

Internal Revenue Service

Department of the Treasury

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CC:ITA:5-PLR-120486-00
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Legend:

- Taxpayer =
- State 1 =
- State 2 =
- State 3 =
- Commercial =
- Recreational =
- City =
- Accommodation Party =
- Exchange Company =
- Park =

- Property =

- Conservation Organization =
- Bond Act =

- Seller =
- Bank =
- Decade 1 =
- Year 1 =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
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Date 9	=
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Amount 1	=
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Rate 1	=
Rate 2	=

This letter ruling is in response to Taxpayer's letter, dated October 11, 2000 and submitted pursuant to Rev. Proc. 2000-1, 2000-1 I.R.B. 4, requesting rulings under § 1031 of the Internal Revenue Code (Code).

Facts:

Taxpayer's business consists of real estate investment and leasing operations. Taxpayer owns and operates Commercial facilities located in State 1, State 2, and State 3. Taxpayer also owns a number of office buildings and recreational facilities, and a parking garage and two parking lots in City.

Accommodation Party is engaged in the business of acquiring, owning, holding, leasing, financing, refinancing, and disposing of real property and its associated personal property. Accommodation Party is a single-member State 2 limited liability company that has not elected pursuant to § 301.7701 of the Income Tax Regulations to be classified as an association. As a result, Accommodation Party is treated as a

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division or branch of its sole member, Exchange Company, a State 1 corporation. Neither Accommodation Party nor Exchange Company bears a relationship to Taxpayer that would result in either of them being treated as a “disqualified person” as defined in § 1.1031(k)-1(k) of the regulations.

The Relinquished Property

Taxpayer, through its predecessor entity, acquired the Relinquished Property (the Park) in Decade 1. Since this acquisition, Taxpayer has held the Park as investment and rental property. During the past several years, Conservation Organization has indicated its ongoing interest in acquiring the Park for public parkland. Conservation Organization is an exempt organization under § 501(c)(3) of the Code, which has among its purposes the acquisition of open space, scenic and recreational lands on behalf of the public.

Beginning in early Year 1, Conservation Organization and Taxpayer began serious discussions about entering into an agreement whereby Conservation Organization would have the option to acquire the Park under certain terms and conditions. Accordingly, after significant negotiations, Taxpayer and Conservation Organization entered into a Bargain Sale Option Agreement dated Date 1 (Option Agreement).

Upon execution of the Option Agreement, Conservation Organization paid Amount 1 to Taxpayer for an exclusive and irrevocable option to acquire all or some lesser portion of the Park for public, open space and recreational purposes (the Option). The all-cash purchase price under the Option Agreement is Amount 2 for the entire Park and if Conservation Organization elects to purchase a lesser portion, the purchase price is generally equal to 96% of the appraised value of such parcel. The Option was contingent upon, among other things, the passage by State 1 voters of the Bond Act. The initial term of the Option was through the earlier of Date 6 or the date the Bond Act failed to pass.

On Date 5, State 1 voters approved the Bond Act. As a result, the Option survived through Date 6. On Date 6, pursuant to a First Amendment to the Option Agreement, the initial option term was extended through Date 8 in consideration for Conservation Organization’s cash payment to Taxpayer of Amount 3. Pursuant to this amendment, Conservation Organization’s extended option term began on Date 9 and will expire on Date 14 in exchange for Conservation Organization’s total cash payments of Amount 4 (Amount 5 was paid on Date 8 and Amount 6 will be due on Date 13, payable to an escrow holder for Taxpayer’s benefit, unless Conservation Organization completes its purchase of all or some portion of the Park for an amount not less than Amount 7 on or before Date 12). These option payments are generally nonrefundable and will be credited against the purchase price for the Park when Conservation Organization exercises the Option.

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The Option Agreement contains a tax-deferred exchange cooperation provision stating that Taxpayer has the right to effectuate a tax-deferred exchange, within the meaning of § 1031, of all or any portion of the Park and that Conservation Organization will cooperate with Taxpayer to effectuate any such exchange. The provision also provides that if Taxpayer effectuates an exchange under § 1031, title to the Park will be transferred to Conservation Organization by an accommodation party, and Conservation Organization agrees to accept title to the Park from such accommodation party as if title had been transferred to Conservation Organization directly from Taxpayer. Conservation Organization has also agreed to execute any and all documents which are reasonably necessary to carry out the tax-deferred exchange, and Taxpayer agrees to remain liable for its obligations under the Option Agreement after entering into any § 1031 exchange. The Option Agreement further provides that all risk of loss with respect to the Park will remain with Taxpayer until the closing of Conservation Organization's purchase of all or a portion of the Park.

Conservation Organization's eventual exercise of the Option and acquisition of the Park has been, and will continue to be subject to and contingent upon a number of public hearings and procedural steps, including, but not limited to: (1) the passage of the Bond Act, (2) gubernatorial budget proposal and State 1 legislative approval, (3) preparation of an appraisal prepared to governmental guidelines and approved by the acquiring agencies, (4) approval by public agencies of the value established by the appraisal; and (5) public hearings and preparation of numerous documents for public review and consideration.

The Replacement Property

On Date 11, Accommodation Party acquired the Replacement Property (the Property) pursuant to a Property Acquisition Agreement dated Date 3 by and between Accommodation Party and Seller and a Date 7 Amendment (Property Acquisition Agreement) for a total cash purchase price of Amount 8. Accommodation Party funded its purchase of the Property and the related transaction costs by borrowing Amount 9 from Bank and additional monies from Taxpayer pursuant to a full recourse line of credit, which provides for a loan to Accommodation Party of up to Amount 10 under certain terms and conditions.

The Bank loan (Bank Loan) dated Date 10 with Accommodation Party, as borrower, is secured by the Property and is also guaranteed by Taxpayer. Taxpayer's guaranty of the Bank Loan is evidenced by a payment guaranty and Taxpayer's environmental indemnification of Bank is evidenced by an indemnity agreement, each dated Date 10, and made by Taxpayer in favor of Bank. Accommodation Party has agreed to pay Taxpayer Amount 11 as a loan guaranty fee for Taxpayer's agreement to execute and deliver the Bank Loan payment guaranty. The Bank Loan bears interest at Rate 1 and is due on Date 15, subject to an optional three-month extension through Date 16. The Taxpayer loan made pursuant to a Loan Agreement between Taxpayer

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and Accommodation Party dated Date 4 (Taxpayer Loan) is unsecured and bears interest at Rate 2 calculated and compounded annually. The Taxpayer Loan is due on the earlier of the sale of the Property or Date 17. Accordingly, all of Accommodation Party's acquisition obligations bear interest at market rates.

Accommodation Party has leased the Property to Taxpayer pursuant to a Lease between Accommodation Party, as landlord, and Taxpayer, as tenant, dated Date 11. In addition to entering into the Lease with Taxpayer, Accommodation Party assigned its interest in certain leases and contracts that Accommodation Party acquired through its acquisition of the Property to Taxpayer and Taxpayer assumed the related liabilities from Accommodation Party.

Under the Lease, Taxpayer pays Accommodation Party a monthly base rent plus additional rent equal to all taxes, insurance and maintenance costs with respect to the Property. This rental provision is standard in the case of "triple net" leases. The Lease has an initial one-year term with a one-year optional extension of the initial term. The amount of the rent exceeds Accommodation Party's cost of operating the Property (including debt service).

Accommodation Party and Taxpayer have also entered into a Real Estate Acquisition Agreement dated Date 2, which was amended and restated on Date 11 (Taxpayer Acquisition Agreement). Pursuant to the Taxpayer Acquisition Agreement and subject to Taxpayer entering into the Lease, Accommodation Party entered into the Property Acquisition Agreement, the Bank Loan and the Taxpayer Loan (Accommodation Party Loans) to acquire the Property.

As long as Accommodation Party owns the Property, Accommodation Party and Taxpayer will report their related transactions for federal income tax purposes in accordance with its form, that is, Accommodation Party as the owner and lessor of the Property and Taxpayer as the lessee under the Lease and lessor under the subleases to customers of the Property.

