

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date:

November 02, 2016

LEGEND

X =

State =

Charity =

business =

D1 =

D2 =

Dear :

This responds to a letter dated May 11, 2016, and subsequent correspondence, submitted on behalf of X, requesting a ruling under § 1011(b) of the Internal Revenue Code (Code.)

FACTS

According to the information submitted, X was organized under the laws of State and elected to be treated as an S Corporation effective D1. X owns several business properties through qualified subchapter S subsidiaries. Charity is a State non-profit corporation that has been recognized as an organization exempt from federal income tax under § 501(c)(3) of the Code effective D2. X plans to have several of its qualified

subchapter S subsidiaries contribute certain business properties to Charity. Some of the properties transferred to Charity may be subject to mortgage debt.

X requests a ruling that the computation of basis under the bargain sale rules of § 1011(b) will be determined on a property-by-property basis.

LAW AND ANALYSIS

Section 1361(b)(3) provides that, except as provided in regulations, a qualified subchapter S subsidiary shall not be treated as a separate corporation and all assets, liabilities, and items of income, deduction, and credit shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

Section 1011(a) provides that the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in § 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in such section for determining loss over the amount realized.

Section 1011(a) provides the general rule that the adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis (determined under § 1012 or other applicable sections of this subchapter and subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses)), adjusted as provided in § 1016.

Section 1011(b) provides that, if a deduction is allowable under § 170 (relating to charitable contributions) by reason of a sale, then the adjusted basis for determining the gain from such sale shall be that portion of the adjusted basis which bears the same ratio to the adjusted basis as the amount realized bears to the fair market value of the property. Under § 1.1011-2(a)(3) of the Income Tax regulations, if property is transferred subject to an indebtedness, the amount of the indebtedness must be treated as an amount realized for purposes of determining whether there is a sale or exchange to which § 1011(b) of the Code and § 1.1011-2 apply, even though the transferee does not agree to assume or pay the indebtedness. See also Ebben v. Commissioner, 783 F.2d 906 (9th Cir 1986). Therefore, pursuant to § 1011(b) and § 1.1011-2(a)(3), upon the contribution of an encumbered property to a charity, the transfer is treated as a bargain sale

CONCLUSION

Based solely on the facts submitted and the representations made, the computation of basis under the bargain sale rules of § 1011(b) is determined on a property-by-property basis if X donates business property subject to mortgage debt to Charity.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the facts described above under any other provision of the Internal Revenue Code.

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 X's authorized representative.

Sincerely,

Stephen J. Toomey
Stephen J. Toomey
Senior Counsel, Branch 4
Office of Associate Chief Counsel (Income Tax
and Accounting)

Enclosures (2)

Copy of this letter
Copy of this letter for section 6110 purposes

cc: