

INTERNAL REVENUE SERVICE

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January 11, 1999

Taxpayer =

Corporation A =

Corporation B =

Corporation C =

LLC =

State A =

Dear

This is in response to your letter dated _____ requesting a ruling on the application of the rules concerning predecessor and successor employers contained in sections 3121(a)(1) and 3306(b)(1) of the Internal Revenue Code (the Code), dealing with the Federal Insurance Contributions Act (FICA) and Federal Unemployment Tax Act (FUTA), respectively.

Taxpayer is a general partnership in which Corporation A and Corporation B each have a 50-percent interest. In _____ Taxpayer will transfer most of its assets and liabilities to a newly formed State A limited liability company (LLC). Corporation C will also transfer assets to LLC in a transaction described in Code section 721, so that Corporations A, B, and C will own LLC in roughly equal proportions. These transfers constitute the Transaction, and no ruling as to any part of the Transaction is requested.

While beneficial ownership of Taxpayer's assets will be transferred to LLC pursuant to the Transaction, transfer of title will take place at a later date. Some assets and liabilities will remain with Taxpayer, and Taxpayer will remain in business for the

purpose of winding up operations. Corporations A and B will remain 50-percent partners in Taxpayer. Taxpayer's employees, including headquarters employees, will continue to work for Taxpayer through the end of _____ when it is expected that most employees will be transferred to LLC or one of its affiliates. Taxpayer will receive a new employee identification number (EIN), however, because for federal income tax purposes LLC will be treated as a continuation of Taxpayer pursuant to Code section 708, and will receive Taxpayer's EIN, in accordance with the provisions of Rev. Rul. 95-37, 1995-1 C.B. 130.

You have requested a ruling that, although Taxpayer will have a new EIN after the Transaction, it will remain the same employer with respect to its employees through the end of _____. In the alternative, you request a ruling that Taxpayer qualifies as successor employer to its employees within the meaning of sections 3121(a)(1) and 3306(b)(1) of the Code.

Law and Analysis

When a worker is employed by two successive employers during a taxable year, the second employer is required to withhold taxes under Code sections 3121(a)(1) and 3306(b)(1), FICA and FUTA taxes, with respect to that worker without regard to the taxes withheld by any prior employer. If FICA taxes are withheld and paid on the worker's wages in excess of the social security contribution and benefit base, the worker is entitled to a credit or refund pursuant to Code sections 6413(c) and 31(b). No such credit or refund is available to the employer for FICA or FUTA taxes.

Code sections 3121(a)(1) and 3306(b)(1) and sections 31.3121(a)(1)-1(b)(2) and 31.3306(b)(1)-1(b)(2) of the Employment Tax Regulations provide that the wages paid, or considered as having been paid, by a predecessor employer to an employee shall, for purposes of the annual wage limitations, be treated as having been paid to such employee by a successor employer if (i) the successor employer during a calendar year acquired substantially all the property used in a trade or business, or used in a separate unit of a trade or business, of the predecessor employer; (ii) such employee was employed in the trade or business of the predecessor employer immediately prior to the acquisition and is employed by the successor employer in its trade or business immediately after the acquisition; and (iii) such wages were paid during the calendar year in which the acquisition occurred and prior to such acquisition.

Rev. Rul. 95-37 (applying the principles of Rev. Rul. 84-52, 1984-1 C.B. 157) states that the conversion of an interest in a domestic partnership into an interest in a domestic LLC that is classified as a partnership for federal tax purposes is treated as a partnership-to-partnership conversion that is subject to the principles of Rev. Rul. 84-52. Under Rev. Rul. 84-52, the conversion of an interest in a domestic partnership into an interest in a domestic LLC that is classified as a partnership for federal tax purposes does not cause a termination of the partnership under Code section 708 because the

conversion is not treated as a sale or exchange for purposes of section 708. Therefore the resulting LLC does not need to obtain a new EIN, but instead uses the EIN of the converted partnership.

In the case before us, we find that the application of the rules governing predecessor and successor employers is not appropriate. Although Taxpayer will require a new EIN, Taxpayer's employees will work continuously for Taxpayer throughout . Under these facts, in which Taxpayer is in the process of transferring its property to another partnership but continues to employ its employees until the end of the year, Taxpayer is the same employer for purposes of the section 3121(a)(1) and 3306(b)(1) successor employer rules.

Conclusion

Consequently, we conclude that Taxpayer remains the same employer for section 3121(a)(1) and 3306(b)(1) purposes and that Taxpayer is not required to begin withholding FICA and FUTA taxes with a new contribution base after the Transaction. Because of this conclusion, it is not necessary to consider your alternative ruling requests.

We express no opinion on the tax consequences of the above transaction under any section of the Code other than those discussed above.

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

Sincerely yours,

JERRY E. HOLMES
Chief, Branch 2
Office of the Associate Chief Counsel
(Employee Benefits &
Exempt Organizations)