Under the Taxpayer Acquisition Agreement, Taxpayer has an option to purchase (or acquire through a tax-deferred exchange) all or a portion of the Property for an amount equal to the fair market value of the designated portion of the Property. For this purpose, the fair market value of the Property (or any portion thereof) for any purchase by Taxpayer within eighteen months of the Property's acquisition by Accommodation Party is generally equal to Accommodation Party's cost of acquiring the Property.

In the event that the option is terminated, upon the occurrence of a certain specified event(s), Accommodation Party may sell the Property in conformity with the termination sale procedures set forth in the Taxpayer Acquisition Agreement. If Accommodation Party does not satisfy the termination sale procedures, upon its receipt of a termination notice, it will have the potential for exposure to economic loss.

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However, Accommodation Party is not obligated to sell the Property and may retain the Property free and clear of all obligations under the Taxpayer Acquisition Agreement. Thus, Accommodation Party has the potential to realize economic gain from its ownership of the Property.

If Accommodation Party elects to sell the Property, Taxpayer must reimburse Accommodation Party for x portion of net sale proceeds as compared to all acquisition and debt costs and fees and any other unreimbursed selling and closing costs and transfer taxes incurred by Accommodation Party. If the net sale proceeds exceed these costs, Accommodation Party may retain any such excess. In the event no offers or bids are received for the Property, or if for any reason the Property cannot be sold despite the good faith efforts of Accommodation Party to do so, the net sale proceeds are deemed to equal y portion and any charges and costs incurred by Accommodation Party in trying to sell the Property will increase the shortfall, which must be reimbursed in z portion by Taxpayer.

The Taxpayer Acquisition Agreement includes a general environmental release and indemnification of Accommodation Party and its affiliates by Taxpayer. The Taxpayer Acquisition Agreement also includes a "Tax Deferred Exchange" provision stating Taxpayer's right to effectuate a § 1031 exchange for all or any portion of the Property. Under the provision, Accommodation Party agrees to cooperate with Taxpayer to effectuate any and all such exchanges and Taxpayer agrees to indemnify, defend and hold Accommodation Party harmless from any losses incurred by Accommodation Party as a result of any such exchange. The provision also provides that Accommodation Party understands and consents to any assignment by Taxpayer of its rights and responsibilities under the Taxpayer Acquisition Agreement to a qualified intermediary selected by Taxpayer and that Accommodation Party agrees to execute all documents reasonably required to carry out any such § 1031 exchange.

The Deferred Exchange of the Park for the Property

Since the inception of this transaction, Taxpayer has intended to exchange the Park for all or a portion of the Property in a tax-deferred exchange under § 1031. As soon as Conservation Organization is in a position to acquire the Park under the Option, Taxpayer will assign all of its rights in the Option Agreement and transfer the Park to a qualified intermediary within the meaning of § 1.1031(k)-1(g)(4) of the regulations (the QI). The QI will then sell the Park to Conservation Organization pursuant to the Option Agreement and take receipt of all sale proceeds with respect to such sale.

Within 45 days after the transfer by Taxpayer of the Park to the QI, Taxpayer will identify all or a portion of the Property as like-kind replacement property in accordance with § 1031(a)(3)(A). The QI will acquire the identified Property from Accommodation Party pursuant to an assignment of all of Taxpayer's rights under Taxpayer's option in

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the Taxpayer Acquisition Agreement and transfer the acquired Property to Taxpayer before the earlier of (i) 180 days after Taxpayer's transfer, or (ii) the due date (including extensions) of Taxpayer's return for the year in which Taxpayer's transfer occurred. Taxpayer intends to hold the Property for use as rental real property.

Rulings Requested:

(1) Taxpayer's exchange of the Park for the Property will qualify for nonrecognition treatment under § 1031.

(2) The portion of the Property to be acquired in exchange for the Park will qualify as "replacement property" as defined in §1.1031(k)-1(a) of the regulations.

Law And Analysis:

Section 1031(a)(1) provides that no gain or loss will be recognized on the exchange of property held for productive use in a trade or business or for investment if the property is exchanged solely for property of a like kind which is to be held either for productive use in a trade or business or for investment.

Under § 1.1031(a)-1(b) of the regulations relating to the meaning of the term "like-kind," real property is generally considered to be like kind to all other real property, whether or not any of the real property is improved.

Section 1031(a)(3) provides certain requirements for treating property received in a nonsimultaneous exchange as like-kind property to the relinquished property. Under § 1031(a)(3), any property received by the taxpayer (the "replacement property") will not be like kind to the relinquished property transferred if the replacement property (a) is not identified within 45 days of the taxpayer's transfer of the relinquished property, or (b) is received after the earlier of (i) 180 days after the taxpayer's transfer, or (ii) the due date (including extensions) for the taxpayer's return for the year in which the taxpayer's transfer occurred.

Section 1.1031(k)-1 of the regulations provides guidance on "deferred exchanges." These regulations specify in detail the circumstances in which deferred exchanges will be accorded nonrecognition treatment. Specifically omitted from such guidance is any application of these regulations to "reverse exchanges." T.D. 8346, 1991-1 C.B. 150, 151 (April 25, 1991).

On September 15, 2000, the Service issued Rev. Proc. 2000-37, 2000-40 I.R.B. 308, setting forth a safe harbor for reverse like-kind exchanges under § 1031. Under the Rev. Proc. 2000-37 safe harbor provisions, the Service will not challenge either (a) the qualification of the property as either replacement or relinquished property (as defined in § 1.1031(k)-1(a) of the regulations) or (b) the treatment of the exchange

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accommodation titleholder as the beneficial owner if the property is held in a “qualified exchange accommodation arrangement” (a QEAA).

Rev. Proc. 2000-37 is effective for QEAs entered into on or after September 15, 2000. Rev. Proc. 2000-37 provides that “no inference” is intended with respect to the federal income tax treatment of similar arrangements entered into prior to or after its effective date. Further, the Service stated that it recognizes that “parking” transactions can be accomplished outside of the safe harbor provided in the revenue procedure. § 3.02 of Rev. Proc. 2000-37.

Rev. Proc. 2000-37 does not apply to Taxpayer’s transaction. First, Accommodation Party’s acquisition of the Property predates the effective date of Rev. Proc. 2000-37. Second, even if Rev. Proc. 2000-37 applied to the transaction, Accommodation Party acquired the Property on Date 11, which will be more than 180 days before the transfer of the Property to Taxpayer.

Courts have permitted taxpayers significant latitude in structuring tax-deferred like-kind exchanges. See Starker v. United States, 602 F.2d 1341 (9th Cir. 1979) (transfers need not occur simultaneously); Coastal Terminals, Inc. v. United States, 320 F.2d 333 (4th Cir. 1963) (tax consequences depend on what the parties intended and accomplished rather than the separate steps); Alderson v. Commissioner, 317 F.2d 790 (9th Cir. 1963) (parties can amend a previously executed sales agreement to provide for an exchange), rev’g 38 T.C. 215 (1962); Barker v. Commissioner, 74 T.C. 555 (1980) (a party can hold transitory ownership of exchange property solely for the purposes of effecting the exchange). A taxpayer can locate suitable replacement property to be received in an exchange and can enter into negotiations for the acquisition of such property. See Coastal Terminals; Alderson; Coupe v. Commissioner, 52 T.C. 394 (1969), acq. in result only, 1970-2 C.B. xix. A taxpayer can also oversee improvements on the replacement property to be acquired, and can even advance funds toward the purchase of the replacement property to be acquired by exchange. See J.H. Baird Publishing Co. v. Commissioner, 39 T.C. 608 (1962), acq., 1963-2 C.B. 4, Biggs v. Commissioner, 632 F.2d 1171 (5th Cir. 1980), aff’g 69 T.C. 905 (1978).

Case law authority also exists for treating a reverse exchange as a qualifying like-kind exchange under § 1031. In Rutherford v. Commissioner, T.C. Memo 1978-505, taxpayer, a farmer engaged in the cattle breeding business, entered into an agreement with another farmer whereby farmer would transfer 12 half-blood heifers to taxpayer who, at his own expense, would have the heifers artificially inseminated with the sperm of a registered bull. Once the first 12 three-quarter blood heifers were born, taxpayer would deliver the heifers to farmer. The agreement provided for no monetary payments.

Pursuant to their agreement, farmer delivered the half-blood heifers to taxpayer in November 1973. Taxpayer satisfied his obligation by delivering the three-quarter-

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blood heifers to farmer over a several year period beginning with four heifers in 1975, three in 1976 and five in 1977. The Tax Court determined that taxpayer had successfully completed a tax-deferred exchange under § 1031 by his transfer of the relinquished property (the three-quarter blood heifers) for the replacement property (the half-blood heifers). Thus in the qualifying “reverse exchange,” taxpayer received the replacement property before the relinquished property was even conceived.

Similarly, in Biggs, the Tax Court and the Fifth Circuit found that taxpayer’s “reverse exchange” of two parcels of land located in Maryland for four parcels of land located in Virginia qualified under § 1031. Taxpayer advanced monies to Shore Title Company, which was owned and controlled by taxpayer’s attorney, to buy the Virginia properties (the replacement property) from a fourth party before the Maryland properties (the relinquished property) were sold. In addition to advancing acquisition funds to Shore, taxpayer directly paid the finder’s fee and all of the closing costs to acquire the replacement property. Several months later, taxpayer transferred his relinquished property to the second party and received back his advanced funds. Shore then transferred the replacement property to taxpayer.

The Service contended that the exchange did not qualify under § 1031, because Shore served as an agent for taxpayer throughout the transactions. The Service argued that because Shore acted as taxpayer’s agent, taxpayer “merely effected an exchange with himself.” Both courts rejected the Service’s characterization of Shore as taxpayer’s agent and concluded that the fact that Shore was used to facilitate the exchange did not mean that Shore was taxpayer’s agent. In their respective decisions, the Tax Court and the Fifth Circuit each held that the exchange qualified under § 1031 because (a) taxpayer always intended to enter into a tax-deferred exchange; (b) the various transfers were all interdependent and integrated parts of a single overall plan, and (c) Shore was not acting as taxpayer’s agent.

Moreover, in J.H. Baird Publishing Co. and Coastal Terminals, the Tax Court and the Fourth Circuit, respectively, approved qualifying § 1031 exchanges where the replacement property was acquired by a third party at the taxpayer’s direction for the pre-exchange completion of significant improvements. After completion of the taxpayer-directed construction, the newly constructed property was acquired by the taxpayer as replacement property and in each case qualified under § 1031.

In J.H. Baird, the Board of Directors of a Sunday school desired to acquire a building owned by J.H. Baird Publishing Co. Baird, however, only wanted to exchange its property in a tax-deferred exchange. To accomplish Baird’s and the Board’s goals, the parties entered into certain agreements with Realty Co. As a result and at Baird’s direction, on October 15, 1956, Realty acquired an appropriate vacant lot. On October 31, 1956, Realty Co. sold Baird’s relinquished property to the Board. The sale proceeds from the relinquished property went into a Realty Co. escrow account for Baird and the monies were used by Realty Co. to construct the replacement property.

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Meanwhile, Baird continued to occupy the relinquished property rent-free until the replacement property was completed. After completion of the new building in 1957, Baird received title to the replacement property and some excess cash from Realty Co. in exchange for the previously transferred relinquished property.

The Service denied like-kind exchange treatment on the grounds that there could not have been an exchange because Realty Co. was acting as Baird's agent. The Service contended that Realty Co., acting as Baird's agent, had sold Baird's relinquished property and with the sale proceeds had acquired and built a new property for Baird at his direction. Accordingly, the Service concluded that no exchange occurred.

In its decision, the Tax Court reviewed the concept of agency and found that an agency relationship is based upon a contract, either express or implied, between parties and that the contract here did not purport to create an agency. The court also acknowledged that the facts and circumstances indicated that an agency relationship did not exist. Thus, even though Realty Co. (i) held the relinquished property sale proceeds in an escrow account for Baird; (ii) agreed to build the replacement property on a vacant lot according to specifications approved by Baird; and (iii) agreed to transfer the completed replacement property plus any excess cash from the sale of Baird's property to Baird in exchange for Baird's property, the Tax Court found that Realty Co. was not acting as Baird's agent, but rather Realty Co. was acting on its own behalf as a principal.

An agency analysis, therefore, underlies the determination of whether or not an exchange occurred. The concept of agency is also inherent in the § 1.1031(k)-1 regulations, which provide for the use of a qualified intermediary as a safe harbor. The regulations respect the qualified intermediary as a bona fide party to the exchange and not as the agent of the taxpayer. See §1.1031(k)-1(g)(4)(i).

While taxpayer attempts to convert independent purchase and sale transactions into reverse exchanges have failed, these cases are distinguishable from the foregoing taxpayer favorable cases. See, e.g., Bezdjian v. Commissioner, 845 F.2d 217 (9th Cir. 1988), aff'g T.C. Memo 1987-140; Lee v. Commissioner, T.C. Memo 1986-294; Dibsy v. Commissioner, T.C. Memo 1995-477; Lincoln v. Commissioner, T.C. Memo 1998-421. In each of these failed reverse exchange cases, the taxpayers merely purchased one property and subsequently sold another property to a different party. The complete lack of contractual interdependence between each property purchase and sale forecloses any argument for exchange treatment, regardless of whether the purported exchange would be a reverse, simultaneous or deferred exchange. In these situations, the taxpayers' steps were not an interrelated exchange transaction.

The recent Tax Court decision in DeCleene v. Commissioner, 115 T.C. No. 34 (2000), is also distinguishable from the present case. Although the court analyzed the

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case as if it involved a “reverse exchange,” it held that the underlying transaction did not involve a like-kind exchange.

In the DeCleene case, taxpayer acquired the Lawrence property in 1992. Approximately one year later, taxpayer transferred the Lawrence property to Western Lime and Cement Co. (WLC) in exchange for a nonrecourse note and, three months later, received back the Lawrence property in exchange for the McDonald property and payment on the note. The court held that WLC did not acquire any of the benefits and burdens of ownership of the Lawrence property and, therefore, the Lawrence property was never transferred to WLC. If the Lawrence property was never transferred to WLC, then the only way in which the transaction could qualify for nonrecognition under § 1031 would be if the acquisition of the Lawrence property in 1992 was treated as part of an integrated plan to exchange it for the McDonald property. However, because at the time of the acquisition of the Lawrence property, taxpayer had not taken any steps to evidence an intent to enter into an exchange, such an integrated plan did not exist. As a result, the court did not reach the issue of the circumstances under which a parking transaction that is entered into as part of an integrated plan to accomplish a like-kind exchange qualifies for nonrecognition under § 1031.

In Commissioner v. Bollinger, 485 U.S. 340 (1988), the Supreme Court reaffirmed its agency analysis set forth in National Carbide Corp. v. Commissioner, 336 U.S. 422 (1949). The Supreme Court’s agency analysis has four factors and two requirements, “the sum of which has become known . . . as the ‘six National Carbide factors.’” Bollinger, 485 U.S. at 346. The Supreme Court’s National Carbide factors are as follows:

- (1) Whether the party in question operates in the name and for the account of the principal;
- (2) binds the principal by its actions;
- (3) transmits money received to the principal; and
- (4) whether receipt of income is attributable to the services of employees of the principal and to assets belonging to the principal.
- (5) The agency-principal relationship cannot be founded solely on the fact that the principal owns the agent. For example, a corporation will in most cases be treated as a taxable entity separate from its sole stockholder.¹
- (6) The business purpose of the party in question must be the carrying on of the normal duties of an agent.

¹ See Moline Properties, Inc. v. Commissioner, 319 U.S. 436, 440-441 (1943). In this case, the Supreme Court did not find an agency relationship between a sole shareholder and his wholly owned corporation, because among other reasons “[t]here was no actual contract of agency, nor the usual incidents of an agency relationship.”

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National Carbide Corp., 336 U.S. at 437.

