

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date:
October 10, 2012

LEGEND:

Taxpayer =
EIN:
LLC =
Complex =
State A =
Date 1 =
X =
Lenders =

Dear :

This responds to your request for a private letter ruling dated June 13, 2012. Your request concerns the qualification of a transaction as a like-kind exchange under § 1031(a) of the Internal Revenue Code.

Taxpayer, a limited liability company treated as a partnership for federal income tax purposes, owns all of LLC, a disregarded entity. LLC owns Complex in State A, which it uses in its trade or business. On Date 1, Taxpayer refinanced existing mortgages and encumbered the buildings in Complex with \$X of 10 year nonrecourse loans issued by Lenders. Because the current market value of Complex is believed to be less than the

outstanding principal debt, Taxpayer has been negotiating to transfer title of Complex, subject to the debt, to Lenders pursuant to the Transfer Agreement.

Taxpayer will enter into an exchange agreement with a qualified intermediary (QI) as defined in § 1.1031(k)-1(g)(4)¹ of the regulations to accomplish an exchange intended to qualify as a like-kind exchange under § 1031 of the Code. QI will acquire and transfer to Taxpayer like-kind replacement property approximately equal in value to the total amount of the outstanding principal debt. Taxpayer will assign to QI its rights in the Transfer Agreement with notice being given to Lenders. Taxpayer will enter into a contract for the acquisition of the replacement property and the rights will be assigned to the QI with notice being given to the seller of the replacement property. The replacement property will then likely be acquired with cash (which Taxpayer would transfer to, or on behalf of, the QI) and/or debt.

Section 1.1031(k)-1(g)(4)(v) provides that if a taxpayer enters into an agreement for the transfer of relinquished property and thereafter assigns its rights in that agreement to an intermediary and all parties to that agreement are notified in writing of the assignment on or before the date of the transfer of the relinquished property, the intermediary is treated as entering into that agreement. If the relinquished property is transferred pursuant to that agreement, the intermediary is treated as having acquired and transferred the relinquished property.

Consistent with the treatment of the QI as having acquired Complex, we rule that Taxpayer's assignment of its rights in the Transfer Agreement to QI will be a transfer of relinquished property for purposes of determining whether there is an "exchange of property held for productive use in a trade or business or for investment" under § 1031(a), notwithstanding that the fair market value of Complex is less than the principal amount of the outstanding nonrecourse debt.

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. Specifically, we express no opinion whether the proposed transaction qualifies in all other respects for tax deferral under § 1031 beyond what is expressly stated in the above ruling. A copy of this letter ruling should be attached to the appropriate federal income tax returns for the taxable years in which the transactions described herein are consummated.

¹ Section 1.1031(k)-1(g) of the regulations sets up four safe harbors, the use of which will prevent actual or constructive receipt of money or other property for purposes of § 1031. Paragraph (g)(4) provides that one of these safe harbors is the qualified intermediary. Paragraph (g)(4)(iii) defines a qualified intermediary as a person who (A) is not the taxpayer or a disqualified person, and (B) enters into a written agreement with the taxpayer (the exchange agreement) and as required by the exchange agreement, acquires the relinquished property from the taxpayer, transfers the relinquished property, acquires the replacement property and transfers the replacement property to the taxpayer.

This letter ruling is directed only to the taxpayer who requested 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, copies of this letter are being sent to your authorized representatives.

Sincerely,

Christina M. Glendening
Assistant to the Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: