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CC:ITA:B04
PLR-138083-13

Date:
January 17, 2014

LEGEND

Taxpayer =

Affiliate 1 =

Affiliate 2 =
Property =

EATX =
EATX =
Parent

Dear :

This is in reply to Taxpayer's request for a private letter ruling, dated , concerning whether § 1031 of the Internal Revenue Code applies to a transaction in which Taxpayer and two related parties enter into separate qualified exchange accommodation arrangements for parking the same property held by an exchange accommodation titleholder.

FACTS

Taxpayer, Affiliate 1, and Affiliate 2 each own one or more commercial office buildings. These entities each have targeted Property for acquisition through transactions separately structured as like-kind exchanges. Taxpayer wants Property to serve as replacement property for at least one relinquished property that it owns. Likewise, both Affiliate 1 and Affiliate 2 (Affiliates) want Property to serve as replacement property for

at least one relinquished property that each owns. Taxpayer, Affiliate 1, and Affiliate 2 each own one or more properties that are of like kind to Property for purposes of § 1031(a) and § 1.1031(a)-1(b) of the Income Tax Regulations.

Taxpayer, Affiliate 1, and Affiliate 2 each will initiate a "reverse" like-kind exchange under the safe harbor provisions of Rev. Proc. 2000-37, 2000-2 C.B. 308. Each will enter into a qualified exchange accommodation arrangement (QEAA) with EATX, an exchange accommodation titleholder. EATX is a limited liability company wholly owned by EATX Parent. EATX Parent is not related to Taxpayer or Affiliates.

Taxpayer represents that Taxpayer, Affiliate 1, and Affiliate 2 will each comply with the requirements of Rev. Proc. 2000-37. This includes the requirement that Taxpayer, Affiliate 1, and Affiliate 2 have a bona fide intent to acquire Property as replacement property in a like-kind exchange under § 1031 at the time EATX acquires qualified indicia of ownership in Property. In addition, Taxpayer's qualified exchange accommodation arrangement (QEAA) provides that Taxpayer acknowledges that EATX has entered into concurrent QEAAs for Property with Affiliate 1 and Affiliate 2, which give Affiliate 1 and Affiliate 2 rights to acquire Property, in whole or part, to complete like-kind exchanges.

Under Taxpayer's QEAA, Taxpayer's right to acquire Property is subject to it giving notice to EATX of its intention to acquire Property, in whole or part. This is subject, however, to the condition that Taxpayer's rights terminate upon prior delivery of such notice by Affiliate 1 or Affiliate 2. The agreement also provides that if Affiliate 1 or Affiliate 2 gives prior notice of its intent to acquire Property, EATX has no further obligation to transfer Property to Taxpayer, whether in connection with the exchange described in the agreement or otherwise. The agreement also provides that if Affiliate 1 or Affiliate 2 states its intention to acquire only a portion of Property, EATX's obligation to transfer the balance of Property to Taxpayer is unaffected. Affiliate 1 and Affiliate 2 will simultaneously enter into their own respective QEAAs with EATX for Property, listing Taxpayer and the other Affiliate as the other parties that may acquire Property under the respective QEAAs, under substantially the same terms and conditions.

Taxpayer will assign its right in the contract to purchase Property to EATX, which will thereafter acquire title to Property using funds that the Taxpayer, Affiliate 1, Affiliate 2, or any related entity advances. Within 45 days thereafter, Taxpayer, Affiliate 1, and Affiliate 2 will each identify property that each proposes to transfer as relinquished property according to the terms of its respective QEAA with EATX. Taxpayer and Affiliates will each separately identify potential relinquished properties consistent with the rules of §1.1031(k)-1(c)(4). Taxpayer and EATX Parent will enter into an exchange agreement. Taxpayer will assign to EATX Parent its right under the QEAA to acquire the Property. Within 180 days from the time that EATX acquires title to the Property, EATX will, at EATX Parent's discretion, transfer title to the Property to Taxpayer in

exchange for Taxpayer's relinquished property, consistent with the rules of §1.1031(k)-1(g)(4).

LAW AND ANALYSIS

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 (relinquished property) if such property is exchanged solely for property of like kind that is to be held either for productive use in a trade or business or for investment (replacement property).

Under § 1031(a)(3) and § 1.1031(k)-1, an exchange does not qualify as a like-kind exchange unless the taxpayer identifies the replacement property on or before 45 days after the taxpayer transfers the relinquished property, and receives the replacement property within the replacement period. The replacement period ends on the earlier of--(i) 180 days after the date on which the taxpayer transfers the property relinquished in the exchange, or (ii) the due date (including extensions) of the taxpayer's tax return for the taxable year in which the transfer of the relinquished property occurs.

