

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200909008**  
Release Date: 2/27/2009  
Index Number: 1031.05-00

Third Party Communication: None  
Date of Communication: Not Applicable

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

Telephone Number: \_\_\_\_\_

Refer Reply To:  
CC:ITA:B05  
PLR-126228-08  
Date:  
November 21, 2008

Entity 1 =

Entity 2 =

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

This is in response to your request for a private letter ruling dated June 6, 2008. You have asked for a ruling that for purposes of exchanges of property under § 1031 of the Internal Revenue Code, the acquisition of a partnership interest under the facts below by Entity 1 is not inconsistent with such entity's status as an exchange accommodation titleholder ("EAT"), as defined by Rev. Proc. 2000-37, 2000-2 C.B. 308.

**FACTS:**

Entity 1 acts as an EAT in safe harbor parking arrangements under Rev. Proc. 2000-37 for exchanges of property intended to qualify for nonrecognition of gain or loss under § 1031. Entity 1 is an affiliate of Entity 2.

Entity 1 will enter into a qualified exchange accommodation agreement ("QEAA") as defined by Rev. Proc. 2000-37 with a taxpayer who will engage in a § 1031 exchange. Pursuant to the QEAA, Entity 1 will acquire from a person unrelated to the taxpayer a 50 percent interest in a partnership whose only asset is real estate. The other 50 percent interest in the partnership is already owned by the taxpayer. Entity 1 will be a partner in the partnership during the period of time that Entity 1 owns the partnership interest. The QEAA states that Entity 1 is acting as the agent of the taxpayer for all purposes other than Federal income tax purposes.

Within 45 days after the acquisition of the partnership interest by Entity 1, the taxpayer will identify (within the meaning of Rev. Proc. 2000-37) relinquished property. The

taxpayer will enter into a contract to sell the relinquished property to an unrelated third party.

The taxpayer will enter into an exchange agreement with Entity 2, which will act as a “qualified intermediary” within the meaning of § 1.1031(k)-1(g)(4) of the Income Tax Regulations. Entity 2 then will enter into a contract with Entity 1 for the purchase of the partnership interest.

Within 180 days after the acquisition of the partnership interest by Entity 1, the taxpayer will assign all rights in the contract for the sale of the relinquished property to Entity 2. Also within 180 days, the relinquished property will be transferred to the unrelated third party buyer through Entity 2, and the partnership interest will be transferred to the taxpayer through Entity 2. Legal title to both the relinquished property and the partnership interest will be transferred by direct deed.

#### LAW AND ANALYSIS:

Section 1031(a)(1) generally provides for the deferral of gain or loss 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)(D) precludes the exchange of a partnership interest from § 1031 treatment.

Rev. Proc. 2000-37 provides a safe harbor under § 1031 for an exchange where the taxpayer acquires the replacement property before transferring the relinquished property. Section 4 of Rev. Proc. 2000-37 sets forth certain requirements that must be met in order for an entity to qualify as an EAT, and in order for the agreement between the EAT and the taxpayer in the § 1031 exchange to qualify as a QEAA. Section 4.02(2) of Rev. Proc. 2000-37 provides, in part, that at the time the qualified indicia of ownership of the property is transferred to the EAT, it is the taxpayer’s bona fide intent that the property held by the EAT represent replacement property in a § 1031 exchange.

In Rev. Rul. 99-6, 1999-1 C.B. 432, situation 1, A and B are equal partners in the AB partnership. A sold A’s entire interest in the AB partnership to B. B’s purchase of A’s interest in the AB partnership resulted in a termination of the partnership under § 708(b)(1)(A). For purposes of determining the tax consequences to B, AB partnership is deemed to have made a liquidating distribution of all its assets equally to A and B, and following this distribution, B is treated as acquiring the assets deemed to have been distributed to A in liquidation of A’s partnership interest. As a result, B holds all the assets formerly held by the AB partnership. Accordingly, B is not treated as acquiring A’s partnership interest in the exchange.

#### CONCLUSION:

The acquisition of the partnership interest by Entity 1, in the facts described above, is not inconsistent with Entity 1's status as an EAT where the remaining partnership interest is already owned by the taxpayer in the § 1031 exchange.

The ruling contained in this letter is based upon information and representations submitted by Entity 1 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, it is subject to verification on examination.

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.

This ruling is directed only to Entity 1. This is not a ruling with respect to any particular partnership, partner, or taxpayer engaged in a § 1031 exchange. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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,

Amy J. Pfalzgraf  
Senior Counsel, Branch 5  
Office of Chief Counsel  
(Income Tax & Accounting)

cc: