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Date: February 26, 2007

LEGEND

X =

State =

GP =

Dear :

This responds to a letter dated May 23, 2006, and subsequent correspondence, submitted on behalf of X, requesting a ruling that amounts included in income by X under § 951(a)(1)(A)(i) and § 1293(a) of the Internal Revenue Code will be treated as qualifying income under § 7704(d)(4).

FACTS

X is a State limited partnership. X contemplates becoming a publicly traded partnership (“PTP”), as defined in § 7704(b). GP, a State limited liability company, is the general partner in X. Limited partner interests in X are held by “qualified institutional buyers,” as defined in Rule 144A of the Securities Act of 1933, as amended (“the Securities Act”), and by “accredited investors,” as defined in Rule 501(a) of the Securities Act. Certain limited partner interests in X were also sold outside the United States pursuant to Regulation S under the Securities Act. In addition, X plans to conduct an initial public offering. The limited partners in X will receive Schedules K-1 with respect to their interests in X. X intends to be taxed as a partnership, rather than as an association or a PTP, which is taxable as a corporation under § 7704, by relying on the exception in § 7704(c).

X has invested, and will continue to invest, the majority of its assets in the equity of a substantial number of foreign entities (“Subsidiaries”). Subsidiaries will be treated as corporations for United States federal income tax purposes and most Subsidiaries will issue instruments commonly known as collateralized debt obligations (“CDOs”).

CDO issuers typically invest all or substantially all of their capital in fixed income assets, including the debt securities of a wide range of issuers. Accordingly, the income they generate consists mostly of interest income, which constitutes foreign personal holding company income under § 954(c)(1)(A) and is subpart F income under § 952(a)(2). Subsidiaries will be classified for United States federal income tax purposes as controlled foreign corporations (“CFCs”) or passive foreign investment companies (“PFICs”), depending on the percentage of ownership by X and other United States persons, although it is expected that Subsidiaries will be CFCs in most instances. X will make a qualified electing fund (“QEF”) election for any Subsidiary that is characterized as a PFIC with respect to X.

X will invest in at least one other corporate Subsidiary that is not a CDO issuer but may generate subpart F income or income that is effectively connected with the conduct of a United States trade or business. X may also receive income from Subsidiaries that is not properly characterized as subpart F income or as PFIC ordinary income or net capital gain.

X represents that it would not be described in § 851(a) if it were a domestic corporation. Specifically, X represents that X (1) is not registered, or required to register, under the Investment Company Act of 1940 (the 1940 Act) as a management company or unit investment trust, (2) does not have in effect (and is not required to have in effect) an election under the 1940 Act to be treated as a business development company, and (3) is not a common trust fund or similar fund excluded by section 3(c)(3) of the 1940 Act from the definition of “investment company.” This is a material representation upon which this ruling is based.

## LAW AND ANALYSIS

Section 7704(a) provides that, except as provided in § 7704(c), a PTP will be treated as a corporation. Section 7704(b) defines a PTP as a partnership if (1) interests in the partnership are traded on an established securities market; or (2) interests in the partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

Under section 7704(c), if 90 percent or more of the gross income of a PTP for a taxable year consists of qualifying income, § 7704(a) does not apply to the PTP for the taxable year. Section 7704(d)(4) provides that qualifying income includes any income that would qualify under § 851(b)(2)(A) or § 856(c)(2).

Section 7704(c)(3) provides that § 7704(c) does not apply to any partnership that would be described in § 851(a) if such partnership were a domestic corporation.

Section 851(b)(2)(A) defines qualifying income for a regulated investment company (“RIC”), in relevant part, as

dividends, interest, payments with respect to securities loans (as defined in § 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in § 2(a)(36) of the Investment Company Act of 1940, as amended) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to [the RIC’s] business of investing in such stock, securities, or currencies ....

Section 851(b) further provides that, for purposes of § 851(b)(2), there shall be treated as dividends amounts included in gross income under § 951(a)(1)(A)(i) or § 1293(a) for the taxable year to the extent that, under § 959(a)(1) or § 1293(c) (as the case may be), there is a distribution out of the earnings and profits of the taxable year that are attributable to the amounts so included.

Section 952 defines subpart F income to include foreign base company income determined under § 954. Under § 954(a)(1), foreign base company income includes foreign personal holding company income determined under § 954(c). Section 954(c)(1)(A) defines foreign personal holding company income to include dividends, interest, royalties, rents, and annuities.

Subsidiaries’ investments in fixed income assets, including debt securities, will produce interest income that may generate foreign personal holding company income under § 954(c)(1)(A), which is subpart F income. X would therefore include in income the sum of its respective pro rata share of each Subsidiary’s subpart F income (if the Subsidiary is a CFC with respect to X) for the taxable year in accordance with § 951(a)(1)(A)(i).

In addition, X will include in income with respect to each Subsidiary that is a PFIC with respect to X, its pro rata share of the Subsidiary’s ordinary earnings and net capital gains (or “QEF inclusions”) for the taxable year in accordance with § 1293(a).

Section 851(b) includes a specific rule providing dividend treatment for certain subpart F inclusions and QEF inclusions. However, subpart F and QEF inclusions will also constitute RIC qualifying income under § 851(b)(2)(A), which states that qualifying income includes “other income ... derived with respect to [the RIC’s] business of investing in ... stock, securities, or currencies” (the “other income rule”).

The investment by X in Subsidiaries that are corporations will be an investment in stock. All of X's inclusions in gross income from Subsidiaries under § 951(a)(1)(A)(i) and § 1293(a) will be derived from its stock ownership and will be "income derived with respect to its business of investing in such stock" under the other income rule of § 851(b)(2)(A).

## CONCLUSION

We conclude that amounts included in the income of X from Subsidiaries under § 951(a)(1)(A)(i) and § 1293(a) will be treated as qualifying income under § 851(b)(2)(A) and § 7704(d)(4), without regard to whether or the extent to which Subsidiaries make distributions to X.

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. Furthermore, this letter ruling is dependent on the taxpayer's representation that it would not be described in § 851(a) if it were a domestic corporation.

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,

Dianna K. Miosi  
Chief, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

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