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Date:
November 14, 2016

Taxpayer =

Dear :

This is in response to Taxpayer's request for a private letter ruling dated May 20, 2016, under § 1031 of the Internal Revenue Code. Specifically, the request concerns whether cellular towers that Taxpayer uses in its business and will relinquish are of like-kind under § 1031 to cable telecommunication signal distribution property Taxpayer intends to receive in exchange for the cellular towers.

FACTS

Taxpayer is a communications services provider that offers communications infrastructure to its customers. Taxpayer currently owns fee simple or long-term leasehold interests in multiple wireless communication tower sites across the nation. Each tower site consists of fencing around the tower site, an antenna support structure for mounting antennas that are affixed to the land by a concrete foundation and attachment hardware (such as bolts and lashings), a nearby equipment hut with HVAC systems installed in the hut, and the land underlying the site itself ("Towers"). All of Taxpayer's Towers are permanently affixed to the land or would be extensively damaged if removed.

Taxpayer is contemplating exchanging its Towers for fiber-optic and copper cables installed either above or below ground and various other associated properties, including telephone poles for carrying the cables, underground conduits, concrete pads, attachment hardware, pedestals, guy wires, and anchors ("Cable Distribution Systems"). The Cable Distribution Systems are permanently affixed to the land or are intended never to be removed until the end of their respective useful lives.

LAW AND ANALYSIS

Section 1031 requires nonrecognition of gain or loss in an exchange of properties held for productive use in a trade or business or for investment if such properties are exchanged solely for like-kind properties held for productive use in a trade or business or for investment.

Section 1.1031(a)-1(b) of the Income Tax Regulations provides that the words “like kind” have reference to the nature or character of the property and not to its grade or quality. Under § 1031, one kind or class of property may not be exchanged for property of a different kind or class.

Several cases indicate that state law classifications of property are not the sole determiner of whether two sets of property are of like kind for § 1031 purposes. In *Fleming v. Commissioner*, 24 T.C. 818, 823-24 (1955), *aff'd sub nom. Commissioner v. P.G. Lake, Inc.*, 356 U.S. 260 (1958), *rev'g* 241 F.2d 78 (5th Cir. 1957), the court found that carved-out oil payments and a fee interest in real estate were not like-kind properties although the oil payment rights were an interest in real estate under applicable state law. In *Clemente Inc. v. Commissioner*, T.C. Memo. 1985-367, and *Oregon Lumber Co. v. Commissioner*, 20 T.C. 192 (1953), *acq.* 1953-2 C.B. 5, the courts considered more than state law classifications of property when determining whether properties were of like kind.

In addition, in *Morgan v. Commissioner*, 309 U.S. 78, 80-81 (1940), which concerned whether a state law classification of a power of appointment determined its character for federal tax purposes, the Supreme Court stated,

State law creates legal interests and rights. The federal revenue acts designate what interests or rights, so created, shall be taxed ... If it is found in a given case that an interest or right created by local law was the object to be taxed, the federal law must prevail no matter what name is given the interest or right by state law.

Therefore, consistent with *Fleming*, *Clemente, Inc.*, *Oregon Lumber*, and *Morgan*, state law property classifications are not the sole basis for determining whether the Towers and the Cable Distribution Systems are like kind property for § 1031 purposes.

In this case, the Towers and the Cable Distribution Systems transmit or support the transmission of telecommunication signals across distances. Neither the Towers nor the Cable Distribution Systems are used for other activities. In addition, the Towers and the Cable Distribution Systems are, or are intended to be, permanently affixed to land. Under these facts, Taxpayer's Towers and the Cable Distribution Systems are like kind property for purposes of § 1031.

CONCLUSION

Taxpayer's real property improved with Towers (including fencing around the tower site, an antenna support structure for mounting antennas that are affixed to the land by a concrete foundation and attachment hardware (such as bolts and lashings), nearby equipment huts with HVAC systems installed in the huts and all other structural components of Towers and the huts that are fully installed) is of like-kind within the meaning of § 1031(a)(1) and § 1.1031(a)-1(b) to the real property improved with Cable Distribution Systems (copper or fiber optic cables, telephone poles, underground conduits, concrete pads, attachment hardware, pedestals, guy wires, and anchors that are fully installed). This ruling applies only to Towers and the Cable Distribution Systems being transferred and received by Taxpayer as relinquished or replacement property, respectively, in the exchange that are affixed or embedded in real property held in fee simple or similar interest or under a long-term lease, easement, right of way or similar long-term right of use arrangement, in each case having a duration of thirty years or more including optional renewal periods exercisable by the tenant or right of use holder.

Except as provided in the preceding paragraph, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter under any provision of the Internal Revenue Code including § 1031. For example, this ruling pertains only to the Towers and the Cable Distribution Systems and does not pertain to any other properties exchanged by Taxpayer.

This ruling is directed only to Taxpayer. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Taxpayer must attach to any income tax return to which it is relevant a copy of this letter or, if it files its returns electronically, must include a statement providing the date and control number of this letter ruling.

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 requested ruling, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to Taxpayer's authorized representative.

Sincerely,

Michael J. Montemurro
Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)