

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:ITA:5 PLR-112864-99
Date:
November 29, 2000

Re:

LEGEND:

Taxpayer	=
Parent	=
QI	=
QI Parent	=
Division 1	=
Division 2	=
Affiliate	=
Property	=
Category 1	=
Category 2a	=
Category 2b	=
Program 1	=
Program 2	=
Class 1	=
Class 2	=
Date 1	=
	=
a	=
b	=
c	=
d	=
e	=

Dear :

This letter responds to your request for a private letter ruling, dated July 21, 1999, submitted on behalf of Taxpayer, requesting rulings on issues concerning its establishment of a like-kind exchange program arising under § 1031 of the Internal Revenue Code.

Facts:

Taxpayer is an subsidiary of . Taxpayer and its subsidiaries provide a to and also purchase b from . Taxpayer also to , the majority of which are affiliated with . In addition, Taxpayer to and . Taxpayer is a calendar year taxpayer and is a member of the Parent affiliated group that files a consolidated income tax return. For financial and tax reporting purposes, Taxpayer has adopted the accrual method of accounting.

Most of the new Properties financed by Taxpayer and its subsidiaries are . Taxpayer also provides . Division 1 is a division of Taxpayer. Division 1 acts as Taxpayer in and for Properties . Division 1 also services to provide . Division 1 has agreements with a for Properties and related are from to , although the Properties are

Division 2 is a division of Taxpayer. It performs the same function as Division 1, , an affiliate of Parent. The Properties are from to Taxpayer, but the Properties are Division 2. The Division 2 are by Division 1.

Taxpayer's Operations

In the course of its business, Taxpayer regularly purchases Properties that are from its of . are typically unrelated to Parent, Taxpayer or their affiliates. terms typically range from c to d. Taxpayer has the Properties and depreciates them under § 168 of the Code. Taxpayer regularly disposes of these Properties when the

Taxpayer's Acquisition of Properties

While individual transactions may vary, the process by which Taxpayer purchases a Property from begins when the , rather than , a Property from the . The submits the to Taxpayer, either by entering the appropriate information in a . If the , Taxpayer . Thereafter, if the and agree to enter into , a Taxpayer is executed by both the and the .

The _____ executes the _____ as the _____. By signing the _____, the _____ also _____ the Property to Taxpayer. The _____ then submits a _____ of _____ related documents to Taxpayer. This _____ contains the _____ documentation relating to _____ and _____ the Property. Upon receipt and approval of the _____, Taxpayer _____ the _____ for the Property. Payment is normally made by _____.

Occasionally, a _____ will not submit a _____ to Taxpayer for _____ with _____. Such a " _____ " typically occurs when _____ the _____ believes that the _____ the _____ established by _____ Taxpayer. The _____ and _____ will execute the _____, the _____ will take _____ the Property, and the _____ will then submit the _____ to _____ Taxpayer. Upon receiving the _____, Taxpayer will perform its normal _____ process on the _____ prior to accepting the Property _____ from the _____.

Division 1 acquires _____ Properties from a number of _____ with whom it has contractual relationships. These _____ are _____ or other _____ that deal directly with the _____ originating the _____. The contractual agreement between Division 1 and each _____ provides that the _____ will _____ Properties _____ from eligible _____ and sell them to Division 1 if they meet Division 1's eligibility criteria. The _____ assigns its rights in the Properties _____ and its rights under its contract with the _____ to Division 1. Each Property is _____ Division 1 _____. Division 1 services these _____ and the _____ has no continuing involvement with them. These Properties _____ are treated like any other Division 1 _____ and are _____ from the _____ to _____ Taxpayer.

Taxpayer's Disposition of Properties

Taxpayer disposes of _____ Properties either after they are _____ (if the _____ is _____) or after they are returned at _____ (generally at _____, unless the _____ is _____). Taxpayer disposes of these Properties in one of two ways. The Property is either sold directly to a _____ (usually the _____ who _____ the _____ with the _____) or the Property is sold at _____ (typically, the buyer _____ is _____).

_____. Such sales are very unusual.

All of Taxpayer's _____ provide the _____ with a _____ at _____ When a _____, the _____ acquires the Property from Taxpayer at _____ that is _____ the _____. The _____ purchases the Property from the _____. If the _____ chooses not to _____, the _____ has the _____ the Property for _____ the _____ in the _____.

situation. In either case, Taxpayer sells the Property . The may pay for the Property by . If the uses the this purchase into the the with Taxpayer. The then sends the necessary paperwork (e and other forms) to Taxpayer. If the pays by , the the in the of paperwork. Upon receipt of payment and approval of the paperwork, Taxpayer releases the Property to the , who then transfers it to .

If the purchases the Property), the can add the to Taxpayer. This is known as a Program 1. The are wholly separate. To purchase the Property, the transmits the the Property to Taxpayer , and in a separate transaction, Taxpayer the Property by and transferring the to the (typically by).

In , the typically negotiates with the to determine pay . The pays this amount to the , who is required to). The pays by .

If the Property is , or if neither the nor the chooses to the Property , the Property is . At the , the Property is sold. The then remits the to Taxpayer . In some cases, a purchasing who is part simply by from Taxpayer . Taxpayer a for the amount of the purchase. For Property purchases under this plan (Program 2), the funds from the and funds to Taxpayer.

Taxpayer's Like-Kind Exchange Program

Taxpayer has established a program of like-kind exchanges of Property. These exchanges are intended to qualify as deferred like-kind exchanges under § 1031 of the Code and the regulations thereunder. To facilitate these exchanges, Taxpayer has entered into a written Master Exchange Agreement (Agreement) with QI, to which Taxpayer has assigned its rights with respect to (a) the disposition of Property ("Relinquished Property") and (b) the acquisition of Property ("Replacement Property"). QI is intended to be a "qualified intermediary" within the meaning of § 1.1031(k)-1(g)(4) of the Income Tax Regulations. By assigning these rights to QI and giving notice to all parties to the agreements establishing such rights, Taxpayer intends that QI be treated as (a) having acquired the Relinquished Property from Taxpayer and transferred it to

the ultimate purchaser and (b) having acquired the Replacement Property from its seller and transferred it to Taxpayer.

Acquisitions of Properties from, and dispositions of Properties to, _____ are excluded from Taxpayer's like-kind exchange program.

Taxpayer has appointed QI to receive the proceeds from the disposition of Relinquished Properties and disburse such proceeds, along with other funds supplied by Taxpayer as may be necessary, to acquire Replacement Properties. QI functions as an intermediary to facilitate exchanges of all acquisitions and dispositions of Property by Taxpayer. Taxpayer's written Agreement with QI limits Taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property held by QI, as required by §§ 1.1031(k)-1(g)(4)(ii) and (g)(6) of the regulations.

The Qualified Intermediary

QI is a _____, QI Parent. QI Parent is a financial institution. In the two preceding years, QI Parent and its affiliates have provided the following routine financial services to Taxpayer and its affiliates: funds processing, lines of credit, lockbox services, counterparties in foreign exchange swaps, and purchases of Taxpayer-issued debt obligations. QI is an independent third-party financial institution that has not previously performed services other than routine financial services for Taxpayer in the two preceding years. Thus, QI is not a "disqualified person" under § 1.1031(k)-1(k)(2) of the regulations.

Assignment and Notice

Taxpayer has structured its program to meet the requirements of the "qualified intermediary" safe harbor under § 1.1031(k)-1(g)(4) of the regulations. Pursuant to this regulation, QI must acquire Relinquished Property from Taxpayer and transfer it to a purchaser, and acquire Replacement Property from a seller and transfer it to Taxpayer. § 1.1031(k)-1(g)(4)(iii)(B). One way that an intermediary is treated as acquiring and transferring property is if the intermediary enters into an agreement with the purchaser of relinquished property or the seller of replacement property, and the property is transferred pursuant to that agreement. §§ 1.1031(k)-1(g)(4)(iv)(B) and (C). The regulations further provide that the intermediary is treated as entering into an agreement if the rights of a party to the agreement are assigned to the intermediary and all parties to that agreement are notified in writing of the assignment on or before the date of the relevant transfer of property. § 1.1031(k)-1(g)(4)(v). Taxpayer and QI have chosen to utilize this "assignment and notice" method of having QI acquire and transfer both the Relinquished Property and the Replacement Property. Purchasers of Relinquished Property and sellers of Replacement Property will be notified in several ways that Taxpayer's rights to sell the Relinquished Property and acquire the Replacement Property have been assigned to QI.

In the Agreement, Taxpayer has assigned to QI Taxpayer's rights (but not its obligations) with respect to the sale of Relinquished Property. This assignment applies to rights with respect to the sale of Property Taxpayer held on the date the Agreement was signed, as well as to Property acquired by Taxpayer in the future. Similarly, Taxpayer has assigned to QI Taxpayer's rights (but not its obligations) with respect to the purchase of Replacement Property in the Agreement. This assignment applies to the rights with respect to the purchase of Property acquired after the date the Agreement was assigned. In addition, Taxpayer will notify QI of individual transactions by sending QI a report containing a listing of the daily acquisitions and dispositions of Property. These reports provide QI with a list of each transaction with respect to which QI has been assigned Taxpayer's rights.

Taxpayer provides _____ with written notification of the assignment in two different ways. First, Taxpayer sent a blanket notice to every _____ prior to the start of the like-kind exchange program. Second, Taxpayer provides a purchasing or selling _____ with a written notice in connection with each disposition of Relinquished Property and each acquisition of Replacement Property on or before the date of the transaction.

The transactions at issue here began with an exchange of the first Relinquished Property disposed of on or after Date 1, with the first Replacement Property acquired after such date (but no more than 45 days after such date) and the cost of which was equal to or greater than the proceeds from the sale of the Relinquished Property.

Matching of Relinquished and Replacement Properties

Every _____ proceeds from the sale of Relinquished Property will flow through the _____ and will be used to acquire Replacement Property. Relinquished Properties and Replacement Properties are divided into three categories: Category 1, Category 2a, and Category 2b. Category 1 Properties are described in General Asset Class 1 and Category 2a and 2b Properties are described in General Asset Class 2. See § 1.1031(a)-2(b)(2). Information about the Relinquished Property and Replacement Property will be analyzed in Taxpayer's like-kind exchange matching system, and Relinquished Property will be matched with the Replacement Property for which it was exchanged, according to certain parameters.

Relinquished Property will only be matched with Replacement Property acquired within 45 days after the date the Relinquished Property was transferred to its purchaser. Furthermore, to the extent possible, Relinquished Property will always be matched with Replacement Property whose cost equals or exceeds the proceeds from the sale of the Relinquished Property. In those cases where it is not possible to acquire Replacement Property equal to or in excess of the cost of the Relinquished Property, the matching system is designed to group property so that the excess of proceeds of Relinquished Property over the cost of Replacement Property is minimized. In such cases, Taxpayer will recognize gain to the extent of the lesser of gain realized or the amount of such excess. § 1.1031(j)-1(b)(3). Also, in the event that it is not possible to match all Relinquished Properties with Replacement Properties in the same Asset Class, Taxpayer may match Properties between Categories 1 and 2b.

Finally,

. Taxpayer's matching system is designed to accommodate these requirements as well.

Taxpayer Purchases of Relinquished Property

Taxpayer in the course of its business. Taxpayer provides to of Property and to of such . Some of Relinquished Property by use of Program 1 or Program 2, provided by Taxpayer. In such a case, Taxpayer a purchaser of Relinquished Property the the Relinquished Property. A contemporaneously with the sale of the Relinquished Property in a separate and distinct arm's-length transaction at market rate terms. The purchaser is not required to , but is free . A purchaser's is not part of the for the transfer of the Relinquished Property.

Like-Kind Exchange Cash Flows

Taxpayer's pre-like-kind-exchange business practice was to use to for almost all purchases of Properties and from and for most sales of Properties. Most of Taxpayer's to and from and were made also. All collections and disbursements for transactions flowed through the .

In addition, most transactions with and others was such party. This eliminates , It is also preferred by the and others, who must .

Taxpayer represents that its business is a highly competitive business, and . In order to avoid causing disruption or confusion with the and others, Taxpayer has adopted a for the like-kind exchange program that will enable it to

Collections

Payment for each Relinquished Property is made by to QI by . In the case of , the payment

- . The system
- . The and

. The

Relinquished Property proceeds are . In the case of , the

The _____ to Taxpayer, processed, and either

Thus, _____ result in proceeds from the sale of Relinquished Property being _____ used by QI, as provided in the Agreement, solely to purchase Replacement Property on Taxpayer’s behalf. At no time will the proceeds from the sale of Relinquished Property be placed in an account over which Taxpayer will have the power to obtain the funds, directly or indirectly, without the QI’s assent.

a Report is generated by _____ that lists

. When these transfers have been authorized by QI and Taxpayer,

. Thus,

Taxpayer is _____ to _____ . In the event of a _____ to _____ the

Some _____ through Program 1 or Program 2. In such a case, _____ the Relinquished Property proceeds is _____

Disbursements

Replacement Property will be purchased by QI with the proceeds from the sale of Relinquished Property. Each Replacement Property will be acquired no sooner than one day after and no later than 45 days after the transfer of the related Relinquished Property. _____ will receive payment for the Replacement Property _____. The _____ by Taxpayer’s system based on _____

_____ . These payments for Replacement Property will be funded _____ with Relinquished Property proceeds. If the proceeds from the sale of Relinquished Property held by QI are insufficient to cover the purchase price of the Replacement Property, Taxpayer will transfer additional funds to _____ fund the shortfall.

