have submitted evidence showing that Partnership1 and General Partner own, manage and operate (through their affiliates) properties located in several geographic regions in the U.S. containing many different types of assets, the varying products of which are sold to a diverse group of customers in both domestic

and world markets.

For what has been represented to be valid business purposes, Partnership 1 and Transferee propose the following transaction:

1. Partnership 1 will redeem the common units and subordinated units owned by certain holders who do not want stock in Transferee in exchange for Partnership 3 limited partner interests.

2. Partnership 3 will redeem the limited partner interests owned by Corporation E and Corporation F with assets previously contributed by each of them. Corporation E and Corporation F will reassume acquisition debt previously assumed by Partnership 3 as part of their admission as partners in Partnership 3.

3. Partnership 1 will contribute all of its stock in Corporation D and Corporation C and all of its interests in Partnership 2 to Partnership 3 in exchange for additional Partnership 3 limited partner interests.

4. General Partner will form New LLC, a newly organized limited liability company (LLC). General Partner will contribute its interest in Partnership 2 to New LLC in exchange for all of the LLC interests. New LLC will not elect to be treated as a corporation for federal income tax purposes.

5. Partnership 3 will contribute its stock in Corporation D and Corporation C, its interest in Partnership 2, and all of its other assets that a REIT is not eligible to own to a newly organized corporation, Corporation H, in exchange for 100 percent of Corporation H's nonvoting stock. General Partner will contribute its interest in New LLC to Corporation H in exchange for 100 percent of the voting stock of Corporation H.

6. General Partner will form a new corporation, Transferee. General Partner will contribute all of its interest in Partnership 1 to Transferee in exchange for voting common stock of Transferee and for Transferee's assumption of General Partner's share of Partnership 1's liabilities. Transferee will elect to be treated as a REIT under § 856 of the Code.

7. Partnership 1 will transfer all of its assets, primarily Partnership 3 limited partner interests, to Transferee in exchange for Transferee voting common stock of a different class than that issued to General Partner and for Transferee's assumption of Partnership 1's liabilities. The value of any marketable securities and money exchanged by Partnership 1 is less than 20 percent of the value of all the assets exchanged by Partnership 1 in the proposed transaction. Partnership 1 will dissolve and distribute to its partners all Transferee stock in liquidation of

their Partnership 1 interests. Partnership 1 will distribute the Transferee stock to the Partnership 1 partners within 5 years of the date Partnership 1 acquires the stock.

8. Transferee's interest in Partnership 3 will be converted to a general partner interest and General Partner's interest in Partnership 3 will be converted to a limited partner interest.

Representations

The following representations have been made concerning the Transaction:

(a) No stock or securities will be issued for services rendered to or for the benefit of Transferee in connection with the proposed transaction.

(b) No stock or securities will be issued for indebtedness of Transferee or for interest on indebtedness of Transferee.

(c) No income items, patents or patent applications, copyrights, franchises, trademarks or tradenames, or technical "know how" will be directly or indirectly transferred to Transferee.

(d) None of the stock to be indirectly transferred to Transferee in the transaction is "section 306" stock within the meaning of section 306(c) of the Code.

(e) The transfers of property to Transferee are not the result of the solicitation by a promoter, broker, or investment house.

(f) General Partner and Partnership 1 will not retain any rights in the property transferred to the Transferee.

(g) No stock of Transferee is being exchanged for accounts receivable.

(h) The adjusted basis and fair market value of the assets to be transferred by General Partner and Partnership 1 to Transferee will, in each instance, be equal to or exceed the sum of the liabilities to be assumed by Transferee plus any liabilities to which the transferred assets are subject.

(i) The liabilities of General Partner and Partnership 1 to be assumed by the Transferee were incurred in the ordinary course of business and are associated with the assets to be transferred.

(j) There is no indebtedness between Transferee and General Partner and Partnership 1, and there will be no indebtedness created in favor of General Partner and Partnership 1 as a result of the Transaction.

