



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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OFFICE OF
CHIEF COUNSEL

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Dear

This is in response to your inquiry concerning exchanges of tenancy in common interests (TICs) under § 1031 of the Internal Revenue Code. Specifically, you have asked us to address the following questions:

1. Is the marketing and sale of TICs in commercial real property an area of concern to the Service?
2. Are the terms "stocks, bonds, or notes" or "other securities" as used in § 1031(a)(2) defined or clarified by other Code provisions or the Income Tax Regulations?
3. Does Rev. Proc. 2002-22, 2002-1 C.B. 733, address the question of whether a § 1031 TIC deal is a security?

As you are well aware, § 1031(a)(1) provides that no gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment.

Section 1031(a)(2)(B), (C) and (D) provide that § 1031 does not apply to any exchange of stocks, bonds, notes, other securities, evidences of indebtedness or interest, or interests in a partnership.

With respect to your first question, the Service is aware of the issue of whether, or under what circumstances, a TIC may constitute a security that may not be exchanged under § 1031, and is watching how matters develop as the TIC concept evolves in the § 1031 context. At present, however, there is no item on the Service's Chief Counsel Published Guidance Plan addressing the issue.

Second, the Internal Revenue Code and the Income Tax Regulations contain many references to stocks, bonds and securities. However, we know of no provision in either the Code or regulations defining the meaning of those terms for purposes of a § 1031

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exchange.

Finally, Rev. Proc. 2002-22 specifies conditions under which the Service will consider a request for a ruling that an undivided interest in rental real estate is not an interest in a business entity, within the meaning of § 301.7701-2(a) of the Procedure and Administration Regulations. The revenue procedure does not address the question of whether a TIC is a security within the meaning of § 1031(a)(2)(B) or (C).

We hope this information is sufficient for your purposes. If you have any questions, you may call _____ of this office at _____.

Very truly yours,

Michael J. Montemurro
Acting Branch Chief
Office of Associate Chief Counsel
(Income Tax & Accounting)