The same Report discussed above with respect to collections is also used to _____. The Report specifies how much is needed _____ for purchases of Replacement Property, the amount of additional funds (if any) needed from Taxpayer for purchases of Replacement Property,

Investment of Unspent Proceeds

If there are any unspent proceeds from dispositions of Relinquished Property remaining in _____, these funds are invested by QI in accordance with Taxpayer's instructions, and any income earned is reported by Taxpayer for tax purposes. § 1.1031(k)-1(h). These earnings on the unspent proceeds are used by the QI to acquire Replacement Property in the future, and Taxpayer's rights with respect to this income is limited in accordance with § 1.1031(k)-1(g)(6) of the regulations.

When a _____ wishes to _____ a Property, Taxpayer generally _____ that the _____ from the _____ at the time of _____ . This _____ is _____ by the _____ in _____ . To simplify _____ the _____, Taxpayer typically receives the _____ by _____ the _____ for the Property _____ . The _____ of the _____ is simply an administrative convenience. Taxpayer _____ the _____ to the purchase price of the Property, _____, and _____ the _____ amount on its books to _____ and is _____ . The _____ purchase price -- _____ and is _____ . Taxpayer has expended the full cost of the Property in money paid to the _____ .

Because the _____ is _____ part of the acquisition of Replacement Property, it does not involve or affect _____, and, therefore, does not have an adverse impact on the overall like-kind exchange program or any one or more distinct exchanges under the program.

The manner in which the _____ depends upon whether the Property is _____, or whether the _____, or whether the _____ . If the Property is _____, Taxpayer _____ for the _____ . If the _____ acquires the Property, however, the _____ . The _____ pays QI the purchase price _____ and _____ . The _____ has thus _____ . QI also receives the full purchase price for the Property, since the QI receives the full purchase price _____ .

. This _____ situation leaves the parties in the exact same position as if the _____ .

Non-Like-Kind Exchange Transaction Processing

Funds that are not proceeds of Relinquished Property or acquisitions of Replacement Property . For example,

Payments from include payments for dispositions of

However, non-like-kind exchange and non-like-kind exchange involvement with non-like-kind exchange . These Taxpayer . QI's

Legal Agreements Governing Cash Flows

The Agreement addresses cash flows in Taxpayer's like-kind exchange program and provides that Taxpayer has no right to receive, pledge, borrow, or otherwise obtain the benefit of money or other property held by QI before the end of the relevant period described in § 1.1031(k)-1(g)(6) of the regulations. Taxpayer identifies Replacement Property by receiving the Replacement Property before the end of the identification period, as provided in § 1.1031(k)-1(c)(1) of the regulations. Thus, if no Replacement Property were to be received with respect to a particular Relinquished Property within the identification period, the Agreement would permit Taxpayer to receive the related Relinquished Property proceeds after the end of the identification period. In such a case, Taxpayer would recognize all realized gain on the disposition of the associated Relinquished Property.

The bank account agreement provides that:

i. The QI

ii. QI approval is required for each transfer of funds

iii. QI funds the full purchase price of disbursements for Replacement Property to the extent of the funds held by QI and Taxpayer funds any shortfall in disbursements for Replacement Property .

iv. Taxpayer has no right to receive, pledge, borrow, or otherwise obtain the benefits of proceeds of sales of Relinquished Property before the end of the relevant period described in § 1.1031(k)-1(g)(6) of the regulations.

Each Taxpayer to has entered into that authorizes . Each with a has been amended to provide that::

i. Settlements due from the _____ to QI may be paid

ii. Settlements due to the _____ from QI may be paid

iii. The _____ directs that

The _____ obligation to QI

iv. The _____ directs that any amounts

Each _____ has been amended in a manner similar to that of _____ with a _____, except that provisions related to _____ have been omitted, since

Rulings Requested

Under these facts, Taxpayer requests that the Service issue the following rulings:

1. Property in Category 1 is of like kind with Property in Category 2b within the meaning of § 1031.

2. Taxpayer's transfer of each Relinquished Property or group of Relinquished Properties and the corresponding receipt of each related Replacement Property or group of Replacement Properties in accordance with the Agreement and as represented in this request for rulings will be treated as a separate and distinct like-kind exchange that qualifies for nonrecognition of gain or loss for federal income tax purposes under § 1031.

