

Internal Revenue Service

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Date:
December 10, 2020

LEGEND

Taxpayer =
State 1 =
Partnership =
State 2 =

Dear :

This is in response to your letter dated June 4, 2020, requesting that interests in Taxpayer be considered “similar evidence of interest in a similar pooled fund” within the meaning of section 1.163-5T(d)(1) of the Temporary Income Tax Regulations and that, if the requirements of section 5f.103-1(c)(1) are satisfied, those interests in Taxpayer will be considered obligations in registered form.

FACTS

Taxpayer is a limited partnership formed under the laws of State 1 and classified as a partnership for federal income tax purposes. Taxpayer uses the calendar year as its accounting period for federal income tax purposes and the accrual method as its overall method of accounting. Investors, including some who may not be United States persons within the meaning of section 7701(a)(30) of the Internal Revenue Code (the “Code”), will contribute capital to Taxpayer in exchange for limited partnership interests in Taxpayer. Taxpayer will use those capital contributions to invest in certain assets.

Taxpayer represents that Taxpayer will principally hold debt instruments and pass-through certificates, as defined in section 1.163-5T(d)(1). Taxpayer’s principal business is to use its investors’ capital contributions to acquire mortgage loans on commercial and residential real estate located in the United States (the “Mortgages”). Taxpayer will

also use capital contributions to acquire interests in Partnership, a limited liability company formed under the laws of State 2 and classified as a partnership for federal income tax purposes, and other affiliated funds that are classified as partnerships for federal income tax purposes (the "Affiliated Funds"). The principal business of Partnership and the Affiliated Funds is to use their investors' capital contributions to acquire Mortgages. Taxpayer represents that interests in Partnership and the Affiliated Funds are pass-through certificates, as defined in section 1.163-5T(d)(1), and are in registered form, as defined in section 5f.103-1(c).

Taxpayer represents that interests in Taxpayer are transferable only pursuant to procedures described in section 5f.103-1(c)(1) and, therefore, are in registered form within the meaning of that regulation. Specifically, the right to receive distributions of principal and interest on the assets held by Taxpayer is transferable only through a book entry system maintained by Taxpayer in accordance with the requirements of section 5f.103-1(c)(2).

LAW AND ANALYSIS

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)(A) defines the term "registration-required obligation" as any 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) of the Income Tax Regulations 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) 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 in part 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 any stated interest with the issuer (or its agent) and may be transferred through both 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.

Taxpayer is classified as a partnership for federal income tax purposes. Taxpayer's principal assets are Mortgages that it holds directly and its interests in Partnership and the Affiliated Funds. Taxpayer represents that its interests in Partnership and the Affiliated Funds are pass-through certificates, as defined in section 1.163-5T(d)(1). Taxpayer further represents that Taxpayer maintains a book entry system in accordance with section 5f.103-1(c)(2) and that the right to receive distributions of principal and interest on the assets held by Taxpayer is transferable only through such book entry system.

CONCLUSION

We conclude that the interests in Taxpayer are "similar evidence 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 Taxpayer will be considered obligations in registered form.

The ruling contained in this letter is based upon information and representations submitted by 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. In particular, no opinion is expressed or implied as to (1) whether Taxpayer's interests in Partnership or the Affiliated Funds are pass-through certificates, as defined in section 1.163-5T(d)(1), (2) whether any payment of interest on the interests in Taxpayer will qualify as portfolio interest for purposes of sections 871 and 881, or (3) whether Taxpayer is engaged in a trade or business within the United States or whether any payment of interest 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.

Spence Hanemann
Senior Counsel, Branch 1 Office of the
Associate Chief Counsel
(Financial Institutions and Products)

Enclosure:
Copy for section 6110 purposes

cc: