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Private Letter Ruling 9807013

This letter responds to your request for a private letter ruling, dated May 16, 1997, submitted on behalf of Taxpayer. Taxpayer, a State A limited partnership, requests a ruling that the receipt of several parcels of real property (each parcel is a "Replacement Property", collectively, the parcels are the "Replacement Properties") by an entity owned by Taxpayer will be treated as the receipt of real property directly by the Taxpayer for purposes of qualifying the receipt of such Replacement Property for nonrecognition of gain under section 1031 of the Code.

Facts

Taxpayer, a State A limited partnership, uses the accrual method for maintaining its accounting books and for preparing its federal income tax returns. The Taxpayer's taxable year ends on December 31. The Taxpayer's partners are LLC, a State A limited liability company, and GP, a general partnership organized in State B.

Taxpayer's business operations consist of the ownership and leasing of a single parcel of improved land. The improvements to the land consist of a commercial office building and related structures. The land and improvements are leased to a single lessee under a long-term lease. Collectively, the land and building are referred to as the "Relinquished Property".

The Relinquished Property serves as security for the Taxpayer's indebtedness. Under the terms of the indebtedness, Taxpayer is required to hold only the Relinquished Property.

Taxpayer has determined that it is in its partners' best interests to dispose of the Relinquished Property. Taxpayer has identified a party interested in acquiring the Relinquished Property. Each Replacement Property will be subject to indebtedness ("Replacement Indebtedness") secured by that Replacement Property. Taxpayer wishes to acquire each Replacement Property subject to its Replacement indebtedness. The terms of each Replacement Indebtedness require that, for such indebtedness to be taken subject to as part of an exchange, the Replacement property securing such Replacement Indebtedness must be acquired by a single asset entity.

Taxpayer proposes to achieve its business objectives by engaging in the following actions:

- (1) Taxpayer will transfer title to the Relinquished property directly to a qualified intermediary (within the meaning of section 1.1031(k)-1(g)(4) of the Income Tax Regulations).
- (2) Taxpayer will form a separate entity (a "Replacement Entity") to take title to each Replacement Property to be received in the exchange. Accordingly, Taxpayer will form one such entity for each of the Replacement Properties.
- (3) Each Replacement Entity will receive title to its designated Replacement Property directly from the qualified intermediary as part of the overall exchange.

(4) Each Replacement Entity will be a "business entity" that is a "domestic eligible entity" within the meaning of section 301.7701-2 and 3 of the regulations.

(5) Taxpayer will be the sole owner of the ownership interests in each Replacement Entity.

(6) Each Replacement Entity will either: (i) file a timely and proper election to be disregarded as an entity separate from its owner pursuant to section 301.7701-3 of the regulations, or (ii) will not file any election pursuant to section 301.7701-3(c) regarding its classification and will instead rely on the default classification rule for single owner entities pursuant to section 301.7701-3(b)(1)(ii).

(7) Each Replacement Entity will hold its Replacement Property either for productive use in a trade or business or for investment, in each case, within the meaning of section 1031 of the Code.

(8) Neither Taxpayer nor any Replacement Entity will be a bank as defined in section 581 of the code.

(9) Taxpayer has represented that the exchange of the Relinquished Property for the Replacement properties will comply with the requirements of section 1.1031(k)-1 of the regulations relating to the qualification of such exchange for nonrecognition of gain or loss under section 1031(a) of the Code.

Law and Analysis

Section 1031(a)(2) of the 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)(2) excludes from eligibility for nonrecognition treatment any exchange of interests in a partnership, stock, or certification of trust or beneficial interest.

Section 301.7701-2(c)(2) of the regulations provides that, in general, a business entity that has a single owner and is not a corporation (as defined in section 301.7701-2(b)) is disregarded as an entity separate from its owner for federal tax purposes unless the entity elects to treat itself as an association for federal tax purposes. Because each Replacement Entity will be disregarded as an entity separate from its owner for federal tax purposes, the assets of each Replacement Entity will be treated as assets of the Taxpayer.

Conclusion

Taxpayer's receipt of the Replacement Properties by the Replacement Entities will be treated as the receipt of real property directly by the Taxpayer for purposes of qualifying the receipt of such Replacement Property for nonrecognition of gain under section 1031 of the code.

Except as specifically ruled above, no opinion is expressed as to the federal tax treatment of the above transactions under other provisions of the code and regulations that may be applicable. No opinion is expressed as to the tax treatment of any conditions existing at the time of or effects resulting from the transaction that are not specifically covered by the above ruling. A copy of

this letter ruling should be attached to the appropriate federal income tax returns for the taxable years in which the transactions described herein are consummated.

This letter ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.