3. Each exchange pursuant to the Agreement of one or more Relinquished Properties for one or more Replacement Properties will qualify for nonrecognition of gain or loss provided no money or other non-like-kind property is received by Taxpayer. If Taxpayer does receive money or other non-like-kind property in an exchange, the gain with respect to the Relinquished Property involved in the exchange will be recognized in an amount not in excess of the sum of such money and the fair market value of such other property.

4. QI, acting in accordance with the Agreement, will be treated as a qualified intermediary as defined in § 1.1031(k)-1(g)(4)(iii) of the regulations and will be treated as acquiring and transferring each Relinquished Property and each Replacement Property for purposes of § 1031.

5. Pursuant to §§ 1.1031(k)-1(f) and (g) of the regulations, Taxpayer will not be in actual or constructive receipt of any of the proceeds from the sale of Relinquished

Property or any money or other property held by QI

unless and until such amounts or items are actually received by Taxpayer (i.e., if Replacement Property is not acquired during the identification period and the related sale proceeds are transferred to Taxpayer).

6. Neither _____ nor _____ from the sale of Relinquished Property _____, including _____, results in actual or constructive receipt of any portion of the proceeds by Taxpayer where QI receives the full amount of proceeds from the sale of Relinquished Property.

7. With respect to Relinquished Property _____, the _____ purchaser of the Relinquished Property is not part of the _____ transfer of the Relinquished Property by Taxpayer, and therefore, Taxpayer does not actually or constructively receive money or other property, on account of _____, before Taxpayer actually receives like-kind Replacement Property.

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 if such property is exchanged solely for property of like kind which is to be held for productive use in a trade or business or for investment. Section 1031(a)(2) adds that this subsection does not apply to any exchange of stock in trade or other property held primarily for sale.

There are three general requirements for nonrecognition treatment under § 1031: (1) both the property surrendered and the property received must be held either for productive use in a trade or business or for investment; (2) the property surrendered and the property received must be of "like-kind;" and (3) there must be an exchange as distinguished from a sale and a purchase.

"Held For" Requirement

The relevant qualified use of the Property owned by Taxpayer and subsequently being exchanged in the transaction is _____. Thus, the Relinquished Property that Taxpayer _____ and the Replacement Property that Taxpayer will be _____ upon acquisition is considered property held for productive use in a trade or business in Taxpayer's hands.

Like-Kind Requirement

The requirement that the exchanged properties be of like kind has reference to the nature or character of the property and not to its grade or quality. § 1.1031(a)-1(b). To qualify for like-kind exchange treatment, one kind or class of property may not be exchanged for property of a different kind or class. Depreciable tangible personal

properties are of a like class if they are either within the same General Asset Class, as defined in § 1.1031(a)-2(b)(2) of the regulations, or within the same Product Class, as defined in § 1.1031(a)-2(b)(3) of the regulations. If a property is classified within any General Asset Class, it may not be classified within a Product Class. § 1.1031(a)-2(b)(1).

Section 1.1031(a)-2(b)(2) of the regulations describes the various General Asset Classes. The Relinquished Properties and Replacement Properties are divided into three categories: Category 1, Category 2a, and Category 2b. Category 1 Properties are described in Class 1 and Category 2a and 2b Properties are described in Class 2. See also Rev. Proc. 87-56, 1987-2 C.B. 674.

To the extent that each exchange consists of one or more Relinquished Properties and one or more Replacement Properties in the same class, these exchanges fit within the General Asset Class safe harbor described above. In the event that it is not possible to match all Relinquished Properties with Replacement Properties in the same Asset Class, Taxpayer may match Properties between Categories 1 and 2b. The General Asset Class safe harbor does not apply to these exchanges.

The General Asset Class and Product Class safe harbors in the regulations simplify the determination of whether depreciable tangible personal property is of a like kind, but they are not the exclusive method for making this determination. For depreciable tangible personal property to be considered of like kind for purposes of § 1031, the property can be either like kind or like class. Section 1.1031(a)-2(a) of the regulations provides that "an exchange of properties of a like kind may qualify under section 1031 regardless of whether the properties are also of like class. In determining whether exchanged properties are of a like kind, no inference is to be drawn from the fact that the properties are not of a like class." Thus, two properties can be in different General Asset Classes (and thus not be of a like class) and yet be of like kind.

The like-kind standard has been interpreted more narrowly in the case of exchanges of personal property as compared to exchanges of real property. See California Federal Life Insurance Co. v. Commissioner, 680 F.2d 85, 87 (9th Cir. 1982) (Tax Court did not err in refusing to apply the lenient treatment of real estate exchanges to an exchange of personal property involving U.S. Double Eagle \$20 gold coins and Swiss francs). Even within the more restrictive parameters of the like-kind standard as applied to personal property, the differences between Property in Category 1 and Property in Category 2b do not rise to the level of a difference in nature or character but are merely a difference in grade or quality.

When an exchange transaction is deferred, rather than simultaneous, even if the taxpayer trades property for like-kind property, the exchanged properties will not be of like kind if the Replacement Property is not timely identified and timely received. Section 1031(a)(3) states that any property received by the taxpayer shall be treated as property that is not like-kind property if (a) such property is not identified as property to be received in the exchange on or before the day that is 45 days after the date on which the taxpayer transfers the property relinquished in the exchange, or (b) such

property is received after the earlier of (i) the day that is 180 days after the date on which the taxpayer transfers the property relinquished in the exchange or (ii) the due date (determined with regard to extension) for transferor's return of the tax imposed by this chapter for the taxable year in which the transfer of the relinquished property occurs.

Section 1.1031(k)-1(c) provides that 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. In the instant case, Taxpayer has represented that it will receive all Replacement Property within 45 days of the sale of the Relinquished Property, thereby satisfying both the identification and receipt requirements of § 1031(a)(3). Accordingly, Category 1 Property is of like kind with Category 2b Property.

Exchange Requirement

For purposes of §§ 1031 and 1.1031(k)-1, a deferred exchange is defined as an exchange in which, pursuant to an agreement, the taxpayer transfers property held for productive use in a trade or business or for investment (the "relinquished property") and subsequently receives property to be held either for productive use in a trade or business or for investment (the "replacement property"). In order to constitute a deferred exchange, the transaction must be an exchange (*i.e.*, a transfer of property for property, as distinguished from a transfer of property for money). § 1.1031(k)-1(a). In the case of a transfer of relinquished property in a deferred exchange, gain or loss may be recognized if the taxpayer actually or constructively receives money or other property before the taxpayer actually receives like-kind replacement property. If the taxpayer actually or constructively receives money or other property in the full amount of the consideration for the relinquished property before the taxpayer actually receives like-kind replacement property, the transaction will constitute a sale and repurchase, and not a deferred exchange, even though the taxpayer may ultimately receive like-kind replacement property. § 1.1031(k)-1(f)(1). According to § 1.1031(k)-1(f)(2), actual or constructive receipt of money or other property by an agent of the taxpayer (determined without regard to paragraph (k) of this section) is actual or constructive receipt by the taxpayer.

QI as Qualified Intermediary

Section 1.1031(k)-1(g) of the regulations sets forth four safe harbors, the use of any of which will result in a determination that the taxpayer is not in actual or constructive receipt of money or other property for § 1031 purposes. Section 1.1031(k)-1(g)(4)(i) of the regulations provides that, in the case of a taxpayer's transfer of relinquished property involving a qualified intermediary, the qualified intermediary is not considered the taxpayer's agent for § 1031 purposes. In such a case, the taxpayer's transfer of relinquished property and subsequent receipt of like-kind replacement property is treated as an exchange, and the determination of whether the taxpayer is in actual or constructive receipt of money or other property before the taxpayer actually receives like-kind replacement property is made as if the qualified intermediary is not the agent of the taxpayer.

Section 1.1031(k)-1(g)(4)(ii) of the regulations provides that § 1.1031(k)-1(g)(4)(i) applies only if the agreement between the taxpayer and the qualified intermediary expressly limits the taxpayer's right to receive, pledge, borrow, or otherwise obtain the benefits of money or other property held by the qualified intermediary as provided in § 1.1031(k)-1(g)(6). Taxpayer's written Agreement with QI limits Taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property held by QI, as required by §§ 1.1031(k)-1(g)(4)(ii) and (g)(6) of the regulations.

