

MTC Partnership Group Meeting Notes

June 13, 2022

- Katie:
 - Went over administrative items including: (1) if experiencing technical difficulties email Chris at cbarber@mtc.gov; (2) no need to introduce oneself if logged on via computer as gotomeetings logs attendee information, although for those dialing in over the phone may email Helen to log attendance if so wish; and (3) slides can be downloaded at MTC project webpage.
 - Inquired if there was any initial public comment. The following initial public comment was made:
 - Bruce Ely: Mentioned that the proposed draft is based partially on Alabama's Act enacted in 2008. The Act was enacted after the *Lanzi* case as a compromise. There are three items Bruce would like to be reviewed:
 - Definition of Qualified Investment Partnership as being limited to individual partners. Bruce indicated this will hamstring the intentions of the law. Alabama's Act included partners beyond that of individuals, including family trusts and estates.
 - Section 3(b) disallows exclusion of income if partner owns majority of stock, and it provides for attribution of ownership through the use of the term "indirect" ownership. This may affect the interpretation of the statute.
 - Section 4(b), which discussed the purpose of the statute, is similar to Alabama's. It is suggested that instead of using the term "Act" to use the term "Qualified Investment Partnership."
 - Chris' response to Bruce: As to the limiting the proposed statute to individuals – the application to corporations, estates, etc. may be covered by other statutes. Will review and may revise or put a drafter's note to explain limitation.
- Chris
 - Discussed the proposed draft. Indicated that the proposed draft is to apply to individuals partners and not corporate partners; however, this may be an area to expand. Indicated that this doesn't apply to managers of investment partnership. Excludes partnerships that own interest in non-investment partnership. Also excludes certain investment income.
 - Discussed Section 1 of proposed draft as starting out with the purpose. This purpose is to provide a bright line rule of treating the income as earned by the partner. This aligns with Subchapter K principles.
 - Mentioned Section 2 definitions, including the 90% asset and income test. Also, discussed what qualifies as qualified investments.
 - Discussed Section 3, and noted that Section 3(b) is the section Bruce Ely was referring to earlier with his initial public comment. This section refers to direct and indirect ownership, which may need to be reviewed.

- Discussed Section 4 and highlighted the requirement that an investment partnership needs to be certified. Indicated that some states appear to like this requirement whereas others do not. Also highlighted that this section provides that states are delegated authority to issue regulations. Mentioned Section 4(b), which is another provision Bruce was referring to; this provision states that States have authority to issue regulations and revoke certifications consistent with the "Act" and use of this term may need to be further reviewed.
- Asked for comments and received the following comments:
 - Karen Boucher –
 - Would like the group to think outside the box instead of adopting portions of current state rules.
 - One issue is that if partnership is required to certify on an annual basis, then won't give partners time to know if qualify; if don't qualify partners won't have sufficient time to know where to pay taxes and how much to pay in estimated taxes. Recommended looking at 2 out of 3 years to meet test or to fail test.
 - Also there may be issues with deciding whether qualify based on 90% of gross income, but have qualifying income being determined based on gains or losses.
 - Should have rules as to how income is sourced and computed if fails to be a qualified investment partnership.
 - Should clarify what is considered as "actively participated" in partnership – would a partner that chooses what parties will manage the money be considered to have actively participated in partnership's activities?
 - Bruce Fort: Asked Karen if she would recommend that upon a partnership failing to meet the test in one year, there be a catch up provision?
 - Karen: responded that she had no specific recommendation. Potential ideas is to not impose interest and penalties if fail test.
 - Michael Fatale: Indicated he would provide his comments later as he was having technical difficulties.
 - Karen: Asked if had any ideas how income should be sourced if fail test.
 - Chris: Responded that income may be sourced under the general partnership rules, and those will be worked on after this project.

Katie: Since no further comments, indicated next meeting would be on Jun 27th. Asked Chris if there would be a vote on the draft at the June 27th meeting.

Chris: Indicated that it was up to the Working Group to decide when to vote. Since need to work on it more, there may further revisions, which may affect when the work group votes.

Katie: Adjourned meeting.