

Office of Chief Counsel
Internal Revenue Service
Memorandum

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date: April 16, 2013

to:

LB&I: Group

from:

Senior Attorney ()
(Large Business & International)

subject: Whether Holdings is a continuation of
Taxpayer.
UIL: 708.00-00; 6231.00-00

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Taxpayer =
Holdings =
State =
Inc. =
Inc. 2 =
Inc. 3 =
LP =
MDs =
LLC I =
LLC II =
Merger Sub =
Corp. =
State 2 =
Year 1 =

Year 2 =
Date 1 =

Issue: Whether Holdings is a continuation of Taxpayer.

Conclusions: Yes. Holdings is a continuation of Taxpayer under Rev. Rul. 66-264.

Facts:

The Service opened an examination of (“Taxpayer”) for its (“Year 1”) tax year. Taxpayer is a (“State”) limited liability partnership. The partners of Taxpayer filed a Form 1065, U.S. Return of Partnership Income, for Year 1. Taxpayer’s partnership agreement is dated as of (“Date 1”), which is prior to the date that the Year 1 return was filed. The agreement designates (“LP”) as the TMP.¹

Taxpayer would like to appoint a new TMP. Taxpayer argues that (“Holdings”) is a continuation of Taxpayer (citing section 708 and Rev. Rul. 66-264) and, as such, the TMP of Holdings may be designated to act on behalf of the partners of Taxpayer under Treas. Reg. § 301.6231(a)(7)-1. Taxpayer indicated it wishes to designate (“Inc.”), a member-manager of Holdings, as TMP.

Relevant Steps of the Year 2 Transaction

A. Immediately prior to the transaction, Taxpayer conducted the Taxpayer business,.

B. Inc., a newly formed Delaware corporation (“ ”), formed , a single-member Delaware limited liability company that is disregarded for U.S. federal income tax purposes ("LLC I").

C. Inc. and LLC I, together, formed Holdings.

D. Holdings formed , a single-member State limited liability company that is disregarded for U.S. federal income tax purposes ("LLC II"). LLC I and LLC II were formed solely to satisfy the state law requirement that a State limited liability partnership have at least two owners.

¹ Section 11.2 of the partnership agreement, The Tax Matters Partner, states that the Investor shall be the Tax Matters Partner. The agreement defines “Investor” as LP.

E. Holdings and LLC II, together, formed _____, a State limited liability partnership ("Merger Sub") and a transitory disregarded entity created solely for the purpose of effectuating the Merger described below.

F. Inc. purchased 100% of the stock of _____ ("Corp.") which subsequently changed its name to _____, ("Inc. 3") for cash.

G. Immediately prior to the Merger described in the following step, Taxpayer was owned by Corp., LP, a State limited partnership, and certain related entities; _____ (Inc. 2), a _____ (State 2) corporation, and various affiliates; and various managing directors of the Operating Partnership.

H. Merger Sub merged with and into Taxpayer, with Taxpayer surviving (the "Merger"). In the Merger, the holders of interests in Taxpayer received interests in Holdings and/or cash. Following the Merger, the partners of Taxpayer immediately prior to the Merger hold greater than 50% of Holdings.

I. Following the Merger, the business continues to be operated by Taxpayer, which now is a disregarded entity treated for U.S. federal income tax purposes as a branch of Holdings. Holdings is a partnership for U.S. federal income tax purposes, and is owned by Inc. and the former partners of Taxpayer.

Discussion:

The series of transactions described above involved Taxpayer's partners contributing their interests in Taxpayer to Holdings in exchange for interests in Holdings. This resulted in Taxpayer becoming a disregarded entity that is owned by Holdings.

Section 708(b)(1)(A) provides that a partnership terminates if no part of any business of the partnership continues to be carried on by any of its partners in a partnership. Rev. Rul. 66-264 held that a partnership did not terminate when three partners of a five-partner partnership purchased the partnership's assets at a judicial sale, and then continued the partnership's business through a new three-person partnership. It thus appears that as long as the historic partners of a partnership continue the original partnership's business in a partnership form, the original partnership should not be treated as terminating under § 708(b)(1)(A).

Section 708(b)(1)(B) provides that a partnership terminates if within a 12 month period there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits. Treas. Reg. § 1.708-1(b)(2) provides, in relevant part, that the contribution of property to a partnership does not constitute a sale or exchange. As a result, none of the steps that are treated as occurring as part of the merger that transfers the partnership interests in Taxpayer to Holdings are considered a sale or exchange. Thus, there is no termination under § 708(b)(1)(B). See, e.g., PLR 9834039.

In conclusion, Holdings is considered a continuation of Taxpayer, even though Holdings bears a different EIN.

A TMP is the general partner designated as the TMP by the partnership in accordance with the regulations, or if a designation has not been made by the partnership, then the TMP is the general partner having the largest profits interest at the close of the taxable year involved (2003). I.R.C. § 6231(a)(7). To designate a TMP under Treas. Reg. § 301.6231(a)(7)-1, the person/entity must have been a general partner at some time during the taxable year for which the designation is made, or is a general partner at the time of the designation. Thus, Holdings' TMP can be designated the TMP for the partnership for its Year 1 tax year because it is the current general partner of the continued partnership. Designation of Holdings' TMP as the new TMP will terminate the TMP status of the Year 1 TMP. Treas. Reg. § 301.6231(a)(7)-1(1)(l)(1)(v). The Taxpayer cannot, however, designate an officer of Inc. as TMP because the officer is not a general partner.

Treasury Regulation § 301.6229(b)-1(a) permits a partnership to authorize any person to extend the period for assessment with respect to all partners by filing a statement to that effect.

This writing is based upon the facts and representations submitted by the taxpayer. This office has not verified any of the materials submitted in support of the request for advice. This advice has been coordinated with CC:PSI:3 and CC:P&A:7. If you have any further questions or comments, please contact .

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By: _____

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