Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:ITA:BR4
PLR-157409-06
Date:
February 05, 2007

Taxpayer =

Business X =
Property A =
City B =
Property C =

City D =
EAT =
QI =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
Buyer =

Dear

This responds to your request for a private letter ruling, dated December 11, 2006. Specifically, you have asked us to rule that Taxpayer has complied with the requirements for identifying relinquished property set forth in § 4.02(4) of Rev. Proc. 2000-37, 2000-2 C.B. 308.

FACTS:

Taxpayer engages in Business X. Taxpayer uses the accrual method of accounting and its taxable year is the calendar year. Prior to the transactions described below, Taxpayer owned Property A, which is improved real property located in City B.

On Date 1, Taxpayer and an exchange accommodation titleholder (EAT) entered into a qualified exchange accommodation arrangement (QEAA) to set up an exchange pursuant to Rev. Proc. 2000-37. Also on Date 1, Taxpayer assigned to EAT its rights as purchaser under a pre-existing purchase agreement for Property C, which is improved real property located in City D, and gave notice of the assignment to the sellers. Also on Date 1, EAT acquired Property C, pursuant to the QEAA.

On Date 2, Taxpayer entered into a sale contract, agreeing to sell Property A to Buyer. On Date 3, Taxpayer entered into an exchange agreement with QI as a qualified intermediary for a § 1031 exchange with respect to Property A. Also on Date 3, Taxpayer assigned to QI its rights as seller under the Property A sales contract and gave notice of the assignment to Buyer.

On Date 4, the sale of Property A closed. Date 5, which was two days later and which happened to be a Sunday, was the 45th day following Date 1, the date on which EAT acquired Property C. On the day following (Date 6), Taxpayer sent EAT a signed document formally identifying Property A and other property as the possible relinquished properties in the exchange.

On or before Date 7 (the date which is 180 days after Date 1), QI will use exchange funds from the sale of Property A to acquire Property C from EAT as its replacement property.

APPLICABLE LAW:

Section 1031(a)(1) of the Internal Revenue 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 1031(a)(3) provides, in part, that for purposes of § 1031(a), any property received by the taxpayer is treated as property which is not like-kind property if the property is not identified as property to be received in the exchange on or before the day which is 45 days after the date on which the taxpayer transfers the property relinquished in the exchange.

Rev. Proc. 2000-37 provides a safe harbor under which the Internal Revenue Service will not challenge (a) the qualification of property as either “replacement property” or “relinquished property” (as defined in § 1.1031(k)-1(a) of the Income Tax Regulations) for purposes of § 1031 and the regulations thereunder or (b) the treatment of the EAT as the beneficial owner of such property for federal income tax purposes if the property is held in a QEAA as defined in section 4.02 of that revenue procedure.

One of the requirements set forth in Rev. Proc. 2000-37, which is stated at section 4.02(4), is that no later than 45 days after the transfer of qualified indicia of ownership of the replacement property to the EAT, the relinquished property must be properly identified. Identification must be made in a manner consistent with the principles described in § 1.1031(k)-1(c).

Section 1.1031(k)-1(c)(1) provides, in part, that replacement property is identified before the end of the identification period only if the requirements in § 1.1031(k)-1(c)(1) are satisfied with respect to the replacement property. However, any replacement property that is received by the taxpayer before the end of the identification period will in all events be treated as identified before the end of the identification period.

LEGAL ANALYSIS and CONCLUSION:

For property to be eligible for use as relinquished property in an exchange within the safe harbor rules of Rev. Proc. 2000-37, it must be identified within 45 days after the EAT acquires replacement property pursuant to a QEAA. Section 1.1031(k)-1(c) establishes the requirements for identifying replacement property in a deferred exchange. Under that regulation, any replacement property received within the 45-day identification period is treated as identified within the identification period. Applying that principle to a safe-harbor parking transaction under Rev. Proc. 2000-37, relinquishing property through a qualified intermediary before the expiration of 45 days from the date that replacement property is parked, satisfies this identification requirement.

In the present case, Taxpayer disposed of Property A through QI less than 45 days following EAT's acquisition of Property C. The net proceeds from the sale of Property A were transferred to QI in its exchange accommodator role. Assuming QI is a qualified intermediary as defined in § 1.1031(k)-1(g)(4), QI may be used in the capacity of a qualified intermediary in a safe harbor parking transaction under the revenue procedure.[1] Accordingly, provided QI is a qualified intermediary described § 1.1031(k)-1(g)(4), Taxpayer satisfied the identification requirements with respect to its exchange of Property A for Property C in accordance with section 4.02(4) of Rev. Proc. 2000-37 by disposing of Property A through QI within the 45-day identification period.

CAVEAT(S):

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. A copy of this letter must be attached to any income tax return to which it is relevant. We enclose a copy of the letter for this purpose. Also enclosed is a copy of the letter showing the deletions proposed to be made when it is disclosed under § 6110.

[1] *See* Rev. Proc. 2000-37, section 4.02(5), which anticipates use of qualified intermediaries along with exchange accommodation titleholders in parking transactions.

This ruling letter is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Michael J. Montemurro
Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting