

Private Letter Ruling No. 2009-19027 (PLR 200919027)

Internal Revenue Service (IRS)
Private Letter Ruling (PLR)
Issue Date: February 3, 2009
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Section 1031 — Exchange of Property Held for Productive Use or Investment

This is in response to your request for a private letter ruling dated October 10, 2008, as amended by a supplemental submission dated December 17, 2008. Specifically, you have requested a ruling that Taxpayer and Trust C are not related persons for purposes of Section 1031(f) of the Internal Revenue Code and that an exchange of property is not a transaction to which Section 1031(f) applies.

FACTS

Farmland was owned by Father. Upon Father's death, Farmland was placed into two testamentary trusts with income payable to Mother for life and remainder to Taxpayer, Child B and Child C. Upon the death of Mother, Farmland was transferred to Taxpayer, Child B and Child C, in equal shares as tenants in common. The three children subsequently deeded each of their interests in Farmland to three grantor trusts, Trust A, Trust B and Trust C. Through Trust A, Taxpayer holds its interest in Farmland for use in a trade or business or for investment.

Child C subsequently died. Pursuant to the terms of Trust C, Child C's interest in Farmland is to remain in trust with trust income to be paid to her surviving spouse for life and remainder to her children. For federal income tax purposes, the current owners of Farmland are Taxpayer (through Trust A), Child B (through Trust B) and Trust C in equal shares as tenants in common. The Co-trustees of Trust C are Trustee X, the spouse of Child C, and Trustees Y and Z, the children of Child C.

Trust C now wishes to liquidate its ownership interest in Farmland. Taxpayer and Child B wish to remain invested in Farmland through Trust A and Trust B. To facilitate each others' wishes, and to increase the marketability of the interest to be sold, the Trusts have agreed to exchange each of their undivided 1/3 interest in Farmland for 100 percent fee simple interests in the same property. This exchange will be based upon the division suggested in a recent survey and appraisal. The division will split Farmland into three parcels of equal value.

None of the Trusts will assume any liabilities of the other Trusts or receive money or other property as a result of the exchange. However, as a result of the death of Child C, Trust C will have a different and higher basis in its parcel than the other owners due to the step up in basis received when Child C died. After the exchange of the undivided interests for whole parcels, Trust C will sell its parcel to a third party. Taxpayer and Child B will retain their respective parcels (each a portion of Farmland) for use in a trade or business or for investment.

LAW AND ANALYSIS

Section 1031(a)(1) of the Code provides that no gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment.

Section 1031(f)(1) of the Code generally provides that if -

- (A) a taxpayer exchanges property with a related person,
- (B) there is nonrecognition of gain or loss to the taxpayer under this section with respect to the exchange and
- (C) before the date 2 years after the date of the last transfer which was part of such exchange -
 - (i) the related person disposes of such property, or
 - (ii) the taxpayer disposes of the property received in the exchange from the related person which was of like kind to the property transferred by the taxpayer, there shall be no nonrecognition of gain or loss under this section to the taxpayer with respect to such exchange; except that any gain or loss recognized by the taxpayer by reason of this subsection shall be taken into account as of the date on which such subsequent disposition occurs.

Section 1031(f)(3) of the Code provides that for purposes of Section 1031(f), the term "related person" means any person bearing a relationship to the taxpayer described in Section 267(b) or Section 707(b)(1).

Under Section 267(b)(1), members of a family, as defined in Section 267(c)(4), are considered related persons. Section 267(c)(4) provides that the "family of an individual" includes only the individual's brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants. The relationships described in Section 707(b)(1) include (A) a partnership and a person owning, directly or indirectly, more than 50 percent of the capital interest, or the profits interest, in such partnership, and (B) two partnerships in which the same persons own, directly or indirectly, more than 50 percent of the capital interests or profits interests.

Rev. Rul. 73-476, 1973-2 C.B. 300, holds that exchanges of undivided interests in multiple parcels of real estate for 100 percent ownership of one or more parcels of the same real estate qualify as valid like-kind exchanges.

The above-described exchange and subsequent sale by Trust C of its fee simple interest in a portion of Farmland is not a transaction to which Section 1031(f) applies. In general, a transaction is described in Section 1031(f) if related parties engage in an exchange and then one of the related parties disposes of their acquired property within two years of the acquisition. In the present case, Taxpayer and Child B are related persons under Section 267(b), but neither intend to sell their respective property within 2 years of the exchange. Further, while Trust C intends to sell its interest within 2 years of the exchange, Taxpayer is not related to Trust C or Trustees X, Y and Z within the meaning of Section 1031(f)(3).

Accordingly, with respect to Taxpayer and Trust C, there is no exchange between related persons for purposes of Section 1031(f)(1).

RULING

Taxpayer and Trust C are not related persons for purposes of Section 1031(f). Consequently, the application of Section 1031(a) to Taxpayer is not affected by Trust C's sale of its interest (including the interest it acquired from Taxpayer) in Farmland within 2 years of its acquisition by Trust C.

CAVEATS:

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.

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.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are 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.

Sincerely,

Michael J. Montemurro
Branch Chief
Branch 4
(Income Tax & Accounting)