

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-104521-12

Date:
July 30, 2012

Legend

X =

A =

B =

Bank =

State =

Date1 =

Date2 =

Year =

Location =

\$n =

Dear _____ :

This letter responds to a letter dated January 27, 2012, and subsequent correspondence submitted on behalf of X by X's authorized representative, seeking a

ruling that an arrangement is not a trust as defined by § 301.7701-4(a) of the Procedure and Administration regulations.

FACTS

X was incorporated in State on Date1. X is wholly owned by A and B, husband and wife. In Year, A and B caused X to purchase a condominium in Location. X signed a fideicomiso or Mexican Land Trust (“MLT”) agreement with Bank on Date2 and the public deed to the condominium was recorded in the name of Bank.

The Mexican Federal Constitution prohibits non-Mexican citizens from owning real property located within 100 kilometers of Mexico’s inland borders or within 50 kilometers of its coastline. These areas are known as the “restricted zone” and only Mexican citizens (or Mexican corporations whose bylaws forbid the ownership of stock by non-Mexican citizens) are allowed to directly own real property within the restricted zone.

Location is within the restricted zone. X, A, and B are not Mexican citizens and are thus prohibited from directly owning the condominium. Accordingly, in order for X to acquire the condominium, X was required to obtain a permit from the Mexican Ministry of Foreign Affairs and to purchase the beneficial interests in the MLT under which legal title to the condominium was held by Bank, a Mexican bank.

A and B represent that they negotiated directly with the seller of the condominium regarding the terms of the sale, paid the seller directly, and had no interactions with Bank. X has the unrestricted right to sell or mortgage the condominium and does not require the permission of Bank to do either. X is directly responsible for all tax obligations and is required to pay any taxes due directly to the Mexican taxing authority. A and B, through X, have the exclusive right to possess the condominium and to make any desired modifications, limited only by the need to obtain the proper licenses and permits. If the condominium is leased, X directly receives the rental income and must pay taxes on the income. X represents that the condominium is not ordinarily leased and if it is leased in the future, the income will be reported on the appropriate U.S. federal income tax return. Bank collects an annual fee of \$n and disclaims all responsibility for the condominium, including obtaining clear title, and has no duty to defend or maintain the condominium. As part of the arrangement, Bank holds only legal title to the condominium. Accordingly, Bank does not hold or accept cash or any other property under the MLT arrangement other than legal title to the condominium.

X seeks a ruling that its MLT agreement with Bank is not a trust for U.S. federal income tax purposes.

LAW & ANALYSIS

Section 301.7701-1(a)(1) provides that whether an organization is an entity separate from its owners for federal tax purposes is a matter of federal tax law and does not depend on whether the organization is recognized as an entity under local law.

Section 301.7701-4(a) provides that the term “trust” refers to an arrangement created by a will or by an inter vivos declaration whereby trustees take title to property for the purpose of protecting or conserving it for the beneficiaries under the ordinary rules applied in chancery or probate courts. Usually the beneficiaries of such a trust do no more than accept the benefits thereof and are not the voluntary planners or creators of the trust arrangement. However, the beneficiaries of a trust may be the persons who create it if the trust was created for the purpose of protecting or conserving trust for beneficiaries who stand in the same relation to the trust as they would if the trust had been created by others for them. Generally, an arrangement is treated as a trust if it can be shown that the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility.

Rev. Rul. 92-105, 1992-2 C.B. 204, addresses the transfer of a taxpayer’s interest in an Illinois land trust under § 1031. Under the facts of the ruling, a single taxpayer created an Illinois land trust and named a domestic corporation as trustee. Under the deed of trust, the taxpayer transferred legal and equitable title to real property to the trust, subject to the provisions of an accompanying land trust agreement. The land trust agreement provided that the taxpayer retained exclusive control of the management, operation, renting, and selling of the real property, together with an exclusive right to the earnings and proceeds from the real property. Under the agreement, the taxpayer was required to file as tax returns, pay all taxes, and satisfy any other liabilities with respect to the real property. Rev. Rul. 92-105 concludes that, because the trustee’s only responsibility was to hold and transfer title at the direction of the taxpayer, a trust, as defined in § 301.7701-4(a), was not established. Instead, the trustee was a mere agent for the holding and transfer of title to real property, and the taxpayer retained direct ownership of the real property for federal income tax purposes.

The MLT described here is similar to an Illinois Land Trust. The sole purpose of the MLT is to satisfy the Mexican Federal Constitution by vesting legal title to the property in the name of the trustee. The trustee’s sole responsibility for the property is to hold and transfer title at the exclusive direction of the taxpayer. The trustee has no duty and no right to defend, maintain, or manage the property. Taxpayer retains sole authority to manage and control the property, the direct right to collect any rents or proceeds generated by the property, and the direct obligation to pay all taxes and liabilities related to the property. We also note that there is no arrangement between Bank, X, A, B or any other person to utilize the condominium in an activity for profit, such that ownership of the condominium could be classified as a business entity.

CONCLUSION

Based solely on the information submitted and the representations made, we conclude that the MLT described herein is not a trust within the meaning of § 301.7701-4(a) and that X is treated as the owner of the condominium 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.

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 rulings, it is subject to verification on examination.

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.

Sincerely,

Faith P. Colson

Faith P. Colson

Senior Counsel, Branch 1

(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes