

Internal Revenue Service

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Person To Contact:
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Date:
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LEGEND:

- LLC1 =
- State A =
- LLC2 =
- Taxpayer =
- State B =
- Date 1 =
- LLC3 =

Dear :

This responds to your request for a private letter ruling dated November 1, 2006. Your request concerns the qualification of a transaction as a like-kind exchange under § 1031(a) of the Internal Revenue Code.

FACTS:

LLC1 is a State A limited liability company, 100 percent owned by LLC2, a State A limited liability company, which itself is 100 percent owned by Taxpayer, a State A limited liability company. Taxpayer has two members and is treated as a partnership for Federal income tax purposes. LLC1 and LLC2 are both disregarded as entities

separate from Taxpayer, their owner, under § 301.7701-3(b)(ii) of the Income Tax Regulations. LLC 1 owns an interest in hotel property in State B, which has been held for many years in its trade or business.

On Date 1, LLC1 entered into a contract that provides for the sale of the hotel property to an unrelated party. LLC1 will be entering into an exchange agreement with a qualified intermediary (QI) as defined in § 1.1031(k)-1(g)(4)¹ to accomplish an exchange intended to qualify as a like-kind exchange under § 1031 of the Code. Consistent with § 1.1031(k)-1(g)(4)(v), all of LLC1's rights (but not its obligations) in the contract for the sale of the hotel property (Relinquished Property) will be assigned by LLC1 to the QI, with notice being given to the buyer. Thereafter, LLC1 will assign all of its rights, title and interest, as well as all of its obligations in the exchange agreement to LLC2. In turn, LLC2 will assign all of its rights, title and interest as well as all of its obligations in the exchange agreement to Taxpayer.

On or before the 45th day from the transfer of the Relinquished property, Taxpayer will designate like-kind replacement property or properties (Replacement Property), and consistent with § 1.1031(k)-1(g)(4)(v), all of its rights (but not its obligations) in all contracts to acquire Replacement Property will be assigned to the QI, with notice being given to the seller. On or before the 180th day from the transfer of the Relinquished Property, the Replacement Property (or properties) will be acquired by a newly created single member limited liability company (or companies), LLC3, which will be 100 percent owned by Taxpayer and disregarded as an entity separate from Taxpayer under § 301.7701-3(b)(ii).

Under these facts, Taxpayer requests a ruling that the actions of LLC1 and LLC2 are attributable to Taxpayer and that the acquisition of the replacement property by LLC3 is treated as an acquisition by Taxpayer for purposes of § 1031.

LAW AND ANALYSIS:

Section 1031(a)(1) of the Code provides that no gain or loss will be recognized on the exchange of property held for productive use in a trade or business or for investment if the property is exchanged solely for property of a like kind which is to be held either for productive use in a trade or business or for investment. Under § 1.1031(a)-1(b) of the regulations, real property is usually considered to be of like kind to other real property, whether or not any of the real property involved is improved. However, under

¹ Section 1.1031(k)-1(g) of the regulations sets up four safe harbors, the use of which will prevent actual or constructive receipt of money or other property for purposes of § 1031. Paragraph (g)(4) provides that one of these safe harbors is the qualified intermediary. Paragraph (g)(4)(iii) defines a qualified intermediary as a person who (A) is not the taxpayer or a disqualified person, and (B) enters into a written agreement with the taxpayer (the exchange agreement) and as required by the exchange agreement, acquires the relinquished property from the taxpayer, transfers the relinquished property, acquires the replacement property and transfers the replacement property to the taxpayer.

§ 1031(a)(3), any property received by the taxpayer (the "replacement property") will be treated as if it is not of a like kind to the property transferred (the "relinquished property") if the replacement property (a) is not identified within 45 days of the taxpayer's transfer of the relinquished property, or (b) is received after the earlier of (i) 180 days after the taxpayer's transfer, or (ii) the due date of the taxpayer's return for the year in which the taxpayer's transfer occurred.

Section 301.7701-2(c)(2) of the regulations provides that, in general, a business entity that has a single owner and is not a corporation (as defined in § 301.7701-2(b)) is disregarded as an entity separate from its owner for federal tax purposes unless the entity elects to treat itself as an association for federal tax purposes. Based on Taxpayer's representations, because LLC1, LLC2 and LLC3 each will be disregarded as an entity separate from its owner for federal tax purposes, the assets of each wholly-owned LLC will be treated as assets of the Taxpayer.

CONCLUSION:

The actions of LLC1 and LLC2 are attributable to Taxpayer and the acquisition of replacement property by LLC3 is treated as an acquisition by Taxpayer for purposes of § 1031.

CAVEATS:

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express no opinion whether the proposed transaction qualifies in all other respects for tax deferral under § 1031 beyond what is expressly stated in the above ruling. A copy of this letter ruling should be attached to the appropriate federal income tax returns for the taxable years in which the transactions described herein are consummated.

This letter 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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,
Michael J. Montemurro
Chief, Branch 4
(Income Tax & Accounting)