

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201714028**
Release Date: 4/7/2017

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 707.00-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-135816-16
Date: December 21, 2016

LEGEND

Company =

Partnership =

DRE =

Business =

State =

X =

Y =

Special Class of Interests =

a =

b =

c =
d =
e =
f =
D1 =

Dear _____ :

This letter is in response to a letter dated November 10, 2016, and subsequent correspondence submitted on behalf of Company requesting a ruling that the liabilities that will be assumed by Partnership (through DRE) in connection with Company's transfer of substantially all of its assets and liabilities to Partnership will constitute qualified liabilities under § 1.707-5(a)(6)(i)(E) of the Income Tax Regulations.

FACTS

The information submitted states that Company is a joint venture among affiliates of X and Y that is currently engaged, directly and through wholly owned subsidiaries and joint ventures, in Business. In addition to operating assets, Company and its subsidiaries hold all of the general partner interests and various classes of limited partner interests, including currently owned Special Class of Interests in Partnership. Partnership is a State limited partnership that is classified as a partnership for federal tax purposes. The public owns approximately a percent of Partnership's publicly traded class of limited partner interests. Partnership owns all of the interests in DRE, which is disregarded as an entity separate from Partnership for federal tax purposes under § 301.7701-2(c)(2)(i) of the Procedure and Administration Regulations.

Company (including its subsidiaries that are disregarded as entities separate from Company for federal tax purposes under § 301.7701-2(c)(2)(i)) is planning to transfer approximately \$b of cash, all of its material operating assets, and the currently owned Special Class of Interests to Partnership (through DRE) in exchange for additional limited partner units and new Special Class of Interests in Partnership (Transfer). In connection with the Transfer, Partnership (through DRE) will assume approximately \$c of Company's liabilities (Liabilities), and Partnership's limited partnership agreement will be amended to provide that distributions in respect of the new Special Class of Interests will be reduced by up to \$d each year for the first three years following the Transfer depending on whether Partnership's total cash distributions for each year exceed its distributable cash flow. (Approximately e of the limited partner units issued in connection with the Transfer will be issued in respect of the currently

owned Special Class of Interests transferred, but will be issued by Partnership directly to Company.)

All of the Liabilities were incurred more than f years before the proposed Transfer. Some of the Liabilities were originally incurred to make distributions in connection with Company's formation on D1 and have been subsequently refinanced. The remaining balance of the Liabilities have been used to acquire assets, make improvements, pay expenses, and otherwise operate Company's business and that of its subsidiaries, including to refinance other liabilities incurred for the same purposes. Company has also regularly distributed cash to its members in proportion to their ownership interests. Those cash distributions, however, have been less than Company's earnings. The Liabilities (and the liabilities they refinanced) are an integral part of Company's existing and historical capital structure.

Company makes the following representations:

- (i) None of the Liabilities is in default;
- (ii) The Liabilities were not incurred in anticipation of the Transfer to Partnership;
- (iii) The Transfer to Partnership was not being considered at the time the Liabilities were incurred;
- (iv) Company would have incurred the Liabilities without regard to the Transfer to Partnership; and
- (v) There will not be a shift in the ownership of the capital of Partnership associated with the Transfer, and the amount of cash deemed to be distributed under § 752(b) (if any) upon the assumption of the Liabilities will not exceed Company's basis in its interests in Partnership, nor will there be a reduction in Company's interests in Partnership's unrealized receivables (within the meaning of § 751(c)) and inventory items (within the meaning of § 751(d)) in connection with the Transfer. For this purpose, a "shift in the ownership of capital" means a change by reason of a partner's giving up any part of his right to be repaid the amount in his capital account (after adjustment under § 1.704-1(b)(2)(iv)(f)) in favor of one or more other partners.

LAW AND ANALYSIS

Section 707(a)(2)(B) of the Internal Revenue Code (Code) provides that under regulations prescribed by the Secretary, if (i) there is a direct or indirect transfer of money or other property by a partner to a partnership, (ii) there is a related direct or indirect transfer of money or other property by the partnership to such partner (or

another partner), and (iii) the transfers described in § 707(a)(2)(B)(i) and (ii), when viewed together, are properly characterized as a sale or exchange of property, such transfers shall be treated either as a transaction described in § 707(a)(1) or as a transaction between two or more partners acting other than in their capacity as members of the partnership.

Section 1.707-3(b)(1) provides that a transfer of property (excluding money or an obligation to contribute money) by a partner to a partnership and a transfer of money or other consideration (including the assumption of or the taking subject to a liability) by the partnership to the partner constitute a sale of property, in whole or in part, by the partner to the partnership only if based on all the facts and circumstances—(i) the transfer of money or other consideration would not have been made but for the transfer of property; and (ii) in cases in which the transfers are not made simultaneously, the subsequent transfer is not dependent on the entrepreneurial risks of partnership operations.

Section 1.707-5(a)(1) provides that, for purposes of §§ 1.707-3 through 1.707-5, if a partnership assumes or takes property subject to a qualified liability (as defined in § 1.707-5(a)(6)) of a partner, the partnership is treated as transferring consideration to the partner only to the extent provided in § 1.707-5(a)(5). By contrast, if the partnership assumes or takes property subject to a liability of the partner other than a qualified liability, the partnership is treated as transferring consideration to the partner to the extent that the amount of the liability exceeds the partner's share of that liability immediately after the partnership assumes or takes subject to the liability as provided in §§ 1.707-5(a)(2), (3), and (4).

Section 1.707-5(a)(5)(i) provides, in part, that if a transfer of property by a partner to a partnership is not otherwise treated as part of a sale, the partnership's assumption of or taking subject to a qualified liability in connection with a transfer of property is not treated as part of a sale.

Section 1.707-5(a)(6)(i)(E) provides, in part, that a liability assumed or taken subject to by a partnership in connection with a transfer of property to the partnership by a partner is a qualified liability of the partner only to the extent the liability is a liability that was not incurred in anticipation of the transfer of the property to a partnership, but that was incurred in connection with a trade or business in which property transferred to the partnership was used or held but only if all the assets related to that trade or business are transferred other than assets that are not material to a continuation of the trade or business.

Section 1.707-5(c) provides that, to the extent that the proceeds of a partner or partnership liability (the refinancing debt) are allocable under the rules of § 1.163-8T to payments discharging all or part of any other liability of that partner or of the

partnership, as the case may be, the refinancing debt is treated as the other liability for purposes of applying the rules of § 1.707-5.

Section 1.163-8T(e)(1) provides that, to the extent proceeds of any debt (the “replacement debt”) are used to repay any portion of a debt, the replacement debt is allocated to the expenditures to which the repaid debt was allocated. The amount of replacement debt allocated to any such expenditure is equal to the amount of debt allocated to such expenditure that was repaid with proceeds of the replacement debt.

CONCLUSION

Based on the facts submitted and the representations made, we conclude that the Liabilities assumed by Partnership (through DRE) in connection with Company’s Transfer to Partnership will constitute qualified liabilities of Company under § 1.707-5(a)(6)(i)(E).

Except as specifically ruled above, we express or imply no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code. Specifically, we express or imply no opinion regarding whether Company’s Transfer otherwise constitutes a disguised sale of property to Partnership under § 707(a)(2)(B) or regarding the tax consequences of any exchange of Company’s Special Class of Interests with Partnership.

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

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to Company’s authorized representatives.

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 ruling request, it is subject to verification on examination.

Sincerely,

Mary Beth Carchia
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes