

Internal Revenue Service

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Department of the Treasury

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Date:
June 15, 2001

LEGEND:

Taxpayer =

Apartment =

YCorp =

Dear

This responds to your letter dated February 5, 2001, and subsequent submissions, requesting a ruling on the proper treatment of an exchange of an interest in a cooperative apartment unit, (which includes shares of stock in a residential cooperative corporation owning and operating the cooperative and the building and common areas where the cooperative apartment unit is located, and an interest as a tenant in a long-term proprietary lease to the same premises set to expire in the year 2036) for a condominium interest in fee in the same apartment and common areas under § 1031 of the Internal Revenue Code. Specifically, you are requesting a ruling that Taxpayer shall not recognize any gain or loss from the exchange of such interests. These are the applicable facts:

Taxpayer is a New York stock corporation, which presently owns shares of stock and proprietary leases to residential cooperative apartments in various buildings in New York City. One such property held by Taxpayer as a shareholder and proprietary lessee is Apartment. This property is owned and operated by a cooperative housing corporation, YCorp, which is also organized as a New York stock company. Taxpayer and all other shareholders and proprietary lessees of YCorp have the right to occupy their respective apartments and they have the obligation to pay their proportionate share of the cost of operating the property. The current proprietary leases are long-term leases, all having more than 30 years remaining to their terms. Taxpayer has held Apartment (the proprietary lease for Apartment) for more than two years.

YCorp will file a condominium declaration pursuant to the Condominium Act of the State of New York. Taxpayer (along with each of the shareholders and proprietary lessees) may exchange its interest in the building operated by YCorp for a condominium deed for the same apartment without other consideration. Upon the recording of the

condominium deed, the unit owner will be responsible for the payment of its proportionate share of the common charges, as well as for the real estate taxes which will be separately assessed against the particular unit. The condominium will operate Apartment and all other apartments in the condominium in precisely the same manner as the cooperative is now operated.

Section 1031 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 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. One kind or class of property may not, under that section, be exchanged for property of a different kind or class. The fact that any real estate involved is improved or unimproved is not material, for that fact relates only to the grade or quality of the property and not to its kind or class. Unproductive real estate held by one other than a dealer for future use or future realization of the increment in value is held for investment and not primarily for sale.

Section 1.1031(a)-1(c) of the regulations provides examples of exchanges of property of a "like kind." It states that no gain or loss is recognized if (1) a taxpayer exchanges property held for productive use in his trade or business, together with cash, for other property of like kind for the same use, such as a truck for a new truck or a passenger automobile for a new passenger automobile to be used for a like purpose; or (2) a taxpayer who is not a dealer in real estate exchanges city real estate for a ranch or farm, or exchanges a leasehold of a fee with 30 years or more to run for real estate, or exchanges improved real estate for unimproved real estate; or (3) a taxpayer exchanges investment property and cash for investment property of a like kind.

State law is usually determinative as to whether an interest in property constitutes real or personal property and, therefore, whether the property interest in question, is amenable to a tax deferred exchange for other real property under § 1031 of the Code. For example, the Service holds in Rev. Rul. 55-749, 1955-2 C.B. 295, that where, under applicable state law, water rights are considered real property rights, the exchange of perpetual water rights for a fee interest in land constitutes a nontaxable exchange of property under section 1031(a) of the Code provided the requirements of that section as to holding for productive use in a trade or business or for investment are satisfied.

The legal status of stock ownership in a cooperative in the State of New York as real property or personal property is unclear. See e.g., State Tax Commission v. Shor, 43 N.Y. 2d 151, 154 (1988); and AHL Properties Ten v. 306-100th St. Owners Corp., 86 N.Y.2d 643 (1995). However, under various New York statutes, stock ownership in a

cooperative is often treated and equated as an interest in real property.¹ Moreover, the condominium deed will constitute a fee interest to the same underlying real property, to the same common areas and particularly to Apartment, (the same apartment). The only difference will be that Taxpayer will hold title to Apartment directly by condominium deed rather than indirectly as a shareholder in a cooperative corporation and proprietary lessee.

Accordingly, as to Taxpayer, we rule that directly held legal title to Apartment evidenced by a condominium deed is of like kind to Taxpayer's interest in the same Apartment as shareholder in the present owner of Apartment (the cooperative corporation) and proprietary lessee of such Apartment.

The Taxpayer's presently held interest as tenant, and the condominium to be received in the exchange, are both real property interests representing the same physical property for purposes of § 1031 of the Code. Therefore, the exchange of Taxpayer's leasehold interest in the Apartment for a condominium interest in the same property constitutes a nontaxable exchange of properties of a like-kind under § 1031(a), provided that the properties are held for productive use in a trade or business or for investment and all other requirements for deferral under § 1031 are satisfied.

No determination is made by this letter as to whether the described transaction otherwise qualifies for deferral of gain realized under § 1031. Except as specifically ruled above, no opinion is expressed as to the federal tax treatment of the transaction under any other provisions of the Code and the Income Tax Regulations that may be applicable or under any other general principles of federal income taxation. No opinion is expressed as to the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above ruling.

¹ Examples include homestead exemptions for both cooperative apartments and condominium units, N.Y.C.P.L.R. § 5206(a)(2) and (3) (McKinney 1997); real estate mortgage lending requirements as to interests in cooperatives the same as with other types of real estate, N.Y. Real Prop. Law § 279.5. (McKinney 1989) and N.Y.Pub.Auth. Law § 2402(5) (McKinney Supp. 2001); tax abatement on real property, including cooperative apartment stock ownership, for senior citizens, N.Y.Real Prop. Tax Law §467.3-a (McKinney Supp. 2001); "mansion tax" as to private homes, including cooperative apartments, exceeding one million dollar purchase price, N.Y. Tax Law § 1402-a(a) (McKinney 2000); limit of late charges on loans secured by real estate including interests in cooperative housing corporations, N.Y.Real Prop. Law §254-b.1 (McKinney 1989).

This ruling is directed only to the taxpayer(s) who requested it. Section 6110(k)(3) of the Code provides that it may not be cited as precedent.

Sincerely yours,
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(Income Tax & Accounting)
by Robert M. Casey
Senior Technician Reviewer, Branch 5

cc: