

Internal Revenue Service

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Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:01

PLR-118025-15

Date:

December 16, 2015

Legend

X =

Y =

Z =

A =

B =

C =

D =

Year1 =

Date1 =

State1 =

Fund1 =

Fund2 =

n1 =

n2 =

n3 =

n4 =

n5 =

Dear :

This responds to your letter dated May 27, 2015, and subsequent correspondence, submitted on behalf of X, requesting a ruling under §§ 707(b)(1) and 267(d) of the Internal Revenue Code (Code).

FACTS

According to the information submitted, X, Y, and Z are grantor trusts within the meaning of §§ 671 through 679. X, Y, and Z were formed in Year1 by A, B, and C, respectively, and each is held for the benefit of its grantor's descendants. D is a State1 limited liability company treated as a partnership for U.S. federal income tax purposes.

On Date1, pursuant to separate purchase and sale agreements, D sold its membership interests in Fund1 and Fund2 to X, Y, and Z (collectively, the Purchasing Trusts) in equal proportions (the Sale). Fund1 and Fund2 are partnerships for U.S. federal income tax purposes for which no section 754 elections have been made. In connection with the sale of D's membership interests in Fund1 and Fund2, D reported a \$n1 capital loss. Pursuant to §§ 743(b) and (d) and 755, the bases of the assets of Fund1 and Fund2 were, in the aggregate, decreased with respect to the Purchasing Trusts by \$n2.

\$n3 of the capital loss was disallowed pursuant to § 707(b)(1)(a) (the Disallowed Loss). The portion of the loss attributable to membership interests in Fund1 and Fund2 sold to X was \$n4. The downward basis adjustment with respect to X was \$n5. Notwithstanding the Disallowed Loss, the downward basis adjustment with respect to X was not changed and remains in effect.

Since the Sale, both Fund1 and Fund2 have recognized gains on disposition of assets held at the time of the Sale. In addition, it is expected that Fund1 and Fund2 may recognize gains in the future on dispositions of assets held at the time of the Sale. X may also recognize gain in the future on the disposition of its membership interest in Fund1 or Fund2.

X requests a ruling regarding when it is entitled to reduce all or a portion of the gain allocated to it on the sale of the assets by the previously disallowed loss.

LAW & ANALYSIS

Section 267(d) provides that if (1) in the case of a sale or exchange of property to the taxpayer a loss sustained by the transferor is not allowable to the transferor as a deduction by reason of subsection (a)(1); and (2) the taxpayer sells or otherwise disposes of such property (or of other property the basis of which in his hands is determined directly or indirectly by reference to such property) at a gain, then such gain shall be recognized only to the extent that it exceeds so much of such loss as is properly allocable to the property sold or otherwise disposed of by the taxpayer. This subsection shall not apply if the loss sustained by the transferor is not allowable to the transferor as a deduction by reason of § 1091 (relating to wash sales).

Section 707(b)(1) provides that no deduction shall be allowed in respect of losses from sales or exchanges of property (other than an interest in the partnership), directly or indirectly, between (A) a partnership and a person owning, directly or indirectly, more than 50 percent of the capital interest, or the profits interest, in such partnership, or (B) two partnerships in which the same persons own, directly or indirectly, more than 50 percent of the capital interests or profits interests. In the case of a subsequent sale or exchange by a transferee described in this paragraph, § 267(d) shall be applicable as if the loss were disallowed under § 267(a)(1). For purposes of § 267(a)(2), partnerships described in subparagraph (B) of this paragraph shall be treated as persons specified in § 267(b).

Treas. Reg. § 1.707-1(b)(1)(ii) provides that if a gain is realized upon the subsequent sale or exchange by a transferee of property with respect to which a loss was disallowed under the provisions of subdivision (i) of this paragraph, § 267(d) shall apply as though the loss were disallowed under § 267(a)(1).

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that pursuant to §§ 707(b)(1) and 267(d), upon a sale or other disposition by Fund1 or Fund2 of property that was the subject of a downward basis adjustment pursuant to §§ 743(b) and 743(d) with respect to X as a result of the Sale (or of other property the basis of which is determined directly or indirectly by reference to such property), X shall recognize gain only to the extent that it exceeds the amount of the Disallowed Loss properly allocable to the property sold or otherwise disposed of by Fund1 or Fund2.

The ruling contained in this letter is 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.

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) 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 representatives.

Sincerely,

David R. Haglund

David R. Haglund

Chief, Branch 1

Office of the Associate Chief Counsel

(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purpose