

Internal Revenue Service

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B05

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April 13, 2006

Legend

Partnership =

Company =

LLC =

A =

B =

C =

D =

E =

F =

G =

Family =

Percent H =

Percent I =

Percent J =

Percent K =

PLR-147736

Percent L =

Percent M =

Percent N =

Address 1 =

Address 2 =

City X =

City Y =

Dear _____ :

This is in reply to a letter dated July 22, 2004, and subsequent correspondence submitted on your behalf by your authorized representative requesting a private letter ruling on the applicability of section 1031 of the Internal Revenue Code of 1986 (Code) to the sale of certain cooperative apartments and the subsequent purchase of replacement properties.

STATEMENT OF FACTS:

Partnership is a partnership for federal income tax purposes. Company is an S corporation for federal income tax purposes. Both entities use the cash method of accounting and file their federal income tax returns on the calendar year.

A and D each own H percent of Partnership. B owns I percent of Partnership, and C owns J percent of Partnership. LLC owns K percent of Partnership. E and Family each own L percent of LLC. F and G each own M percent of Company, and E owns N percent of Company.

Partnership owns shares of stock in 21 cooperative apartments and 2 garage spaces at Address 1 in City X, which is located in New York State. Company owns shares of stock in 25 cooperative apartments at Address 2 in City Y, which is also located in New York State. Partnership and Company rent these properties and collect rental payments. All of the properties are owned by cooperative housing corporations organized under New York State law.

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Partnership and Company intend to sell their interests in the above-described properties they now own. Partnership and Company have identified replacement properties consisting of improved and unimproved real properties to be received in transactions intended to qualify as like kind exchanges under section 1031. These replacement properties will be owned by Partnership and Company as tenants in common.

You have represented that Partnership and Company will comply with the 45-day identification period and the 180-day replacement period provided for in section 1031, as well as the rules governing the use of an intermediary to facilitate a like kind exchange. Accordingly, your letter ruling requests concern whether Partnership's and Company's interests in cooperative apartments in New York State will be considered like kind to the real property interests that Partnership and Company intend to acquire in the exchange.

STATEMENT OF LAW AND ANALYSIS:

Section 1031 of the Code provides for the nonrecognition of gain or loss in an exchange of properties that are held for productive use in a trade or business or for investment if such properties are exchanged solely for like kind properties that are held for productive use in a trade or business or for investment. A deferred exchange is an exchange wherein the property to be exchanged by the taxpayer is relinquished before the replacement property is acquired. Generally, a deferred like kind exchange utilizes an intermediary to hold the relinquished or acquired property before such property is transferred to the exchanging taxpayer.

If a taxpayer in a deferred like kind exchange actually or constructively receives money or non-like kind property before the taxpayer actually receives the replacement property, gain may be recognized on the exchange. Further, if a taxpayer in a deferred exchange actually or constructively receives money or non-like kind property in the full amount of the consideration for the relinquished property, then the transaction will constitute a taxable sale and not an exchange, even though the taxpayer may ultimately receive like kind replacement property. Treas. Reg. §1.1031(k)-1(a).

To assist taxpayers in structuring like kind exchanges, the section 1031 regulations provide four safe harbors whereby taxpayers will not be in actual or constructive receipt of exchange proceeds in a deferred like kind exchange: security or guarantee arrangements, qualified escrow accounts and qualified trusts, qualified intermediaries, and interest and growth factors. Of these four, only the safe harbor for qualified intermediaries also provides a safe harbor against characterization of the accommodator facilitating the deferred exchange as an agent of the taxpayer.

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Treas. Reg. §1.1031(k)-1(g)(4). The use of the qualified intermediary safe harbor further requires that the qualified intermediary not be considered a disqualified person with respect to the taxpayer involved in the exchange within the meaning of Treas. Reg. §1.1031(k)-1(k).

Treas. Reg. §1.1031(a)-1(b) defines like kind for purposes of section 1031 and explains that the term like kind has reference to the nature or character of the property and not to its grade or quality. Properties to be exchanged tax free under section 1031 must be of the same kind or class. With respect to real estate, Treas. Reg. §1.1031(a)-1(b) states that whether the real estate is improved or unimproved is not material because that relates only to the grade or quality of the property and not to its kind or class.

Treas. Reg. §1.1031(a)-1(c) sets forth examples of properties that will be considered like kind. The most relevant examples pertain to real estate and provide that a taxpayer who is not a dealer in real estate may exchange city real estate for a ranch or farm, a leasehold of a fee with 30 years or more to run for real estate, or improved real estate for unimproved real estate.

Whether stock in a cooperative apartment located in New York State constitutes real or personal property under section 1031 is determined under New York law. See, e.g., Rev. Rul. 55-749, 1955-2 C.B. 295. Although New York case law might suggest that there are conflicts concerning whether a cooperative interest in real property is real property (State Tax Comm'n v. Shor, 43 N.Y.2d 151, 371 N.E.2d 523, 400 N.Y.S.2d 805 (1977), *questioned in* In re Pandeff, 201 B.R. 865 (Bankr. S.D.N.Y. 1996)), various New York statutes treat an interest in a cooperative as equivalent to an interest in real property. N.Y. Civ. Prac. L. & R. § 5206(a) (McKinney 1997) (homestead exemption); N.Y. Real Prop. Law § 279(5) (McKinney 1989) and N.Y. Pub. Auth. Law § 2402(5) (McKinney Supp. 2006) (mortgage for cooperative interest); N.Y. Real Prop. Tax Law § 467(3-a) (McKinney Supp. 2006) (real property tax for senior citizens); N.Y. Tax Law § 1402-a(a) (McKinney 2004) ("mansion tax"); and N.Y. Real Prop. Law § 254-b(1) (McKinney 1989) (limit on mortgage late charges).

Accordingly, we rule that the interests in cooperative apartments in New York owned by Partnership and Company will be considered like kind, for purposes of section 1031, to the improved and unimproved real property that Partnership and Company intend to acquire as replacement properties.

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.

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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.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 11.04 of Rev. Proc. 06-1, 2006-1 I.R.B. 1, 49. However, when the criteria in section 11.07 of Rev. Proc. 06-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

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.

Sincerely,

William A. Jackson
Branch Chief, Branch 5
(Income Tax & Accounting)