

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

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Date:
February 01, 2016

Re: Request for Private Letter Ruling under Section 1400N(d)

Taxpayer =
A =
B =
C =
D =
E =
State =
Date1 =
Date2 =
Date3 =
Date4 =
Property =

Dear :

This letter responds to a letter dated September 3, 2015, submitted by Taxpayer requesting a ruling under section 1400N(d) of the Internal Revenue Code.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is an individual resident of C.

A, a State limited liability company, was formed on Date1, under the State Limited Liability Company Act for the purpose of developing and managing a D business in E. Taxpayer owns all of the membership interests of A and serves as its

sole manager. As a single-member limited liability company, A is disregarded as an entity separate from its owner, Taxpayer, for federal income tax purposes.

B, a State limited liability company, was formed on Date2, under the State Revised Limited Liability Company Act. Taxpayer owns all of the membership interests of B and serves as its sole manager. As a single-member limited liability company, B is disregarded as an entity separate from its owner, Taxpayer, for federal income tax purposes.

A owns the Property. A acquired the Property on or around Date3, and placed the Property in service on Date4. All of the use of the Property is in the Gulf Opportunity Zone (GO Zone). At the time of A's acquisition of the Property and at all times thereafter, the Property is qualified Gulf Opportunity Zone property (GO Zone property) under section 1400N(d)(2). On his individual federal income tax return for the placed-in-service year of the Property, Taxpayer deducted the 50-percent additional first year depreciation deduction provided under section 1400N(d) (GO Zone bonus depreciation) for the Property.

A and B will each restructure its business operations by doing the following transactions (cumulatively referred to as the "Restructure Transactions"):

1. A will distribute the Property to Taxpayer.
2. Upon receiving a distribution of the Property from A, Taxpayer will contribute the Property to B.
3. B and A will enter into an operating lease pursuant to which B will lease the Property to A for use in its D business. This lease is not a triple net lease. B will retain certain management and maintenance responsibilities with respect to the Property. Further, Taxpayer will manage and operate the Property for B.
B was formed for the purpose of acquiring and holding the Property, and leasing it to A for use in its D business.
4. Upon distributing the Property to Taxpayer, A will make an election to be an S corporation. After making the S corporation election, A intends to retain its federal employer identification number, but it will no longer be disregarded from its owner for federal income tax purposes.

The purpose of the Restructure Transactions is to provide additional liability protections for Taxpayer and A.

RULING REQUESTED

Taxpayer requests the Internal Revenue Service issue the following ruling:

The Restructure Transactions will not result in the recapture of any GO Zone bonus depreciation with respect to the Property under section 1400N(d)(5).

LAW AND ANALYSIS

Section 1400N(d) generally allows a 50-percent additional first year depreciation deduction for the taxable year in which GO Zone property is placed in service by a taxpayer. The computation of the allowable GO Zone bonus depreciation and the otherwise allowable depreciation deduction for GO Zone property is made in accordance with rules similar to the rules for 50-percent bonus depreciation property in section 1.168(k)-1(d)(1)(i), (1)(iii), and (2) of the Income Tax Regulations. See section 2.01 of Notice 2006-77, 2006-2 C.B. 590, as clarified, modified, and amplified by section 5 of Notice 2007-36, 2007-1 C.B. 1000.

GO Zone property is depreciable property that meets all of the requirements in section 1400N(d)(2) and in section 2.02 of Notice 2006-77, and is not described in section 2.03 of Notice 2006-77.

Section 1400N(d)(5) provides that for purposes of section 1400N(d), rules similar to the recapture rules under section 179(d)(10) apply with respect to any GO Zone property that ceases to be GO Zone property. Section 1.179-1(e) provides the recapture rules under section 179(d)(10).