A qualified intermediary, as defined in § 1.1031(k)-1(g)(4)(iii)(A) of the regulations, must be a person who is not the taxpayer or a disqualified person. According to § 1.1031(k)-1(k)(2) of the regulations, the term "disqualified person" includes a person who is the taxpayer's agent at the time of the transaction. For this purpose, a person who has acted as the taxpayer's employee, attorney, accountant, investment banker or broker, or real estate agent or broker within the two-year period ending on the date of the transfer of the first of the relinquished properties is treated as the taxpayer's agent. However, performance of certain services does not cause an entity to be a "disqualified person." These services include (a) services for the taxpayer with respect to exchanges of property intended to qualify for nonrecognition of gain or loss under § 1031, and (b) routine financial, title insurance, escrow, or trust services for the taxpayer by a financial institution, title insurance company, or escrow company.

QI Parent is an independent, third-party financial institution that has not previously performed services other than the routine financial services previously described for Taxpayer. In the instant case,

. As such, QI will not be a "disqualified person" under §1.1031(k)-1(k) of the regulations.

In order to qualify as a qualified intermediary, the intermediary must enter into a written agreement with the taxpayer (the "exchange agreement") and as required by the exchange agreement, acquires the relinquished property from the taxpayer, transfers the relinquished property, acquires the replacement property, and transfers the replacement property to the taxpayer. § 1.1031(k)-1(g)(iii)(B). Regardless of whether an intermediary acquires and transfers property under general tax principles, an intermediary treated as acquiring and transferring the relinquished property if the intermediary (either on its own behalf or as the agent of any party to the transaction) enters into an agreement with a person other than the taxpayer for the transfer of the relinquished property to that person, and pursuant to that agreement, the relinquished property is transferred to that person. § 1.1031(k)-1(g)(4)(iv)(B). An intermediary is treated as acquiring and transferring replacement property if the intermediary (either on its own behalf or as the agent of any party to the transaction) enters into an agreement with the owner of the replacement property for the transfer of that property and, pursuant to that agreement, the replacement property is transferred to the taxpayer. § 1.1031(k)-1(g)(4)(iv)(C). For these purposes, an intermediary is treated as entering into an agreement if the rights of a party to the agreement are assigned to the intermediary and all parties to that agreement are notified in writing of the assignment on or before the date of the relevant transfer of property. § 1.1031(k)-1(g)(4)(v).

In the instant case, Taxpayer has assigned to QI its rights to sell Relinquished Property. In all instances, the purchaser receives notice of the assignment prior to the time that the Relinquished Property is transferred to the purchaser. Each form of notice informs the purchaser in writing that Taxpayer has assigned to QI its rights to sell the Property. the Property will be transferred directly from Taxpayer to the purchaser of the Property pursuant to the agreement between Taxpayer and purchaser. Thus, QI will be treated as acquiring and transferring the Relinquished Property pursuant to §§ 1.1031(k)-1(g)(4)(iv)(B) and (v).

In addition, Taxpayer assigned its right to purchase Replacement Property to QI. In all instances, the seller receives notice prior to the time that the Replacement Property is transferred to Taxpayer. Each form of notice informs the seller in writing that Taxpayer has assigned to QI its rights to purchase the Property. the Property is transferred directly to Taxpayer pursuant to the agreement between seller and Taxpayer. Thus, QI will be treated as acquiring and transferring the Replacement Property pursuant to § 1.1031(k)-1(g)(4)(iv)(C) and (v). Accordingly, QI, acting in accordance with the Agreement, will be treated as a qualified intermediary as defined in § 1.1031(k)-1(g)(4)(iii) of the regulations and will be treated as acquiring and transferring each Relinquished Property and each Replacement Property for purposes of § 1031.

Constructive Receipt – Proceeds of Relinquished Property

The Agreement between Taxpayer and QI provides that Taxpayer will have no rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property as required by §§ 1.1031(k)-1(g)(4) and (6)(i) of the regulations. Proceeds from the sale of Relinquished Property are deposited into or . To the extent that funds from the sale of the Relinquished Property are insufficient to cover the purchase of Replacement Property, Taxpayer transfers funds to cover the amount of the purchases.

Taxpayer is not in actual or constructive receipt of proceeds of sales of Relinquished Property that are deposited in , transferred to , and ultimately transferred to , and used to acquire Replacement Property. All agreements governing the flow of funds limit Taxpayer's ability to actually or constructively receive those funds as required by §§ 1.1031(k)-1(g)(4)(ii) and (g)(6) of the regulations.

