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LEGEND

A =

State =

Date 1 =

Date 2 =

Dear :

This letter responds to a letter dated December 28, 2008 submitted by your authorized representative on behalf of A, requesting a ruling concerning the federal income tax consequences of the contribution of property to an existing partnership.

FACTS

According to the information submitted, A is a State limited liability company formed on Date 1 for the purpose of making investments in various stocks and securities. On Date 1, A had 13 original members consisting of trusts and other limited liability companies.

A was formed to lower investment costs and create greater investment opportunity for its members that would otherwise not be available to them as separate investors. A's portfolio includes currently publicly traded domestic and foreign common stocks and options representing numerous different companies and a broad range of sectors in the market. However, the LLC Agreement allows for A to acquire, hold, manage, sell, or otherwise dispose of various types of securities and investments.

On Date 2, A executed the First Amended and Restated Limited Liability Company Agreement (the "LLC Agreement") which reflected certain assignments by the original members to other entities (the original member and their assignees is each a "Founding Member" and collectively "Founding Members") and also admitted five new members which were comprised of four limited liability companies and one family foundation (each a "New Member" and collectively "New Members"). In coordination with the execution of the LLC Agreement, the New Members will make capital contributions to A in exchange for membership interests and certain Founding Members will make additional capital contributions to A in exchange for additional membership interests. With regard to the anticipated capital contributions of the New and Founding Members, A has represented the following:

1. The New and Founding Members will contribute solely cash and/or a diversified portfolio of stocks and securities to A.

2. There is no plan or intention for the New and Founding Members to transfer assets other than cash and/or a diversified portfolio of stocks and securities to A.

3. Any other transferor who has contributed or will contribute assets to A has contributed or will contribute solely cash and/or a diversified portfolio of stocks and securities to A.

For the purposes of these representations, a portfolio of stocks and securities is diversified if it satisfies the 25 and 50 percent tests of section 368(a)(2)(F)(ii) of the Internal Revenue Code, applying the relevant provisions of § 368(a)(2)(F), except that in applying § 368(a)(2)(F)(iv), government securities are included in determining total assets unless the government securities are acquired to meet the requirements of § 368(a)(2)(F)(ii).

LAW AND ANALYSIS

Section 721(a) provides that no gain or loss shall be recognized to a partnership or to any of its partners in the case of a contribution of property in exchange for an interest in the partnership.

Section 721(b) provides that § 721(a) shall not apply to gain realized on a transfer of property to a partnership which would be treated as an investment company (within the meaning of § 351) if the partnership were incorporated.

Section 351(a) provides that no gain or loss is recognized if one or more persons transfer property to a corporation solely in exchange for stock or securities in a corporation and immediately after the exchange the transferors control the transferee

corporation. Section 351(e)(1) provides that § 351(a) does not apply to a transfer of property to an investment company.

Section 1.351-1(c)(1) of the Income Tax Regulations provides that a transfer to an investment company will occur when (i) the transfer results, directly or indirectly, in diversification of the transferors' interests and (ii) the transferee is a regulated investment company ("RIC"), real estate investment trust ("REIT"), or a corporation more than 80 percent of the value of whose assets (excluding cash and non-convertible debt obligations from consideration) are held for investment and are readily marketable stocks or securities, or interests in RICs or REITs.

Section 1.351-1(c)(5) provides that a transfer ordinarily results in diversification of the transferors' interests if two or more persons transfer nonidentical assets to a corporation in the exchange. It further provides that, if a transfer is part of a plan to achieve diversification without recognition of gain, such as a plan which contemplates a subsequent transfer, however delayed, of the corporate assets (or of the stock or securities received in the earlier exchange) to an investment company in a transaction purporting to qualify for nonrecognition treatment, the original transfer will be treated as resulting in diversification.

Section 1.351-1(c)(6)(i) provides that (i) a transfer of stocks and securities will not be treated as resulting in a diversification of the transferors' interests if each transferor transfers a diversified portfolio of stocks and securities and (ii) a portfolio of stocks and securities is considered to be diversified if it satisfies the 25 and 50 percent tests of § 368(a)(2)(F)(ii), applying the relevant provisions of § 368(a)(2)(F), except the government securities are included in total assets for purposes of the denominator of the 25 and 50 percent tests (unless acquired to meet the 25 and 50 tests), but are not treated as securities of an issuer for purposes of the numerator of the 25 and 50 percent tests.

A corporation is diversified within the meaning of § 368(a)(2)(F)(ii) if not more than 25 percent of the value of its total assets is invested in the stock and securities of any one issuer and not more than 50 percent of the value of its total assets is invested in the stock and securities of 5 or fewer issuers. For purposes of this clause, all members of a controlled group of corporations (within the meaning of § 1563(a)) shall be treated as one issuer. For purposes of this clause, a person holding stock in a regulated investment company, a real estate investment trust, or an investment company which meets the requirements of this clause shall, except as provided in regulations, be treated as holding its proportionate share of the assets held by such company or trust.

CONCLUSIONS

After applying the relevant law to the facts submitted and the representations made, we find that the transfer by the New and Founding Members to A is not a transfer of

property to a partnership that would be treated as an investment company (within the meaning of § 351) if A were incorporated, provided that this is the only transfer to A (except for transfers solely of cash and/or a diversified portfolio of stocks and securities). Accordingly, no gain or loss will be recognized by A or the New and Founding Members on contribution of the assets described above to A, in exchange for an interest in A.

We express no opinion on the tax treatment of the transaction described above under any other provision of the Code or regulations or the tax treatment of any conditions existing at the time or, or effects resulting from, the transaction not specifically covered by the above ruling. In particular, we express no opinion as to whether the proposed transaction described above is part of a plan to achieve diversification without recognition of gain under § 1.351-1(c)(5). Furthermore, we express no opinion as to the consequences of other transfers to A, either as to whether such other transfers would be "transfers to an investment company" or would (except for transfers solely of cash and/or a diversified portfolio of stocks and securities), when taken together with the transfers by the New and Founding Members, cause those transfers to be considered "transfers to an investment company."

Under a power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

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.

Sincerely,

Melissa C. Liquerman
Branch Chief, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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