

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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PLR-130342-09

Date:
September 23, 2009

Partnership =

Business 1 =

Business 2 =

Business 3 =

Corporation =

Date 1 =

Month 2 =

Date 3 =

State A =

Dear :

We respond to your authorized representatives' letter of June 22, 2009, and the August 7 and September 9, 2009, supplements thereto, requesting rulings as to the federal income tax consequences of a proposed transaction. The information in that

request and in those supplements is summarized below. All dates in this letter are within the 2009 calendar year.

Partnership engages in three lines of business: Business 1, Business 2, and Business 3, and sees as part of its overall growth strategy the growth of Businesses 1 and 2. To effectuate this strategy, Partnership requires access to new capital and equity to make acquisitions. Partnership's management and owners believed that potential investors would prefer investing in a corporation rather than a limited partnership, which led to the decision to convert Partnership into a corporation.

Thus, on Date 1, Corporation was formed pursuant to a "Plan of Conversion" of Partnership into a corporation, which plan had been entered into several days before. The Plan of Conversion provided that, pursuant to relevant law of State A, Partnership would continue its existence in the organizational form of a corporation. The certificate of conversion filed with State A provided that the certificate was to be effective on Date 1. The taxpayer represents that under the laws of State A the Plan of Conversion constituted a contract between and among the parties thereto.

In the conversion, partners holding Class A interests in Partnership received Class A common stock of Corporation, and partners holding Class B interests in Partnership received Class B or Class C common stock of Corporation. Corporation has issued no additional shares.

In Month 2, Corporation made a partnership profits and tax distribution payment (the "Partnership Distribution Payment") with respect to the previous taxable year to its shareholders in their capacity as former partners of Partnership. Such payment would have been made, and in the same amount, whether or not Partnership had converted into Corporation.

Soon after Date 1, Corporation granted three employees options to acquire nonvoting Class D common stock of Corporation. On Date 3, however, in anticipation of the Proposed Rescission Transaction described below, Corporation canceled the options to acquire Class D shares pursuant to a Stock Option Termination Agreement between Corporation and the employees. Such options were entirely unvested at the time, and Corporation paid no consideration to the three employees for the options' cancellation.

Corporation, Partnership, all the shareholders of Corporation, all the partners in Partnership, and all taxpayers who had been reporting on their returns any of the federal tax consequences of Partnership are (or if they no longer exist, were) on calendar taxable years.

The conversion of Partnership into Corporation was undertaken in the belief that corporate status would make it easier for the taxpayer to raise third-party capital. After

the conversion of Partnership into Corporation, however, Corporation found that it could not raise the desired capital at an acceptable cost so long as its operations included Business 3. Taxpayer has approached investors again to gauge interest in funding Businesses 1 and 2 on a stand-alone basis and, having received more positive responses, proposes the following transaction.

Corporation plans to engage in the Proposed Rescission Transaction, consisting of the filing of a certificate of conversion with State A to convert Corporation into a State A Limited Liability Company (the "Converted LLC"), with all affected parties being restored to the relative economic positions that they would have occupied at the time of the carrying out of the original Incorporation Transaction had the conversion of Partnership into Corporation not occurred. Corporation's three classes of stock will convert into interests in Converted LLC, having rights, preferences, and restrictions that are substantially similar in all material respects to the corresponding interests in Corporation and, prior to that, to the original corresponding interests in Partnership.

Under the Proposed Rescission Transaction, Corporation would convert directly into Converted LLC rather than first back into a partnership. Converted LLC will be taxed as a partnership for federal income tax purposes. When Partnership was first created, partnerships were not subject to State A's franchise tax. Now, partnerships are subject to that franchise tax, as are LLCs, but being an LLC provides taxpayer with certain non-tax benefits as compared to being a partnership. Though Corporation could first convert into a partnership and then into an LLC, it would incur greater expense than if Corporation converts directly into an LLC.

After completion of the Proposed Rescission Transaction, Converted LLC might separate Business 3 from Businesses 1 and 2 in order to raise capital and perhaps dispose of some assets altogether.

