



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

OFFICE OF THE CHIEF COUNSEL

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UIL: 351.00-00, 368.00-00

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

This letter responds to your request for information dated March 29, 2012, regarding whether 26 USC §351 applies to the exchange of an interest in a \_\_\_\_\_ for shares of a \_\_\_\_\_. You maintain that you engaged in such a transaction and you inquire whether the exchange would be governed by §351.

Your letter also referenced Internal Revenue Code §354, which addresses the tax consequences of a reorganization within the meaning of §368, and you referred to a "mutual fund reorganization."

While §351 and §368 provide certain circumstances in which transactions may be done in a manner in which there is no immediate recognition of gain or loss, and while there may be some instances in which the provisions overlap, the two provisions generally apply to different transactions and have different requirements.

Section 351(a) provides that no gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock in such corporation and immediately after the exchange such person or persons are in control (as defined in §368(c)) of the corporation.

Section 351(b) provides that if subsection (a) would apply to an exchange but for the fact that there is received, in addition to the stock permitted to be received under subsection (a), other property or money then (1) gain (if any) to such recipient shall be recognized, but not in excess of (A) the amount of money received, plus (B) the fair market value of such other property received; and (2) no loss to such recipient shall be recognized.

Section 368 provides definitions relating to corporate reorganizations. It defines “reorganization” to mean any one of several reorganizations set forth in §368(a)(1), beginning with statutory mergers or consolidations under §368(a)(1)(A). Each of the reorganizations defined in §368 have specific statutory requirements that must be satisfied to determine whether a reorganization has occurred under the particular applicable section.

In addition to the requirements set forth in the Code, a transaction that is a reorganization under §368 generally must result in: (1) a continuity of interest by the shareholders of the previously owned corporation in the newly owned corporation; and (2) a continuity of business enterprise in the newly owned corporation of one or more of the businesses conducted by the previously owned corporation.

These determinations are fact intensive. Sometimes a slight variation in facts can differentiate between a fully taxable, partially taxable, or entirely tax free transaction.

An information letter is a statement issued by an Associate Office or Director that calls attention to a well established interpretation or principle of tax law without applying it to a specific set of facts. To determine whether the transaction you refer to qualified under §351 or §368 requires an examination of relevant facts regarding the underlying transaction. Such facts, along with significant amounts of other information, would need to be submitted to us by the appropriate party in the form of a letter ruling request.

Rev. Proc. 2012-1, 2012-1 I.R.B. 1, discusses information and other requirements, including the payment of a user fee, to obtain a letter ruling. Rev. Proc. 83-59, 1983-2 C.B. 575 and Rev. Proc. 86-42, 1986-2 C.B. 722, provide specific information that must be submitted to obtain a letter ruling concerning the qualification of a transaction under §351 and §368, respectively. Generally, ruling requests under these provisions are requested by the subject corporations and must be requested either prior to the transaction taking place or prior to the filing of an income tax return for the year of the transaction.

Accordingly, we provide no opinion on whether §351 or §368 would apply to the facts you set forth or whether the exchange would be treated as a taxable sale within the meaning of §1001, among other alternatives.

We hope that this information is helpful to you. Please be advised that this letter is for informational purposes only and does not constitute a ruling. See, Rev. Proc. 2012-1, §2.04, 2012-1 I.R.B. 7.

If you have any additional questions, please contact our office at .

Sincerely,

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Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel (Corporate)