Taxpayer's agreements with and provide that amounts collected from and are deposited into accounts specified by the QI and Taxpayer . The Agreement and provide that QI those funds in the full amount of proceeds from sales of Relinquished Property. The Agreement and also provide that no funds can be without QI approval, and all of these agreements restrict, as required by §§ 1.1031(k)-1(g)(4)(ii) and (g)(6) of the regulations, Taxpayer's right to receive, pledge, borrow or otherwise obtain the benefit of Relinquished Property proceeds and earnings thereon held in

and prior to the end of the relevant periods described in § 1.1031(k)-1(g)(6).

Constructive Receipt –

Under Taxpayer’s like-kind exchange program, all transactions with or are and payments the or are , resulting in either or . In each type of transaction involving , QI receives the full amount of proceeds from the sale of Relinquished Property.

For example, the the sale of Relinquished Property purchasing under Program 2 does not result in actual or constructive receipt of the proceeds by Taxpayer. In each such sale of Relinquished Property, QI receives the sales proceeds of Relinquished Property. In effect, the has the amount the This is accomplished . Thus, Taxpayer is not in actual or constructive receipt of proceeds of Relinquished Property.

Constructive Receipt -- Program 1 and Program 2

Under Program 2, are for by Taxpayer, and can simply by . In a Program 2 sale, the does not the Property from the , and Taxpayer with respect to this transaction.

Taxpayer is not in actual or constructive receipt of proceeds of Relinquished Property by reason of that results from a Program 2 transaction. Taxpayer is in the business of purchasing are not required to and are free to use . The to a is a separate and distinct arm's-length transaction from the sale of the Property, and . Accordingly, Taxpayer does not actually or constructively receive money or other property on account of its receipt of the before Taxpayer actually receives like-kind Replacement Property. See 124 Front Street v. Commissioner, 65 T.C. 6 (1975), acq. 1976-2 C.B. 2.

Program 1 transactions are similar to Program 2 transactions, except that the proceeds from the sale of the Relinquished Property and the . Accordingly, under these facts, the is a separate and independent transaction, and Taxpayer is not in actual or constructive receipt of proceeds of Relinquished Property

by reason of holding
transaction.

that results from a Program 1

Accordingly, based on your representations and the above analysis, we rule as follows:

1. Property in Category 1 is of like kind with Property in Category 2b within the meaning of § 1031.

2. Taxpayer's transfer of each Relinquished Property or group of Relinquished Properties and the corresponding receipt of each related Replacement Property or group of Replacement Properties in accordance with the Agreement and as represented in this request for rulings will be treated as a separate and distinct like-kind exchange that qualifies for nonrecognition of gain or loss for federal income tax purposes under § 1031.

3. Each exchange pursuant to the Agreement of one or more Relinquished Properties for one or more Replacement Properties will qualify for nonrecognition of gain or loss provided no money or other non-like-kind property is received by Taxpayer. If Taxpayer does receive money or other non-like-kind property in an exchange, the gain with respect to the Relinquished Property involved in the exchange will be recognized in an amount not in excess of the sum of such money and the fair market value of such other property.

4. QI, acting in accordance with the Agreement, will be treated as a qualified intermediary as defined in § 1.1031(k)-1(g)(4)(iii) of the regulations and will be treated as acquiring and transferring each Relinquished Property and each Replacement Property for purposes of § 1031.

5. Pursuant to §§ 1.1031(k)-1(f) and (g) of the regulations, Taxpayer will not be in constructive receipt of any of the proceeds from the sale of Relinquished Property or any money or other property held by QI

() unless and until such amounts or items are actually received by Taxpayer (i.e., if Replacement Property is not acquired during the identification period and the related sale proceeds are transferred to Taxpayer).

6. Neither nor from the sale of Relinquished Property with , including , results in actual or constructive receipt of any portion of the proceeds by Taxpayer where QI receives the full amount of proceeds from the sale of Relinquished Property.

7. With respect to Relinquished Property that is , the to the purchaser of the Relinquished Property is not part of the transfer of the Relinquished Property by Taxpayer, and therefore, Taxpayer does not actually or constructively receive money or other property, on account of , before Taxpayer actually receives like-kind Replacement Property.

* * * * *

No opinion is expressed as to the tax treatment of the proposed transaction under the provisions of any other section of the Code or regulations that may be applicable or the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction described that are not specifically covered in the above ruling. In this connection, we understand that if a favorable ruling is obtained for this transaction, it will serve as a model for subsequent like-kind exchanges. As previously stated, no opinion is expressed as to any other transaction that you contemplate. A copy of this letter should be attached to the federal income tax return for the year in which the transaction in question occurs. This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be cited as precedent.

Sincerely yours,

ASSOCIATE CHIEF COUNSEL
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By: _____
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