Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Number: **200328034**
Release Date: 7/11/2003
Index Number: 1001.02-02

Person to Contact:

Telephone Number:

Refer Reply To:
CC:ITA:4-PLR-129553-02
Date:
October 1, 2002

LEGEND:

A and B =

C =

D =

T =

State =

Jointly-Owned Property =

Date 1 =

Date 2 =

x =

Dear Sir or Madam:

This letter responds to your submission of May 24, 2002, and supplemental correspondence, dated August 7, 2002, and August 15, 2002, regarding the income

tax consequences under § 1001 of the Internal Revenue Code of the proposed partition of the Jointly-Owned Property (JOP) into separate parcels. You have requested a ruling that the partition does not constitute a sale, exchange, or other disposition that would cause any of the taxpayers, A, B, C, or T, to recognize any gain or loss under § 1001.

FACTS:

Ownership of Jointly-Owned Property

The JOP is a contiguous tract of real estate owned as tenants-in-common by A and B, C, and T. A and B are parents of C, and T is a trust for the benefit of D, another child of A and B. A and B, as joint tenants, own an undivided fee interest in three-sixths of the JOP and a life estate for the life of the survivor of A and B in one-sixth of the JOP. C owns an undivided fee interest in two-sixths of the JOP. T owns a remainder interest in the one-sixth interest in which A and B own a life estate.

A and B hold a mortgage on a portion of the JOP. The obligors on the mortgage are C, as to approximately $31*x,* and another child (who formerly owned an interest in the JOP) of A and B, as to approximately $32*x*.

Partition of Jointly-Owned Property

The JOP will be partitioned into separate parcels of property that will not be owned jointly by A and B, C, and T, but will be owned separately, as follows:

(1) A and B will own a parcel as joint tenants in fee simple;

(2) A and B will also own a life estate for the life of the survivor in a parcel;

(3) T will own the remainder interest in the parcel in which A and B own a life estate; and

(4) C will own two parcels in fee simple.

You have made the following representations:

(1) Based on appraisals obtained, each parcel of property will be approximately equal in value to the value of the taxpayers' respective undivided interests in the JOP immediately prior to the partition.

(2) None of the taxpayers will benefit disproportionately as a result of the partition, and no gift will be made or received as a result of the partition.

(3) No interest in the JOP property that is subject to a mortgage will be transferred or assumed by any of the taxpayers as a result of the partition. The mortgage obligors will remain indebted to A and B in the same amounts.

You have asked us to rule that the partition of the JOP as described above will not constitute a sale, exchange, or other disposition that would cause any of the taxpayers to recognize any gain or loss under § 1001.

LAW AND ANALYSIS:

Section 61(a)(3) provides that gross income includes gains derived from dealings in property. Under § 1001(a) the gain from the sale or other disposition of property is the excess of the amount realized over the adjusted basis provided in § 1011 for determining gain, and the loss is the excess of the adjusted basis over the amount realized. Section 1001(c) provides that, except as otherwise provided in Subtitle A of the Code, the entire amount of the gain or loss, determined under § 1001, on the sale or exchange of property, must be recognized.

Section 1.1001-1(a) of the Income Tax Regulations provides generally that the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially either in kind or in extent, is treated as income or as loss sustained.

For purposes of § 1001, in an exchange of property, each party to the exchange gives up a property interest in return for a new or additional property interest. Such an exchange of property is a disposition under § 1001(a). See section 1.1001-1. In a partition, the parties do not acquire a new or additional interest. See Noble v. Beach, 130 P.2d 426, 430 (Cal. 1942). The partition of jointly-owned property is not a sale or other disposition, but merely the severance of joint ownership.

Rev. Rul. 56-437, 1956-2 C.B. 507, holds that the conversion of a joint tenancy in corporate stock into a tenancy in common for the purpose of eliminating a survivorship feature, is a nontaxable transaction for federal income tax purposes. Similarly, the severance of a joint tenancy in stock, pursuant to an action under state law to compel partition, and the issuance of two separate stock certificates in the names of each joint tenant, is a nontaxable transaction. Rev. Rul. 56-437 concludes that in both cases there was no sale or exchange, and the taxpayers neither realized a taxable gain nor sustained a deductible loss.

Rev. Rul. 73-476, 1973-2 C.B. 301, holds that if three unrelated tenants-in-common of three separate parcels rearrange their interests so that each party becomes the sole owner of one of the parcels, an exchange occurs so that gain or loss is realized. Rev. Rul. 79-44, 1979-2 C.B. 265, reaches the same conclusion on similar facts.

CONCLUSION:

The JOP is contiguous and is owned as tenants-in-common by A and B, C, and T.

Because the JOP will be partitioned and no exchange of separate parcels of property will occur, the result in Rev. Rul. 56-437, rather than in Rev. Rul. 73-476, applies. Based on the facts presented, including the representations made, we conclude that the partition of the JOP will not be treated as a sale or exchange by the taxpayers. Accordingly, no gain will be realized the taxpayers under § 1001 as a result of the partition.

CAVEATS:

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

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any item discussed or referenced in this letter. This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Robert A. Berkovsky
Branch Chief
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures (2)