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Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B05
PLR-143876-12

Date:
April 09, 2013

Legend

Tribe =

X =

LLC =

State =

Assets =

Y Interests =

Dear :

This responds to a letter dated September 19, 2012, and subsequent correspondence, submitted on behalf of X, requesting a ruling on certain tax consequences and reporting requirements of a proposed transaction.

Facts

The Tribe is a federally recognized Indian tribe. The Tribe obtained for X a charter as a corporation organized under section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. § 477 (1993).

X intends to issue Y Interests in X to LLC, a limited liability company formed under the laws of State, in exchange for Assets. This will enable X to have an immediate investment portfolio. Subsequently, X intends to issue additional Y Interests to U.S. persons that are accredited investors in exchange for cash in a private offering exempt from registration under the Securities Act of 1933, as amended. The proceeds of the private offering will be utilized to fund additions to X's investment portfolio. X represents that LLC and the accredited investors (collectively, the "Investors") will include non-members of the Tribe.

X will enter into an investment management agreement with one or more investment managers to manage X's investment portfolio. The investment manager may issue on behalf of X additional Y Interests to new Investors. X will pay the investment manager an annual incentive fee based upon increases in the net asset value of the portfolio, or such other fee as may be agreed to between X and the investment manager. In addition, X will retain the services of a management company to calculate the net asset value of the investment portfolio at the end of each month, as well as to perform investor relations and other administrative services associated with managing X.

The Y Interests will entitle the Investors to receive, subject to X's need for funds for investment purposes, annual distributions consisting of a share of X's earnings and profits. An Investor may, subject to the investment manager's approval, redeem any or all of its Y Interests for their net asset value at the end of any month.

Rulings Requested

The Tribe, on behalf of X, requests the following rulings:

1. When the Tribe issues Y Interests in X to the Investors, X will continue to share the same tax status as the Tribe.

2. X, the Tribe, and the Investors will not incur any income tax liability or reporting obligations when X generates earnings from the investment portfolio but makes no distributions.

3. Distributions from X to the Investors will be treated in the same manner as distributions from a taxable "C" corporation, must be reported as ordinary income, and if the distributions are made out of X's earnings and profits, X must report such distributions as dividends and issue a Form 1099-DIV.

4. If X cancels or redeems the Investors' Y Interests in exchange for cash, X must report the transaction as a sale or exchange of a capital asset and issue a Form 1099-B.

Law and Analysis

The Internal Revenue Code prescribes the classification of various organizations for federal tax purposes. Whether an organization is an entity separate from its owners for federal tax purposes is a matter of federal tax law and does not depend on whether the organization is recognized as an entity under local law. Section 301.7701–1(a)(1) of the Income Tax Regulations. Thus, the fact that X is a legal entity for certain purposes is not determinative of whether X is regarded as a separate entity from the Tribe for federal tax purposes. Similarly, the fact that the proposed transaction does not give rise to a new entity for local law is not determinative of whether the proposed transaction would result in the creation of a separate entity for federal tax purposes.

Section 301.7701–1(a)(3) provides that an entity formed under local law is not always recognized as a separate entity for federal tax purposes. For example, an organization wholly owned by a State is not recognized as a separate entity for federal tax purposes if it is an integral part of the State. Similarly, tribes incorporated under section 17 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C. 477, or under section 3 of the Oklahoma Indian Welfare Act, as amended, 25 U.S.C. 503, are not recognized as separate entities for federal tax purposes. Federally recognized Indian tribes are not subject to federal income tax, and tribes incorporated under section 17 of the Indian Reorganization Act of 1934, as amended, share the same tax status as the tribe. *See* Mescalero Apache Tribe v. Jones, 411 U.S. 145, 157 n.13 (1973); *see also* Rev. Rul. 94-16, 1994-1 C.B. 19; Rev. Rul. 81-295, 1981-2 C.B. 15.

Section 301.7701–1(a)(2) provides that a joint venture or other contractual arrangement may create a separate entity for federal tax purposes if the participants carry on a trade, business, financial operation, or venture and divide the profits therefrom. Section 301.7701–1(b) provides that the classification of organizations that are recognized as separate entities is generally determined under §§ 301.7701–2 and 301.7701–3 for organizations that are not classified as trusts. Section 301.7701–3(a) provides that a business entity that is not classified as a corporation under § 301.7701–2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes. Section 301.7701-3(b)(1) provides that a newly formed domestic eligible entity with two or more members is a partnership for federal tax purposes, unless the entity elects to be an association taxed as a corporation.

Section 7701(a)(2) of the Code provides that the term partnership includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not a corporation, trust or estate.

A partnership exists for federal tax purposes when two or more persons join together to carry on a trade or business and share in the profits and losses of that trade or business. Commissioner v. Tower, 327 U.S. 280 at 286 (1946). The primary inquiry is whether, considering all of the facts, the parties in good faith and acting with a business

purpose intended to join together in the present conduct of a business enterprise. Commissioner v. Culbertson, 337 U.S. 733, 742 (1949).

The following factors, none of which is conclusive, provide evidence of the parties' intent: (1) the agreement of the parties and their conduct in executing its terms; (2) the contributions, if any, which each party has made to the venture; (3) the parties' control over income and capital and the right of each to make withdrawals; (4) whether each party was a principal and co-proprietor, sharing a mutual proprietary interest in the net profits and having an obligation to share losses, or whether one party was the agent or employee of the other, receiving for his services contingent compensation in the form of a percentage of income; (5) whether business was conducted in the joint names of the parties; (6) whether the parties filed federal partnership returns or otherwise represented to respondent or persons with whom they dealt that they were joint venturers; (7) whether separate books of account were maintained for the venture; and (8) whether the parties exercised mutual control over and assumed mutual responsibilities for the enterprise. Luna v. Commissioner, 42 T.C. at 1077, 1078 (1964).

Section 701 provides that a partnership as such shall not be subject to the income tax imposed by Chapter 1, and that persons carrying on business as partners shall be liable for income tax only in their separate or individual capacities. Section 702(a) provides that in determining his income tax, each partner shall take into account separately his distributive share of the partnership's income.

Conclusions

Because under § 301.7701-1(a)(3) X is not recognized as an entity separate from the Tribe for federal tax purposes, X will continue to share the same tax status as the Tribe. In particular, for federal tax purposes, X is not a corporation, and cannot issue interests, pay dividends, or redeem interests in its own capacity. Consequently, for federal tax purposes the proposed transactions are considered to be between the Tribe and the Investors. Under §§ 301.7701-1(a)(2) and 301.7701-3(b)(1), and the analysis of Tower, Culbertson, and Luna, the proposed transactions will result in the formation of a partnership for federal tax purposes between the Tribe and the Investors. Pursuant to § 702, the Investors must take into account separately their distributive shares of the partnership’s income, whether or not distributed. The partnership must comply with all reporting requirements applicable to partnerships.

Because the proposed transactions will result in the formation of a partnership, we do not reach the other requested rulings.

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.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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 representatives.

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 the request for rulings, it is subject to verification on examination.

Sincerely,

Jeffrey T. Rodrick
Senior Technician Reviewer, Branch 5
Office of Chief Counsel
(Income Tax & Accounting)

Enclosures (2)

Copy of this letter
Copy of this letter for § 6110 purposes