Rev Proc. 2000-37 provides a safe harbor for structuring reverse exchanges through parking arrangements. Under this revenue procedure, the Service treats an exchange accommodation titleholder (EAT) as the beneficial owner of property for federal income tax purposes if the property is held in a QEAA. *See* section 1 of Rev. Proc. 2000-37, as modified by section 4.01 of Rev. Proc. 2004-51, 2004-2 C.B. 294. Rev. Proc. 2000-37 provides guidance on how to structure a like-kind exchanges when the sale of relinquished property is after the EAT's acquisition of replacement property through an arrangement with the taxpayer.

Rev. Proc. 2000-37 sets forth the following safe-harbor requirements for establishing a QEAA:

1. The EAT, which is not the taxpayer or a disqualified person and is subject to federal income tax, must acquire a qualified indicia of ownership (QIO) in the parked property.
2. At the time EAT acquires a QIO, the taxpayer has a bona fide intent that the parked property be either replacement or relinquished property in an exchange intended to qualify for deferral of gain or loss under § 1031.
3. The EAT and the taxpayer enter into a written qualified exchange accommodation agreement no later than five business days after the EAT acquires a QIO in the parked property, providing that the EAT is holding the property for the benefit of the taxpayer in order to facilitate an exchange under § 1031 and Rev. Proc. 2000-37. The agreement must specify that the EAT will be treated as the beneficial owner of the parked property for federal income tax purposes and that both the EAT and the taxpayer must report federal income tax

attributes on their respective income tax returns in a manner consistent with this agreement.

4. No later than 45 days after the transfer of a QIO of the replacement property to the EAT, the taxpayer must properly identify the relinquished property in a manner consistent with the principles described in § 1.1031(k)-1(c). For this purpose, the taxpayer may properly identify alternative or multiple properties as provided in § 1.1031(k)-1(c)(4)
5. No later than 180 days after the transfer of a QIO of the property to the EAT, the property is transferred either directly or indirectly through a qualified intermediary to the taxpayer as replacement property (or as relinquished property to a third party buyer who is not a disqualified person).
6. The combined time period that the QEAA may hold replacement and relinquished property may not exceed 180 days.

Taxpayer represents that its exchange will satisfy the requirements for a deferred exchange in § 1.1031(k)-1 and the safe harbor for reverse exchanges in Rev. Proc. 2000-37. At the time EATX acquires a QIO in Property, it will not be clear whether Taxpayer, Affiliate 1, or Affiliate 2, each of which has identified relinquished properties, will complete the transfer of one or more such identified properties to complete the exchange within the 180-day period permitted for a QEAA under Rev. Proc. 2000-37.

Rev. Proc. 2000-37 allows Taxpayer to complete a reverse like-kind exchange without concern that EATX's ownership of Property will be attributed to Taxpayer. In addition, Rev. Proc. 2000-37, as modified by Rev. Proc. 2004-51, does not prohibit an accommodation party from serving as an EAT to multiple taxpayers, including related parties, under multiple and simultaneous QEAAs for the same parked property. Moreover, Taxpayer's QEAA is not invalid merely because Taxpayer's right to acquire Property terminates upon prior notice by Affiliate 1 or Affiliate 2 to EATX of its intent to acquire Property.

CONCLUSION

Based strictly on the information submitted, and each representation made (including the representation that Taxpayer and Affiliates each have a bona fide intent to acquire Property pursuant to each of its QEAAs), we conclude as follows:

Taxpayer's arrangement to acquire Property in whole or in part constitutes a QEAA, as defined in Rev. Proc. 2000-37, separate and distinct from the QEAAs entered into by Affiliate 1 and Affiliate 2, with separate application of the identification rules of § 1.1031(k)-1(c)(4).

Except as provided in the preceding paragraph, we do not express or imply an opinion concerning the tax consequences of any aspect of any transaction or item discussed or

referenced in this letter. For example, we do not express an opinion whether Taxpayer and Affiliates each had a bona fide intent to acquire Property pursuant to their QEAAs. *See* § 4.02(1) of Rev. Proc. 2012-3, 2012-1 I.R.B. 113, 121. Further, we express no opinion concerning whether Taxpayer has otherwise complied with (i) the requirements for deferral of gain under § 1031 of the Code and its regulations, (ii) Rev. Procs. 2000-37 and 2004-51, and (iii) the provisions of its exchange agreement with its qualified intermediary and its QEAA with EATX.

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(s).

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 ruling contained in this letter is 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
Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: