

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201614026**
Release Date: 4/1/2016
Index Number: 163.08-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:FIP:B02
PLR-133645-15
Date:
January 05, 2016

Legend

Taxpayer =
Country =
State =

Dear :

This is in response to your letter dated September 14, 2015, requesting that certain interests held in a partnership will be considered obligations in registered form, if the interests in the partnership are transferable according to the procedures described in section 5f.103-1(c) of the Temporary Income Tax Regulations.

FACTS

Taxpayer is an exempted company organized under the laws of Country. Taxpayer uses the calendar year as its accounting period for federal income tax purposes and an accrual method as its overall method of accounting.

Taxpayer is directly owned by a State limited partnership (“Domestic Feeder”) and two exempted companies, each formed under the laws of Country and classified as a partnership for U.S. federal income tax purposes (each a “Foreign Feeder”). The primary activity of Domestic Feeder and Foreign Feeders will be to raise money from U.S. and foreign investors to purchase their respective interests in Taxpayer. Taxpayer will use the amounts it receives as capital contributions from Domestic Feeder and Foreign Feeders to acquire interests in a limited partnership expected to be organized

under the laws of State and treated as a partnership for federal income tax purposes (“Partnership”).

Taxpayer will hold an approximately 99 percent interest in Partnership. Partnership will have the ability to acquire student loans, accept additional capital contributions and use principal pay downs on the loans it holds to finance acquisition of additional student loans. Therefore, Taxpayer represents that Partnership will have the power to vary the investments it holds. Taxpayer further represents that it will not operate in a manner that will cause Foreign Feeders to be engaged in the conduct of a trade or business in the United States within the meaning of sections 871(b) or 888(a)(1) of the Internal Revenue Code.

Partnership will use the amounts it receives as capital contributions from Taxpayer and other partners to acquire student loans in the secondary market (“the Student Loans”). Taxpayer represents that the Student Loans are not in registered form within the meaning of section 5f.103-1(c). Partnership will acquire the Student Loans with the intent to hold them as capital assets for investment until maturity and will not be a trader or dealer in the Student Loans or other property.

Taxpayer represents that interests in Partnership will be transferable only pursuant to procedures described in section 5f.103-1(c)(1) and therefore are in registered form within the meaning of this regulation. Specifically, the following procedures will be used for transfer of interests in the Partnership.

First, under applicable law and under the terms of the limited partnership agreement, the general partner will be obligated to keep a full and accurate register of the interests in Partnership. Only those persons that are listed as partners of Partnership on a “schedule of partners” will be entitled to a distributive share of Partnership’s income with respect to the Student Loans. The “schedule of partners” will be a schedule maintained by the general partners containing the following information with respect to each partner in Partnership: name, address, date of admission, amount and date of all capital contributions, and the amount and date of any transfers to which the general partner consents.

Second, the interests in Partnership will be transferred only with written consent of the general partner, which the general partner will have the right to withhold at its sole discretion. The transferee will become a member of Partnership only when the general partner enters the transferee’s name on the “schedule of partners”. The ownership of an interest in Partnership will be required to be reflected in a book entry that identifies the owner of an interest and will be transferable only through a book system maintained by Partnership and its general partner, in accordance with the requirements of section 5f.103-1(c)(2). As a result, the right to receive a distributive share of Partnership’s income attributable to principal and interest with respect to the Student Loans will be

transferable only through a book entry system maintained by Partnership, in accordance with the requirements of section 5f.103-1(c)(2).

Taxpayer represents that its business purpose in creating this investment structure is to provide investors in Domestic and Foreign Feeders with the ability to invest in a pool of student loans and to receive a return on their investment that is above-market on a risk-adjusted basis. Furthermore, this investment structure enables the investors in Taxpayer to invest in a pool of student loans without incurring the significant administrative costs of creating multiple grantor trusts.

LAW

Section 163(f)(1) disallows a deduction for interest on any registration-required obligation unless the obligation is in registered form. Section 163(f)(2) defines the term “registration-required obligation” as an obligation (including any obligation issued by a governmental entity) other than an obligation which (i) is issued by a natural person, (ii) is not of a type offered to the public, or (iii) has a maturity (at issue) of not more than one year.

Section 1.163-5T(d)(1) provides that a pass-through or participation certificate evidencing an interest in a pool of mortgage loans, which under Subpart E of Subchapter J of the Code is treated as a trust of which the grantor is the owner (or similar evidence of interest in a similar pooled fund or pooled trust treated as a grantor trust) (“pass-through certificate”), is considered to be a “registration-required obligation” under section 163(f)(2)(A) and section 1.163-5(c), if the pass-through certificate is described in section 163(f)(2)(A) and section 1.163-5(c) without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates is described in section 163(f)(2)(A) and section 1.163-5(c).