The taxpayer makes the following representations:

- (a) The conversion of Partnership into Corporation constituted a transaction qualifying under section 351 of the Internal Revenue Code.
- (b) Prior to the conversion of Partnership into Corporation, Partnership was a State A limited partnership taxable as a partnership for federal income tax purposes.
- (c) There is no current plan or intention to make an election pursuant to section 301.7701-03 of the Income Tax Regulations for Converted LLC to be classified as an association taxable as a corporation.
- (d) Other than the Partnership Distribution Payment, Corporation has made no distribution to its equity holders since the time of the conversion of Partnership into Corporation.

- (e) No material changes in the legal or financial arrangements between any of Corporation's equity holders and Corporation have occurred since the time of the conversion of Partnership into Corporation.
- (f) Since the time of the conversion of Partnership into Corporation, Corporation has taken no actions with respect to, and engaged in no transactions with, its equity holders that are inconsistent with the actions and transactions the taxpayer would have undertaken had it remained a partnership for federal income tax purposes at all times, except that Corporation has not distributed the additional amounts to its equity holders with respect to each partner's share of allocated net income since the time of the conversion of Partnership into Corporation that Partnership would have distributed had Partnership not converted into Corporation. If the Proposed Rescission Transaction is effectuated, Converted LLC will make these retroactive distributions to its equity holders in accordance with an operating agreement that will be substantially similar in all material respects to that which governed the relationship among equity holders and Partnership.
- (g) If the Proposed Rescission Transaction is effectuated, Converted LLC will file its federal income tax return as if it were a partnership during all of the 2009 taxable year, and each of its equity holders will include in income its allocable share of Converted LLC's items of income, deduction, gain, and loss for the 2009 taxable year.
- (h) Upon the effectiveness of the Proposed Rescission Transaction, the relationship among the equity holders and Converted LLC will be governed by an operating agreement that is substantially similar in all material respects to the partnership agreement that had governed the relationship among Partnership and its equity holders (although the agreement will be re-executed and govern an LLC treated as a partnership for federal tax purposes).
- (i) The Proposed Rescission Transaction is intended to restore the legal and financial arrangements between the equity holders and the taxpayer as would have existed had Partnership not converted from a limited partnership taxable as a partnership into a corporation taxable under subchapter C of the Code.
- (j) The effect of the Proposed Rescission Transaction will be to cause the legal and financial arrangements between the equity holders and the taxpayer to be identical in all material respects, from the date immediately before the conversion of Partnership into Corporation, to such arrangements as would have existed had the conversion of Partnership into Corporation not occurred.

- (k) Neither the equity holders nor the taxpayer have taken or will take any material position inconsistent with such positions as would have obtained had the conversion of Partnership into Corporation not occurred.
- (l) The Proposed Rescission Transaction will be completed by the end of the 2009 taxable year, which will be within the same taxable year as the conversion of Partnership into Corporation.
- (m) There is no material difference in the ultimate economic outcome and tax consequences between a two-step conversion from a corporation to a limited partnership to an LLC and the one-step conversion from a corporation to an LLC.

Based solely on the facts submitted and the representations made, we rule that for federal income tax purposes:

- (1) Converted LLC will be treated as a partnership for federal tax purposes at all times during the 2009 taxable year;
- (2) the equity holders will be treated as partners of Converted LLC at all times during the 2009 taxable year; and
- (3) the conversion of Corporation into Converted LLC pursuant to the Proposed Rescission Transaction will not be treated as a liquidation of Corporation for purposes of determining the taxable income of Corporation and its equity holders.

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. We express no opinion about the tax treatment of the transactions under other provisions of the Code and regulations or on the tax treatment of any condition existing at the time of, or effects resulting from, the transactions that are not specifically covered by the above rulings.

The rulings contained in this letter are based upon information and representations submitted by the 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 this request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this

requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Filiz A. Serbes
Chief, Branch 3
Office of the Associate Chief Counsel (Corporate)