

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200627013**

Release Date: 7/7/2006

Index Number: 731.00-00

Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 – PLR-150278-05

Date:

March 31, 2006

Legend

LP =

State =

Trust 1 =

Trust 2 =

Trust 3 =

A =

B =

C =

D =

E =

LLC =

LP2 =

a% =

b% =

c% =

d% =

Date 1 =

Date 2 =

Dear

This responds to a letter dated September 30, 2000, submitted on behalf of LP by its authorized representative, requesting certain rulings under § 731(c) of the Internal Revenue Code.

The information submitted states that LP is a limited partnership formed under the laws of State on Date 1. At formation, LP's partners were Trust 1 and Trust 2, each holding a a% limited partnership interest, and Trust 3 holding a b% general partnership interest. Trust 1 and Trust 2 were created under the Last Will and Testament of A for the benefit of his children, B and C, and contained virtually identical assets. Trust 1 and Trust 2 contributed identical assets to LP. The contributions by Trust 1 and Trust 2 included cash, stocks, bonds and bond funds, Treasury and corporate notes, a c% limited partnership interest in LP2, mineral interests and land. Trust 3, created by B and D, contributed cash. LP's assets currently include cash and cash accounts, stocks in corporations, bonds and bond funds, and the limited partnership interest in LP2. On Date 2, Trust 2 terminated and pursuant to the terms of Trust 2, the LP interest it held was distributed to C's son, E.

LP proposes to make a liquidating distribution to Trust 1 that consists of the remaining assets that Trust 1 contributed, an interest in 50% of the other investments acquired by LP (other than bank accounts, certificates of deposit or money market investments which will not be distributed), and an amount of cash to balance the value of the distributions with Trust 1's a% interest in LP. The basis of each asset distributed to Trust 1 will be substantially the same as the

basis of each asset in the hands of LP. LP will distribute 50% of b% of the net value of LP to Trust 3. Trust 3 will sell its remaining 50% general partnership interest to LLC, a State limited liability company wholly owned by another trust for which E is the beneficiary, which will become LP's new general partner. After the transaction, E will own a d% limited partnership interest in LP and LLC will own a b% general partnership interest in LP.

LP requests rulings that it is an investment partnership within the meaning of § 731(c)(3)(C)(i) and that Trust 1 is an eligible partner under § 731(c)(3)(C)(iii). Therefore, the liquidating distribution of marketable securities to Trust 1 will fall under the § 731(c)(3)(A)(iii) exception to the general rule of § 731(c)(1) that a distribution of marketable securities is treated as a distribution of money. As an alternative request, the taxpayer asks for a ruling that the distribution of marketable securities to Trust 1 will fall under the § 731(c)(3)(A)(i) exception. LP also requests a ruling that the transaction does not cause a termination under § 708(b)(1) that would cause LP's retention of the assets to be treated as a contribution to a new partnership under § 721.

Section 708(b)(1) provides that a partnership shall be considered as terminated only if (A) no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership, or (B) within a 12-month period there is a sale or exchange of 50% or more of the total interest in partnership capital and profits.

Section 731(a)(1) provides that in the case of a distribution by a partnership to a partner gain shall not be recognized to such partner, except to the extent that any money distributed exceeds the adjusted basis of such partner's interest in the partnership immediately before the distribution.

Section 731(c)(1) provides that (A) for purposes of § 731(a)(1) and § 737 the term "money" includes marketable securities, and (B) such securities shall be taken into account at their fair market value as of the date of the distribution.

Section 731(c)(2)(A) provides that the term "marketable securities" means financial instruments and foreign currencies which are, as of the date of the distribution, actively traded (within the meaning of § 1092(d)(1)).

Section 731(c)(3)(A)(i) provides that § 731(c)(1) shall not apply to the distribution from a partnership of a marketable security to a partner if the security was contributed to the partnership by such partner.

Section 731(c)(3)(A)(iii) provides that § 731(c)(1) shall not apply to the distribution from a partnership of a marketable security to a partner if such

partnership is an investment partnership and such partner is an eligible partner thereof.

Section 731(c)(3)(C)(i) provides that for purposes of § 731(c)(3)(A)(iii) the term "investment partnership" means any partnership which has never been engaged in a trade or business and substantially all of the assets (by value) of which have always consisted of-- (I) money, (II) stock in a corporation, (III) notes, bonds, debentures, or other evidences of indebtedness, (IV) interest rate, currency, or equity notional principal contracts, (V) foreign currencies, (VI) interests in or derivative financial instruments (including options, forward or futures contracts, short positions, and similar financial instruments) in any asset described in any other subclause of § 731(c)(3)(C)(i) or in any commodity traded on or subject to the rules of a board of trade or commodity exchange, (VII) other assets specified in regulations prescribed by the Secretary, or (VIII) any combination of the foregoing.

Section 731(c)(3)(C)(iii)(I) provides that the term "eligible partner" means any partner who, before the date of the distribution, did not contribute to the partnership any property other than assets described in § 731(c)(3)(C)(i).

Section 731(c)(3)(C)(iv) provides that except as otherwise provided in regulations prescribed by the Secretary, (I) a partnership shall be treated as engaged in any trade or business engaged in by, and as holding (instead of a partnership interest) a proportionate share of the assets of, any other partnership in which the partnership holds a partnership interest, and (II) a partner who contributes to a partnership an interest in another partnership shall be treated as contributing a proportionate share of the assets of the other partnership.

Section 1.731-2(e)(4) provides that for purposes of § 731(c)(3)(C)(iv), a partnership (upper-tier partnership) is not treated as engaged in a trade or business engaged in by, or as holding (instead of a partnership interest) a proportionate share of the assets of, a partnership (lower-tier partnership) in which the partnership holds a partnership interest if (i) the upper-tier partnership does not actively and substantially participate in the management of the lower-tier partnership; and (ii) the interest held by the upper-tier partnership is less than 20 percent of the total profits and capital interests in the lower-tier partnership.

Based solely on the information submitted and the representations made, we conclude as follows: (1) the distribution by LP to Trust 1 is not a distribution to an eligible partner because Trust 1 contributed assets not listed in § 731(c)(3)(C)(i); therefore, the § 731(c)(3)(A)(iii) exception will not apply to the proposed distribution; (2) to the extent LP distributes property to Trust 1 that was contributed by Trust 1, the § 731(c)(3)(A)(i) exception will apply to that portion of

the distribution; and (3) the proposed transaction will not cause LP to terminate under § 708(b)(1).

This ruling is directed only to the taxpayer who 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, a copy of this letter is being forwarded to X's authorized representative.

Sincerely,

J. Thomas Hines
Chief, Branch 2
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purpose