(k) No stock of another corporation will be directly transferred to Transferee.

(l) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.

(m) All exchanges will occur on approximately the same date.

(n) There is no plan or intention on the part of Transferee to redeem or otherwise reacquire any stock to be issued in the transaction.

(o) Taking into account any issuance of additional shares of Transferee stock, any issuance of stock for services, the exercise of any Transferee stock rights, warrants, or subscriptions, a public offering of Transferee's stock, and the sale, exchange, transfer by gift, or other disposition of the stock of Transferee to be received in the exchange, the transferors (including for this purpose the partners of Partnership 1 and, if the Offering is integrated with the Transaction, the purchasers of Transferee stock) will be in "control" of Transferee within the meaning of section 368(c) of the Code.

(p) General Partner and Partnership 1 will each receive stock approximately equal to the fair market value of the property transferred to the Transferee by it.

(q) Transferee will remain in existence and will retain and use the property transferred to it in a trade or business through Partnership 3 and its affiliates.

(r) There is no plan or intention by Transferee to dispose of the transferred property other than in the normal course of business operations.

(s) Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the proposed transaction.

(t) General Partner and Partnership 1 are not under the jurisdiction of a court in a title 11 or similar case (within the meaning of Section 368(a)(3)(A)) of the Code and the stock of securities deemed

received in the exchange will not be used to satisfy the indebtedness of General Partner and Partnership 1.

(u) Transferee will not be a “personal service corporation” within the meaning of Section 269A of the Code.

Partnership Termination Law and Analysis

Section 708(b)(1)(A) and § 1.708-1(b)(1) of the Income Tax Regulations provide that a partnership shall terminate when the operations of the partnership are discontinued and no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership.

Section 731(a) provides that, in the case of a distribution by a partnership to a partner, gain is not recognized by the partner except to the extent that any money distributed exceeds the adjusted basis of the partner's interest in the partnership immediately before the distribution.

Section 731(c)(1)(A) provides that for purposes of § 731(a)(1) the term "money" includes marketable securities.

Section 731(c)(2)(B)(v) provides that, except as otherwise provided in regulations, the term "marketable securities" includes interests in any entity if substantially all the assets of the entity consist (directly or indirectly) of marketable securities, money, or both.

Section 1.731-2(d)(1)(ii) provides that, in general, § 731(c) does not apply to the distribution of a marketable security if the security was acquired by the partnership in a nonrecognition transaction, and the following conditions are satisfied: (A) the value of any marketable securities and money exchanged by the partnership in the nonrecognition transaction is less than 20 percent of the value of all the assets exchanged by the partnership in the nonrecognition transaction; and (B) the partnership distributed the security within five years of either the date the security was acquired by the partnership or, if later, the date the security became marketable.

Section 752(b) provides that any decrease in a partner’s share of the liabilities of a partnership shall be considered as a distribution of money to the partners by the partnership.

Section 733(1) provides that in the case of a distribution by a partnership to a partner other than in liquidation of a partner’s interest, the adjusted basis to such partner of his interest in the partnership shall be reduced (but not below zero) by the amount of any money distributed to such partner.

Section 732(b) provides that the basis of property (other than money) distributed by a partnership to a partner in liquidation of the partner's interest shall be an amount equal to the adjusted basis of the partner's interest in the partnership, reduced by any money distributed in the same transaction.

Section 735(b) provides that, in determining the period for which a partner has held property received in a distribution from a partnership (other than for purposes of § 735(a)(2)), there shall be included the holding period of the partnership, as determined under § 1223, with respect to the property.

Rulings

Based on the information submitted and the representations made, we rule as follows:

1. For federal income tax purposes, General Partner and Partnership 1 will be treated as having transferred their interests, pursuant to § 351, in Partnership 3 to Transferee in exchange for Transferee shares and the assumption of liabilities followed, in the case of Partnership 1, by a distribution of Transferee shares in liquidation of Partnership 1's interests. Rev. Rul. 84-111, 1984-2 C.B. 88.