Section 6 of Notice 2006-77 provides the rules for applying the recapture requirement in section 1400N(d)(5). Section 6.02 of Notice 2006-77 provides that if GO Zone property is no longer GO Zone property in the hands of the same taxpayer at any time before the end of the GO Zone property's recovery period as determined under section 167(f)(1) or section 168, as applicable, then the taxpayer must recapture in the taxable year in which the GO Zone property is no longer GO Zone property (the recapture year) the benefit derived from claiming the GO Zone bonus depreciation for such property. The benefit derived from claiming the GO Zone bonus depreciation for the property is equal to the excess of the total depreciation claimed (including the GO Zone bonus depreciation) for the property for the taxable years before the recapture year over the total depreciation that would have been allowable for the taxable years before the recapture year as a deduction under section 167(f)(1) or section 168, as applicable, had the GO Zone bonus depreciation not been claimed (regardless of whether such excess reduced the taxpayer's tax liability). The amount to be recaptured is treated as ordinary income for the recapture year. For the recapture year and subsequent taxable years, the taxpayer's deductions under section 167(f)(1) or section 168, as applicable, are determined as if no GO Zone bonus depreciation was claimed with respect to the property. If, subsequent to the recapture year, a change in use of the property results in the property again being GO Zone property, then the GO Zone bonus depreciation is not allowable for the property.

In this case, the Property is nonresidential real property. Before the Restructure Transactions, the Property is owned by A. Because A is a disregarded entity for federal

income tax purposes, Taxpayer is treated as the owner of the Property for federal income tax purposes.

After the Restructure Transactions, the Property will be owned by B. Because B is a disregarded entity for federal income tax purposes, Taxpayer will continue to be treated as the owner of the Property for federal income tax purposes. Accordingly, the Property is in the hands of the same taxpayer before and after the Restructure Transactions.

The issue in this case is whether the Property is used in the active conduct of a trade or business by B and Taxpayer in the GO Zone after the Restructure Transactions in accordance with section 1400N(d)(2)(A)(ii).

Section 3.02 of Notice 2006-77 provides the rules applicable to the “active conduct of a trade or business” requirement in section 1400N(d)(2)(A)(ii). Solely for purposes of section 1400N(d)(2)(A)(ii), section 3.02(2) of Notice 2006-77 provides that the determination of whether a trade or business is actively conducted by the taxpayer is to be made based on all of the facts and circumstances. A taxpayer generally is considered to actively conduct a trade or business if the taxpayer meaningfully participates in the management or operations of the trade or business. Furthermore, for purposes of section 1400N(d)(2)(A)(ii), a member of a limited liability company is considered to actively conduct a trade or business of the limited liability company if the limited liability company meaningfully participates (through the activities performed by itself, or by others on behalf of the limited liability company) in the management or operations of a trade or business.

In this case, all of the use of the Property is in the GO Zone before and after the Restructure Transactions. After the Restructure Transactions, B will use the Property in B's rental real estate business. B will lease the Property to A for use in its D business. Taxpayer represents that (i) this lease is an operating lease and is not a triple net lease, and (ii) Taxpayer will manage and operate the Property for B. Because Taxpayer manages and operates the Property and the lease between B and A with respect to the Property is an operating lease and is not a triple net lease, B and Taxpayer meaningfully participate in the management and operation of the Property for purposes of section 3.02(2) of Notice 2006-77. Accordingly, the Property is used in the active conduct of a trade or business by B and Taxpayer in the GO Zone after the Restructure Transactions. See Examples 1, 3, and 4 in section 3.02(3) of Notice 2006-77.

CONCLUSION

Based solely on Taxpayer's representations and the relevant law and analysis set forth above, we conclude that the Restructure Transactions will not result in the recapture of any GO Zone bonus depreciation with respect to the Property under section 1400N(d)(5).

Except as specifically set forth above, no opinion is expressed or implied concerning the tax consequences of the facts described above under any other provisions of the Code (including other subsections of section 1400N(d)). Specifically, no opinion is expressed or implied on whether the Property is GO Zone property that meets all of the requirements in section 1400N(d)(2) and in section 2.02 of Notice 2006-77, as clarified, modified, and amplified by section 5 of Notice 2007-36.

In accordance with the power of attorney, we are sending a copy of this letter to Taxpayer's authorized representative. We are also sending a copy of this letter to the appropriate Service official.

This letter ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Kathleen Reed

Kathleen Reed
Branch Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax and Accounting)

Enclosures (2):
copy of this letter
copy for section 6110 purposes