Section 1.871-14(a) of the Income Tax Regulations provides that no tax shall be imposed under section 871(a)(1)(A), 871(a)(1)(C), 881(a)(1) or 881(a)(3) on any portfolio interest as defined in sections 871(h)(2) and 881(c)(2) received by a foreign person. Under sections 871(h)(2) and 881(c)(2), interest must be paid on an obligation that is in registered form to qualify as portfolio interest. The term “registered form” has the same meaning given such term by section 163(f). Sections 871(h)(7) and 881(c)(7). Section 1.871-14(c)(1)(i) provides that the conditions for an obligation to be considered in registered form are identical to the conditions described in section 5f.103-1.

Section 1.871-14(d)(1) provides that interest received on a pass-through certificate qualifies as portfolio interest if the interest satisfies the conditions in section 1.871-14(c)(1) without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates is described in section 1.871-14(c)(1)(ii). This paragraph only applies to payments made to the holder of the pass-through certificate

from the trustee of the pass-through trust and does not apply to payments made to the trustee of the pass-through trust.

Section 5f.103-1(c)(1) provides generally that an obligation is in registered form if (i) the obligation is registered as to both principal and any stated interest with the issuer (or its agent) and transfer of the obligation may be effected only by surrender of the old instrument and either the reissuance by the issuer of the old instrument to the new holder or the issuance by the issuer of a new instrument to the new holder, (ii) the right to the principal of, and stated interest on, the obligation may be transferred only through a book entry system maintained by the issuer (or its agent) as described in section 5f.103-1(c)(2), or (iii) the obligation is registered as to both principal and stated interest with the issuer (or its agent) and may be transferred through most of the methods described in (i) and (ii) above.

Section 5f.103-1(c)(2) provides that an obligation will be considered transferable through a book entry system if the ownership of an interest in the obligation is required to be reflected in a book entry, whether or not physical securities are issued. A book entry is a record of ownership that identifies the owner of an interest in the obligation.

Section 301.7701-4(c)(1) of the Procedure and Administration Regulations provides that an investment trust with a single class of undivided beneficial interest in the trust assets is classified as a trust if there is no power under the trust agreement to vary the investment of the certificate holders.

ANALYSIS

The purpose of the registration requirement for certain obligations is to prevent the underreporting of tax on gains on sales on both taxable and tax-exempt securities and to ensure that securities will be sold (or resold in connection with the original issue) only to persons who are not United States persons. See section 1.163-5(c)(1)(i).

Taxpayer has represented that the Student Loans are not in registered form. Section 1.163-5T(d)(1) provides that an interest (a “pass-through certificate”) in a trust that is treated as a grantor trust is considered to be an obligation in registered form if the pass-through certificate is in registered form “without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates” is in registered form. Taxpayer has represented that Partnership is not treated as a grantor trust under section 301.7701-4(c)(1).

Partnership will acquire multiple Student Loans and hold those loans as a single pool of assets. Partnership will distribute income received on the pool of Student Loans to its partners as an aggregated stream of income, without regard to particular Student Loans in the pool. In this manner, the Student Loans held by Partnership are similar to a pool of mortgage loans.

In this case, the interests in Partnership will be transferable only pursuant to the procedures described in section 5f.103-1(c)(1). Interests in Partnership will be transferred in accordance with section 5f.103-1(c)(1)(i). Furthermore, Partnership will maintain a book entry system (as described in section 5f.103-1(c)(2)), and the right to receive distributions of principal and interest on the Student Loans will be transferable only by this book entry system.

CONCLUSION

We conclude, based on the facts of this case, that the interests in Partnership are similar evidences of interest in a similar pooled fund within the meaning of section 1.163-5T(d)(1), and that, if the requirements of section 5f.103-1(c)(1) are satisfied, the interests in Partnership will be considered obligations in registered form.

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. In particular, no opinion is expressed or implied regarding whether any payment of interest on the interests in Partnership will qualify as portfolio interest for purposes of sections 871 and 881. Furthermore, no opinion is expressed or implied as to whether Partnership is engaged in a trade or business within the United States or whether the interest in Partnership is effectively connected with that trade or business.

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,

Susan Thompson Baker

Susan Thompson Baker
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)