

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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CC:ITA:B04  
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Date:  
November 29, 2011

Legend

Taxpayer =

Agency =

Ranch =

Parcel =

Dear :

This is in response to your private letter ruling request dated May 24, 2011, and supplemental correspondence, submitted on behalf of Taxpayer. You have requested a ruling that the conveyance of a perpetual conservation easement on Parcel in exchange for mitigation credits should be treated as a sale or exchange of property under section 1001 for federal income tax purposes.

Facts

Taxpayer has owned Ranch for five years for the purpose of development but has not developed any of Ranch. Ranch contains a habitat for two federally listed endangered species. Taxpayer has negotiated a Mitigation Bank Agreement (Agreement) with

Agency in which Taxpayer will grant perpetual conservation easements to Agency and will receive mitigation banking credits in exchange.

A mitigation bank is an area of land containing wetlands, natural habitats or other ecological value that has been restored, established, enhanced or preserved, and which is then set aside to compensate for future conversions of other lands of similar ecological value for development purposes. The owner of the restored or preserved property either transfers property in fee to a governmental unit or conservation organization, or, as in the proposed transaction, places a conservation easement on the property. The transferor then becomes entitled to receive "mitigation banking credits" in an amount and type determined by the governmental agency approving the mitigation bank. The transferor may retain the credits and use the credits to mitigate development activity in other nearby natural habitats or can sell the credits to other persons who may use the credits to satisfy compensatory mitigation requirements. Taxpayer intends to sell the mitigation credits that it receives in the proposed transaction.

Taxpayer represents that it intends to grant a conservation easement on Parcel, a portion of Ranch, simultaneously with, or promptly after, signing the Agreement with Agency. Taxpayer will retain the fee interest and limited use of Parcel after the grant of the conservation easement. Taxpayer may grant conservation easements on all of Ranch through subsequent grants.

### Law

Section 61(a)(3) of the Internal Revenue Code provides that gross income includes gain derived from dealings in property.

Section 1001(a) provides that the gain from the sale or other disposition of property is the excess of the amount realized over the adjusted basis provided in § 1011 for determining gain, and the loss is the excess of the adjusted basis provided in § 1011 for determining loss over the amount realized. Under § 1001(c), the entire amount of gain or loss must be recognized, except as otherwise provided.

Section 1.1001-1(a) of the Income Tax Regulations provides that the gain or loss realized from the exchange of property for other property differing either in kind or in extent, is treated as income or as loss sustained. Section 1.1002-1(d) provides that ordinarily, to constitute an exchange, the transaction must be a reciprocal transfer of property.

### Conclusion

Based on the stated facts and representations made, we conclude that the conveyance of the perpetual conservation easement on Parcel in exchange for mitigation credits is a sale or exchange of property under section 1001 for federal income tax purposes.

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 the taxpayer requesting it. Section 6110(k)(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.

The ruling contained in this letter is 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 a ruling, it is subject to verification on examination.

A copy of this ruling should be attached to Taxpayer's federal income tax returns for the tax years affected.

Sincerely,

Susan J. Kassell  
Senior Counsel, Branch 1  
(Income Tax & Accounting)

cc: