

Internal Revenue Service

Department of the Treasury

Number: **200203046**
Release Date: 1/18/2002
Index Number: 704.00-00

Washington, DC 20224

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Date:
Oct 19 2001

X =

A =

a =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

This responds to a letter dated May 23, 2001, and subsequent correspondence, submitted on behalf of A, requesting a ruling that the Partners of X will not recognize pre-contribution gain under section 704(c)(1)(B) or section 737(b)(1) as a result of the in-kind distribution of a assets on or after Date 5, that were contributed to the Partnership on Date 4, because the assets were contributed pursuant to a written binding contract for the contribution of a fixed amount of property that was in effect on June 8, 1997, and at all times thereafter before such contribution and thus qualified for transitional relief under section 1063(b)(2) of the Taxpayer Relief Act of 1997.

FACTS

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The taxpayer represents the following facts:

In Year 1, Trustor established 5 trusts, one for his wife and one for primary benefit of each of his four children. There currently are eight Year 1 trusts remaining with trustor's grandchildren as the sole current income beneficiaries. Each trust owns undivided interest in a assets and substantial portfolio of investment securities and will terminate upon the earlier of the death of the grandchild or 21 years after the death of the last child.

During the early Year 2, the Corporate Trustee became increasingly concerned that the orderly control of the a assets might be seriously disrupted if undivided interests passed out of the common control upon the death of a third generation income beneficiary and the resulting trust terminated. In Year 3, the Trustee decided to contribute all of the a assets to a partnership.

The Partnership's original Limited Partnership Agreement (LPA) was executed on Date 1, and obligated each of the partners to contribute their a assets to the Partnership in exchange for limited partnership interests. Due to the Trustee's concern that certain beneficiaries of the trusts would oppose the limited partnership agreement, the agreement was made contingent upon obtaining court approval. It was also made contingent upon obtaining a ruling from the Internal Revenue Service that the partnership was a partnership for federal tax purposes; this requirement was subsequently eliminated as unnecessary after the promulgation of the regulations under sections 301.7701-1 through 301.7701-3.

The state court litigation took several years to resolve. Ultimately, on Date 2, the court entered an order requiring the Trustee to execute a LPA substantially similar to the Amended and Restated LPA previously submitted to the court. Although the Amended and Restated LPA contained numerous changes from the original LPA no change was made to the partners' obligation to contribute their a assets to the partnership. The court authorized the Trustee to make further changes to the Amended and Restated LPA prior to the formation of the partnership, subject to the right of an interested party to object and hearing by the court.

The Final LPA, which contained minor changes to the Amended and Restated LPA, was executed by all parties on Date 3. The partnership was formed, and the a assets were contributed to the partnership on Date 4. Although the execution of the Final LPA could have occurred any time after Date 2, Date 3 was chosen because that was the date on which interested trust beneficiaries, the trustee and persons involved in managing the a assets have traditionally met. In addition, the Trustee wanted to utilize the interim period to make sure that all administrative details were given proper attention, including necessary changes to computer systems and accounting procedures. Date 2 is prior to June 8, 1997, and Date 4 is subsequent to it.

LAW AND ANALYSIS

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Section 1063 of the Taxpayer Relief Act of 1997, extended from 5 to 7 years the period during which pre-contribution gain is recognized if property contributed to a partnership is distributed in-kind. The amendment applies to property contributed to a partnership after its June 8, 1997 effective date. It does not apply, however, to any property contributed pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such contribution if such contract provides for the contribution of a fixed amount of property.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that the Partners of X had a binding contract in effect on June 8, 1997, to contribute a assets to X. Accordingly, we conclude that Section 1063 of the Taxpayer Relief Act of 1997, does not apply and that A will not recognize pre-contribution gain under section 704(c)(1)(B) or section 737(b)(1) as a result of the in-kind distribution of a assets on or after Date 5.

Except as specifically set forth above, no opinion is expressed or implied as to the federal income tax consequences of the transaction described above under any other provision of the Code.

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.

Sincerely,
David R. Haglund
Senior Technician Chief, Branch 1
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
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