



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

OFFICE OF
CHIEF COUNSEL

February 5, 2009

Number: **INFO 2009-0125**
Release Date: 6/26/2009

CC:ITA:B04
GENIN-146759-08

UIL: 1031.00-00

Dear _____ :

I am responding to your letter dated October 15, 2008, concerning a 2005 transaction in which you and _____ exchanged relinquished property in _____, _____, for replacement property in the _____. You state that the transaction was intended to qualify for deferral of gain as a like-kind exchange under § 1031 of the Internal Revenue Code. You allege that _____ defrauded you by having only her name placed on the deed for the replacement property. You have obtained a court judgment that held that you became a fifty-percent owner of the replacement property when _____ acquired it in November 2005.

You ask the Internal Revenue Service to—

1. determine if the original § 1031 tax exchange was done properly;
2. correct the original § 1031 tax exchange documents (if done improperly);
3. correct and re-file your federal income tax returns for 2005, 2006 and 2007; and
4. determine if _____ committed fraud by submitting false tax returns.

In order for us to address your first request, you would have to submit a request for letter ruling under Rev. Proc. 2009-1, 2009-1 I.R.B. 1 (copy enclosed), including the required user fee (generally \$625 if the taxpayer's gross income is less than \$250,000 as determined under Appendix A of the revenue procedure). Under section 5.01 of the revenue procedure, the IRS generally issues letter rulings on a proposed transaction or on a completed transaction if the taxpayer files the request for letter ruling before filing the federal income return for the year in which the transaction is completed. In this case, we cannot issue you a ruling concerning whether the exchange qualified under §

1031 because you did not submit a request for ruling before you filed your federal income tax return for 2005, the year in which the exchange was completed. We hope, however, that the following general information about § 1031 of the Code is helpful.

Section 1031(a)(1) generally provides that no gain or loss is recognized on the exchange of business or investment property for like-kind business or investment property. Section 1031(a)(3) provides that property is not treated as like-kind property if the taxpayer does not receive timely identified replacement property by the earlier of—

- 180 days after the date on which the taxpayer transfers the property relinquished in the exchange (the relinquished property), and
- the due date (including extensions) of the taxpayer's federal income tax return for the year in which the transfer of the relinquished property occurs (the statutory replacement period).

You indicate that you relinquished investment property in October 2005 and, pursuant to a court judgment, were found to be part owner of qualified replacement investment property as of November 2005, well within the statutory replacement period. If this is so, the fact that the court's determination of your ownership rights did not occur until after the end of the statutory replacement period would not of itself preclude you from deferring gain on the exchange under § 1031.

Your request that we correct the original § 1031 exchange documents is not within the Service's tax administration functions. Concerning your third request, you may correct and re-file your 2005, 2006, and 2007 federal income tax returns, by filing amended returns. The IRS, however, does not correct and re-file taxpayers' income tax returns at their request. If you claim a refund of an overpayment tax on an amended return, you generally must file the claim within 3 years from the time the original return was filed. See § 6511(a). For example, if you timely filed your 2005 federal income tax return, you must file the claim for refund by April 15, 2009 (or October 15, 2009 if you obtained an extension to file that return).

You request that we determine whether _____ committed fraud by filing false returns. If you believe that _____ violated federal income tax laws, you may file Form 3949-A, *Information Referral* (copy enclosed), with the Internal Revenue Service. However, I cannot discuss this matter with you because § 6103 of the Code generally prohibits IRS employees from disclosing returns or return information.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See section 2.04 of Rev. Proc. 2009-1 (at page 5 in the enclosed copy).

GENIN-146759-08

3

If you have any additional questions, please call me or

at

Sincerely,

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

Enclosures (2)