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September 29, 2008

LEGEND:

Taxpayer	=
Foreign Parent	=
Foreign-Sub	=
Domestic-Sub	=
LT (Lower Tier)	=
Processed Mineral	=
Facility	=

Dear

This responds to your request for a private letter ruling, dated March 19, 2008, regarding the application of § 1031(a) of the Internal Revenue Code to a proposed exchange of property.

FACTS:

Taxpayer, a domestic limited partnership, is in the business of transporting Processed Mineral to customers. Foreign Parent, through Domestic-Sub and Foreign-Sub, engages in the same business. Taxpayer is not related to Foreign Parent or its subsidiaries for purposes of § 267 or 707 of the Code, although Foreign Parent owns a substantial interest in Taxpayer.

Taxpayer owns Old Facility as part of its trade or business. As described below, Taxpayer proposes to exchange Old Facility for like-kind property in a transaction

intended to meet the requirements of § 1031. As part of the exchange, Domestic-Sub through LT (its wholly owned LLC) will construct New Facility that will serve as Taxpayer's replacement property. LT is an entity disregarded for federal income tax purposes. Taxpayer and Domestic Sub will then exchange Old Facility for New Facility.

The right-of-way easements needed to construct New Facility are currently owned by Taxpayer. Prior to construction, where necessary, Taxpayer will acquire additional easements as needed for New Facility and then assign them (the "Easement Assignments") on a non-exclusive basis to LT for cash in an amount equal to the fair market value of the Easement Assignments. These assignments will be effected in a manner that will preserve Taxpayer's continuing easement rights over the same property. Pursuant to the Easement Assignments, LT will have the right to construct, own and operate New Facility on the Assigned Easements (and any other facilities subsequently acquired by LT to the extent lying within the Assigned Easements) and will be fully liable for its share of property taxes imposed on the Assigned Easements and any damages caused by its activities on the Assigned Easements.

LT intends to acquire the funds necessary for the construction of New Facility through a combination of equity contributions received from Foreign Parent and nonrecourse loans received from a syndicate of third party lenders (the "Project Financing"). The Project Financing will be secured by New Facility. Under the terms of the Project Financing, lenders would have the right to foreclose on New Facility, including LT's rights under the Assigned Easements, to satisfy the Project Financing in the event LT defaults on, or is in material breach of, the Project Financing. Taxpayer would have no debt obligations to the Project Financing lenders, to Domestic-Sub or to LT.

No liabilities (including Project Financing) will be assumed by either party, or transferred from one party to the other, in connection with the exchange. Following the exchange, Taxpayer will use New Facility in its trade or business. Although much of the property being exchanged may constitute improvements to real property, no land interest (*i.e.*, fee simple interests, leaseholds, easements, right-of-ways, etc.) is the subject of this ruling.

LAW, ANALYSIS AND RULING:

Section 1031(a)(1) 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(b) provides, in part, that if an exchange would be within the provisions of subsection (a) if it were not for the fact that the property received in exchange consists not only of property permitted to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in

an amount not in excess of the sum of such money and the fair market value of such other property.

Section 1.1031(a)-1(c) of the Income Tax Regulations provides, in part, 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.

With respect to personal property, § 1.1031(a)-2(b)(1) provides, in part, that depreciable tangible personal property is exchanged for property of a "like kind" under § 1031 if the property is exchanged for property of a like kind or like class. Depreciable tangible personal property is of a like class to other depreciable tangible personal property if the exchanged properties are either within the same General Asset Class or within the same Product Class. The methods for determining whether exchanged depreciable tangible personal properties are within the same asset class or product class are detailed in § 1.1031(a)-2(b).

Section 1.1031(a)-2(c)(1) provides that an exchange of intangible personal property or nondepreciable personal property qualifies for nonrecognition of gain or loss under § 1031 only if the exchanged properties are of a like kind. No like classes are provided for these properties. Whether intangible personal property is of a like kind to other intangible personal property generally depends on the nature or character of the rights involved (e.g., a patent or a copyright) and also on the nature or character of the underlying property to which the intangible personal property relates.

Section 1.1031(j)-1 of the regulations provides rules for the treatment of exchanges of multiple properties. Section 1.1031(j)-1(a) provides, in part, that as a general rule the application of § 1031 requires a property-by-property comparison for computing the gain recognized and the basis of property received in a like-kind exchange. These regulations provide the method for determining what amounts must be recognized as gain and for determining basis of multiple items of property following an exchange.

For this transaction, Taxpayer is exchanging Old Facility, which it uses in its trade or business, for New Facility which it will hold for use in its trade or business. Old Facility consists of properties, both tangible and intangible, that are essentially the same type of properties constituting New Facility. Therefore, the properties relinquished that constitute Old Facility are also essentially of like kind to the replacement properties constituting New Facility.

However, the transaction described is an exchange of multiple properties, which is governed by § 1.1031(j)-1. Under § 1.1031(j)-1, even though the properties exchanged

are of like kind and no cash is received in the exchange, it is still possible that some of the gain realized from the transaction must be recognized. For example, assume a taxpayer exchanges Property A and Property B for Property C and Property D. The fair market values of the exchanged properties are as follows:

Property A	$100	Property C	$85
Property B	$250	Property D	$265
Total	$350		$350

Assume also that Property A is of like-kind to Property C (but not to Property D), Property B is of like-kind to Property D (but not Property C), and the exchanging taxpayer has a $0 adjusted basis in Property A and B. In this example, even though there is an exchange of like-kind properties worth $350, the taxpayer is considered to have received $15 of non-like kind property. That is, since Property A, with a fair market value of $100, was exchanged for Property C, which is worth $85, the exchanging taxpayer is considered to have received $15 worth of Property D for Property A and Property D is not of like-kind to Property A. Consequently, in accordance with the rules of § 1.1031(j)-1, the taxpayer has $15 of gain that is not deferred under § 1031. In the present case, Taxpayer must refer to § 1.1031(j)-1 to determine the amount of realized gain that is not deferred under § 1031.

Accordingly, subject to the provisions of § 1.1031(j)-1 of the regulations for determining the amount of any boot received by Taxpayer, and all other requirements of § 1031 not specifically addressed in this letter, the transaction described qualifies as a like-kind exchange under § 1031(a) of the Code for deferral of gain or loss realized.

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.

The ruling contained in this letter is based upon information and representations submitted by 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. Taxpayer should apply and the examiner should verify the correct application of § 1031(b) of the Code and §1.1031(j)-1. This ruling will not prevent assessments based on the taxability of boot received by Taxpayer.

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

Sincerely,

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

CC: