

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200706001**

Release Date: 2/9/2007

Index Number: 1031.00-00

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact: \_\_\_\_\_, ID No.

Telephone Number:

Refer Reply To:  
CC:ITA:B05  
PLR-123314-06

Date:  
October 31, 2006

Taxpayer =  
Taxpayer's Father =  
Taxpayer's Mother =  
State =  
Trust =  
Date =

Dear \_\_\_\_\_ :

This responds to your letter, dated April 24, 2006, requesting a private letter ruling regarding whether the exchange by Taxpayer with the Trust and Taxpayer's three siblings (Siblings) of her undivided twenty-five percent (25%) interest in Parcel #1 for a hundred percent (100%) interest in Parcel #3, will constitute a like-kind exchange under § 1031 of the Internal Revenue Code (the Code)?

Facts

Taxpayer's father, during his lifetime, acquired certain timberlands in State, which he held for income producing and investment purposes. Among the interests were parcels that are subject to this ruling request: Parcel #1, Parcel #2, and Parcel #3.

After Taxpayer's Father's death, Parcel #1 was transferred to Taxpayer's Mother, and Parcels #2 and #3 were transferred to the Trust. Subsequent to the receipt of Parcel #1, Taxpayer's Mother transferred Parcel #1, as a gift, to Taxpayer and her Siblings in equal undivided interests as tenants-in-common. The Trust held Parcel's #2 and #3 for the benefit of Taxpayer's Mother during her lifetime. The Taxpayer and her Siblings are equal remainder beneficiaries of the Trust's assets.

The trustees of the Trust and the Siblings decided to sell all of their land holdings including Parcels #1, #2, and #3. Taxpayer did not want to divest herself in ownership of real estate, so to accommodate the parties' desires, and to increase the marketability

of the parcels, the parties agreed that Taxpayer would exchange her undivided twenty-five percent (25%) interest in Parcel #1 for a one hundred percent (100%) unencumbered fee simple interest in Parcel #3. The parties agreed that the fair market value of taxpayer's twenty-five percent (25%) interest in Parcel #1 was equal to the fair market value of Parcel #3.

Following the exchange on Date, the Trust and Siblings sold Parcels #1 and #2 to an unrelated third party.

### Law and Analysis

Section 1031(a)(1) of the Code 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 of the Code also provides that replacement property must be identified within 45 days of relinquished property and that the receipt of replacement property for relinquished property must occur within 180 days of the sale of relinquished property.

Rev. Rul. 73-476, 1973-2 C.B. 300 provides that exchanges of undivided interests in multiple parcels of real estate for 100 percent ownership of one or more parcels of the same real estate qualify as valid like-kind exchanges.

Section 1031(f)(1) of the Code generally provides that if (A) a taxpayer exchanges property with a related person, (B) there is nonrecognition of gain or loss to the taxpayer under this section with respect to the exchange and (C) before the date 2 years after the date of the last transfer which was part of such exchange-(i) the related person disposes of such property, or (ii) the taxpayer disposes of the property received in the exchange from the related person which was of like kind to the property transferred by the taxpayer, there shall be no nonrecognition of gain or loss under this section to the taxpayer with respect to such exchange; except that any gain or loss recognized by the taxpayer by reason of this subsection shall be taken into account as of the date on which such subsequent disposition occurs.

Section 1031(f)(2)(C) of the Code provides that there shall not be taken into account any disposition "with respect to which it is established to the satisfaction of the Secretary that neither the exchange nor such disposition had as one of its principal purposes the avoidance of [f]ederal income tax."

The legislative history of § 1031(f)(2)(C) identifies several situations intended to qualify under this provision. It lists, among others, that the non-tax avoidance exception applies to transactions that do not involve the shifting of basis between properties. H.R. CONF. REP. NO. 101-386, at 614 (1989). The purpose of the exception is to prevent

related parties from shifting basis from a low basis asset to a high basis asset in anticipation of the sale of the low basis asset to reduce gain recognition on the disposition of the low basis asset.

In the instant case, Taxpayer exchanged an undivided interest in Parcel #1 for a fee simple interest in Parcel #3. Pursuant to Rev. Rul. 73-476, an exchange of an undivided interest in real estate for a fee interest in real estate constitutes an exchange of like kind properties. In addition, since the exchange of Taxpayer's undivided interest in Parcel #1 for a fee simple interest in Parcel #3 occurred simultaneously, the exchange meets the 180 day requirement provided in § 1031(3).

Further, neither the exchange nor the subsequent disposition of Parcel #1 is a disposition that causes recognition of gain to Taxpayer pursuant to the income recognition rule of § 1031(f) for exchanges between related persons. The legislative history of § 1031(f)(2)(C) states that dispositions that do not involve the shifting of basis between properties are not taken into account under § 1031(f)(1)(c). Taxpayer has represented that the respective per acre basis in Parcels #1 and #3 were equivalent as a result of the step-up in basis which occurred when Taxpayer's Father died owning the parcels. Accordingly, under 1031(f)(2)(c) this disposition does not involve basis shifting and therefore will not be taken into account under § 1031(f)(1)(c).

### Conclusion

The exchange by Taxpayer with the Trust and Siblings of her undivided twenty-five percent (25%) interest in Parcel #1 for a hundred percent (100%) interest in Parcel #3, will constitute a like-kind exchange under § 1031 of the Code. In addition, the Trust's subsequent sale of its interest in Parcel #1 was not a disposition that caused recognition of any gain to Taxpayer, pursuant to 1031(f), because the avoidance of Federal income tax was not one of the principal purposes of the exchange or subsequent disposition of Parcel #1.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,

George F. Wright  
Senior Technician Reviewer, Branch 5  
Office of Associate Chief Counsel  
(Income Tax & Accounting)