Internal Revenue Service

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Date:
August 29, 2001

Taxpayer =
Xcorp =
LLC =
Date X =

Dear

This responds to your letter dated February 26, 2001, as supplemented by your submission dated April 11, 2001 requesting rulings as to various factors relating to qualification of Taxpayer to serve as an exchange accommodation titleholder, pursuant to Rev. Proc. 2000-37, 2000-40 I.R.B. 308. The facts relating to your ruling application follow:

Xcorp is an entity engaged in the business of providing services as a facilitator of like-kind exchanges pursuant to § 1031(a)(3) of the Internal Revenue Code and § 1.1031(k)-1((g)(4) of the Income Tax Regulations. Taxpayer is a corporation affiliated with Xcorp. Taxpayer files its corporate tax return as part of a consolidated group of corporations with Xcorp. Taxpayer acts indirectly through its ownership of LLC, a Delaware limited liability company, as an exchange accommodation titleholder ("AT"), as that term is defined in Section 4 of Rev. Proc. 2000-37. LLC's role is to hold property for the benefit of customers to facilitate exchanges under § 1031 of the Code.

On Date X, Taxpayer (including LLC) entered into a qualified exchange accommodation agreement ("the QEA Agreement"), consistent with the requirements of the revenue procedure, with an exchange customer ("Customer"). Under the QEA Agreement, Taxpayer will facilitate an exchange for Customer using LLC as an AT. LLC will acquire and hold Replacement Property for Customer under a qualified indicia of ownership and then, within the exchange period provided in the revenue procedure, through a qualified intermediary, transfer Replacement Property to Customer in an exchange for Relinquished Property of Customer. The Relinquished Property will be transferred through the qualified intermediary to its ultimate buyer.[1]

[1] For purposes of this ruling letter, it is assumed, without making any factual determination, that LLC is eligible to act as an AT for the proposed transaction.

However, it has come to Taxpayer's attention that the usefulness of the qualified exchange accommodation arrangements ("QEAAs") permitted under the revenue procedure is reduced because of concerns about duplicate transfer taxes on the transfer of legal title of Replacement Property from LLC to Customer (or the transfer of Relinquished Property to the ultimate buyer if the Relinquished Property is parked with LLC). To minimize this problem, Taxpayer revised ARTICLE SIX, Paragraph Q of the QEA Agreement to add the following language at the end of the paragraph:

> [LLC] is acting solely as [Customer's] agent for all purposes, except for federal income tax purposes.

It is believed that in many jurisdictions, this express agency statement (for non federal income tax purposes) will help avoid additional transfer tax when, for example, LLC transfers legal title to property to its exchange customers.

Taxpayer requests that we rule that the addition of the language regarding agency for non federal income tax purposes will have no adverse affect on qualification of the QEA Agreement, between Taxpayer (including LLC) and Customer, as a qualified exchange accommodation agreement, as defined in Section 4.02 of the revenue procedure.

Section 4.02(3) of the revenue procedure requires that the qualified exchange accommodation agreement, entered into between an exchanging taxpayer and an AT, specify that the AT will be treated as the beneficial owner of the exchange property it receives by transfer for all federal income tax purposes. It further provides that the parties must report the federal income tax attributes of the property on their federal income tax returns in a manner consistent with that agreement.

If Customer enters into or uses all or most of the types of side agreements or arrangements permitted under Section 4.03 of the revenue procedure (i.e., an exchange agreement for AT to serve as a qualified intermediary, a guarantee and indemnity agreement, any agreement to loan or advance funds, a lease to disqualified persons, a management or construction agreement with disqualified persons, any other arrangement relating to the purchase or sale of the property (including put and call agreements at fixed or formula prices), or providing for variation of value so that the burdens and benefits of ownership are with Customer), the AT will likely be considered an agent of Taxpayer under state law. See discussion at Section 2.05 of the revenue procedure. However, Section 5.04 provides that property will not fail to be treated as being held in a QEAA merely because the accounting, regulatory, or state, local or foreign tax treatment between the taxpayer and the AT is different from the treatment required by Section 4.02 (3) of the revenue procedure.[2]

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[2] This analysis is consistent with the intent behind the safe harbor contained in the deferred exchange regulations, which has many parallels to the rules and requirements of the revenue procedure. The preamble to the final deferred exchange regulations states the following:

> For example, commentators questioned whether a taxpayer would be treated as having the immediate right to receive money or other property

For Customer to obtain the benefits of the safe harbor rules of the revenue procedure, the transaction need only fit within the confines of the safe harbor rules. Assuming the boundaries of the safe harbor rules are not exceeded, Customer is entitled to enjoy the protection afforded to all compliant taxpayers by these rules, notwithstanding inconsistent treatment or characterization under state or local law. Thus, a statement in the QEA Agreement that LLC (whose activities and assets are attributed to Taxpayer) is acting as agent of Customer for all purposes other than federal income tax purposes, will not affect the qualification of the QEA Agreement or the QEAA.

Accordingly, the inclusion of a statement in the QEA Agreement that "[LLC] is acting solely as [Customer's] agent for all purposes except for federal income tax purposes" will have no adverse affect on the qualification of the QEA Agreement under Rev. Proc. 2000-37.

Except as specifically ruled above, no opinion is expressed as to the federal tax treatment of the transaction under any other provisions of the Code or regulations that may be applicable or under other general principles of federal income taxation. Neither is any opinion is expressed as to the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above ruling.

Under the Power of Attorney Form 2848 on file with this office, we are sending this original letter to you and a copy to your representative stated on line 2 of the form.

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

Sincerely yours,
Associate Chief Counsel
(Income Tax & Accounting)
By: Robert M. Casey
Senior Technician Reviewer, Branch 3

cc:

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held by an intermediary if, under state agency law, the intermediary is the agent of the taxpayer and the taxpayer has the right to dismiss an agent and thereby obtain property held for the taxpayer by the agent. ... The final regulations also provide that rights conferred upon a taxpayer under state agency law to dismiss an escrow holder, trustee, or intermediary will be disregarded in determining whether the taxpayer has the ability to receive or otherwise obtain the benefits of money or other property held by the escrow holder, trustee, or intermediary.

1991-1 C.B. 150, 152.