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Office:

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From:

Sent: Monday, October 15, 2012 8:20 AM

To:

Cc:

Subject: request for advice

RE:

In response to your September 16, 2012 request for this office's advice on whether the taxpayer could utilize the substance over form doctrine to recast the transaction at issue, _____ concurs with your assessment of the case. In general, the taxpayer is bound by the form of the transaction that it chose. See Commissioner v. Danielson, 378 F.2d 771 (3d Cir. 1967). The Seventh Circuit in United States v. Fletcher, 562 F.3d 839, 842 (7th Cir. 2009), relied on Commissioner v. National Alfalfa Dehydrating and Milling Co., 417 U.S. 134 (1974), for the general proposition that the taxpayer cannot disavow the form of the transaction that it chose to enter into. The Seventh Circuit, however, appears to stop short of a full on prohibition against taxpayers disavowing their transactional forms, by requiring them to have "strong proof" that the economic realities are something different than what they intended. See also Comdisco, Inc. v. United States, 756 F.2d 569, 577-79 (7th Cir. 1985). In this case, based on the facts that have been presented to date, it appears that the taxpayer will not be able to meet the "strong proof" standard. Therefore, _____ concurs with the field's overall conclusion: the taxpayer should not be entitled to utilize substance over form to recast the transaction now into a form that better suits it.