2. The assets held indirectly by General Partner and Partnership 1 represent a diversified portfolio of assets prior to the Transaction with the result that no diversification will result from the Transaction or any subsequent offering of stock within the meaning of § 1.351-1(c)(1)(i) and the transfer will not be considered a transfer to an "investment company" under § 351(e)(1) of the Code.

3. No gain or loss will be recognized by General Partner and Partnership 1, upon the transfer to Transferee of General Partner's and Partnership 1's assets even if such transfer is in connection with a public offering of Transferee stock, as described above. (sections 351(a) and 357(a)).

4. The basis of the Transferee stock received by General Partner and Partnership 1 will be the same as the basis of the property that General Partner and Partnership 1 transfer to Transferee in exchange therefor, reduced by the sum of liabilities assumed by Transferee or to which assets transferred were taken subject to. (Sections 358(a) and 358(d)).

5. General Partner's and Partnership 1 's holding period in the

Transferee shares received in the Transaction includes the period during which the assets transferred to Transferee were held by General Partner and Partnership 1, provided that such property was a capital asset or property described in § 1231 on the date of the transaction (section 1231).

6. Transferee will recognize no gain or loss upon its receipt of property from General Partner and Partnership 1 in exchange for its common stock in the transaction (section 1032(a)).

7. Transferee's basis in the property received from General Partner and Partnership 1 in the transaction will equal the basis of such property in the hands of General Partner and Partnership 1 immediately prior to the transaction (section 362(a)). Transferee's basis in the property received from Partnership 1 in the transaction will be determined with reference to any basis adjustment to the property under § 743(b).

8. Transferee's holding period in the property received from General Partner and Partnership 1 in the Transaction will include the period during which General Partner and Partnership 1 held such property. (Section 1223(2)).

9. Partnership 1 will terminate under § 708(b)(1)(A) when Partnership 1 transfers the Transferee stock to the Partnership 1 partners.

10. The distribution of Transferee stock to the partners of Partnership 1 will not, pursuant to §1.731-2(d)(1), be treated as a distribution of "money" under § 731(a), provided that the Transferee stock is distributed within five years of the date the Transferee stock is acquired by Partnership 1 pursuant to the proposed transaction. Accordingly, the limited partners and general partners of Partnership 1 will not recognize gain on the distribution to them of their pro-rata share of the Transferee stock.

11. Transferee's assumption of Partnership 1's liabilities immediately prior to the liquidation of Partnership 1 will be treated as a cash distribution to the partners of Partnership 1. Accordingly, the basis of each partner's partnership interest will be reduced under §§ 733(1) and 752(b). To the extent the money deemed distributed under § 752(b) exceeds the adjusted basis of a partner's interest in the partnership immediately prior to the distribution, this will result in gain to the partner.

12. Pursuant to § 732(b), the basis of Transferee stock received by the partners of Partnership 1 in liquidation of Partnership 1 will, with respect to each of the partners, equal the adjusted basis of such partner's interest in Partnership 1.

13. When Partnership 1 distributes the Transferee stock to the Partnership 1 partners, under § 735(b), the partners' holding periods will include Partnership 1's holding period of the stock, as determined under § 1223.

We express no opinion about the tax treatment of the transaction under any provisions of the Code or regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction not specifically covered by the above rulings. In particular, we express no opinion as to whether Transferee will qualify as a real estate investment trust under §§ 856-859, or to any other application of § 856 to the transaction.

This ruling letter has no effect on any earlier documents and 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.

A copy of this letter should be attached to the federal income tax returns of the taxpayers involved for the taxable year in which the transaction covered by this letter ruling is consummated.

In accordance with the power of attorney on file in this office, copies of this letter are being sent to the taxpayer and its other authorized representative.

Sincerely yours,
Assistant Chief Counsel (Corporate)
By: Mark S. Jennings
Acting Chief, Branch 1