The foregoing authorities present three general requirements for an exchange to be recognized as a like-kind exchange under § 1031 in similar situations:

- (1) the taxpayer must demonstrate its intent to achieve an exchange and the properties to be exchanged must be of like kind and for a qualified use;
- (2) the steps in the various transfers must be part of an integrated plan to exchange the relinquished property for the replacement property; and
- (3) the party holding the replacement property must not be the taxpayer's agent.

Intent to Exchange

First, a taxpayer must intend to enter into an exchange of property for like-kind property each used by the taxpayer in a trade or business or held as an investment. See Coastal Terminals (“[w]hether the transaction constituted a sale or exchange for income tax purposes depends on the intent of the parties and this intent is to be determined from all relevant facts and circumstances,” quoting Sarkes Tazian, Inc. v. United States, 240 F.2d 467, 470 (7th Cir. 1957)); Biggs (taxpayer insisted at all times that he receive like-kind property as part of the consideration for the transfer of the Maryland property); Baird (parties intended, and the contract provided for, an exchange); Rutland v. Commissioner, T.C. Memo 1977-8 (transaction qualified for § 1031 treatment because the parties intended to effect an exchange and an exchange occurred); Fredericks v. Commissioner, T.C. Memo 1994-27 (taxpayer's intent to exchange property was evidenced by the documentation of the parties' agreement).

In this case, Taxpayer has evidenced its clear and consistent intent to exchange the Park for the Property in a transaction qualifying under § 1031. Taxpayer has consistently insisted from the beginning of its transaction that the exchange of the Park for the Property must be structured as a tax-deferred exchange of like-kind property. Taxpayer has evidenced this intent by its inclusion of “tax-deferred exchange cooperation provisions” in each of the Conservation Organization Option Agreement, the Property Acquisition Agreement, and the Taxpayer Acquisition Agreement. As soon as Conservation Organization exercises its option to purchase the Park (which will be accomplished by using a qualified intermediary), Taxpayer will take the steps outlined above to effect a tax-deferred exchange of the Park for the Property in accordance with § 1031(a)(3) and § 1.1031(k)-1 of the regulations. Moreover, the Park and the Property are like-kind property under § 1.1031(a)-1(b) and Taxpayer has held the Park as rental and investment property and will hold the Property as rental property after the completion of the exchange.

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Interdependent and Integrated Overall Plan

Second, the steps in the various transfers must be interdependent and integrated parts of a single overall plan to achieve an exchange. See, e.g., Biggs, 632 F.2d at 1177-1178 (the many transactions leading to the ultimate transfers of the Maryland and Virginia properties were part of a single, integrated plan, the substantive result of which was a like-kind exchange); Coastal Terminals, 320 F.2d at 337 (“the transaction must be viewed as a whole ...”, quoting Commissioner v. Court Holding Co., 324 U.S. 331, 334 (1945)); Fredericks v. Commissioner, T.C. Memo 1994-27 (taxpayer structured an integrated four party exchange). Taxpayer has entered into the series of steps described above as part of its overall plan to exchange the Park for the Property. Taxpayer has specifically designed and entered into each of the Conservation Organization Option Agreement and the Taxpayer Acquisition Agreement with Accommodation Party to achieve its overall plan of exchanging the Park for the Property. The overall substance of Taxpayer’s series of transactions, which have been specifically designed and executed as parts of an overall unitary plan, is Taxpayer’s exchange of the Park for the Property.

Accommodation Party Not Taxpayer’s Agent

Moreover, under the Supreme Court’s agency analysis, Taxpayer’s relationship with Accommodation Party is not an agency relationship. In accordance with the Supreme Court’s agency analysis, we apply the National Carbide factors to the facts of Taxpayer’s transaction and its relationship with Accommodation Party. With respect to the first factor, Accommodation Party has operated and will operate in its own name and for its own account. The Operating Agreement of Accommodation Party states “[a]ll business of Accommodation Party will be conducted in the Accommodation Party name” and that “Accommodation Party will own and hold title to all of its property in the name of Accommodation Party.” Consistent with its operating agreement, Accommodation Party entered into the Property Acquisition Agreement, the Taxpayer Acquisition Agreement, the Lease, the Bank Loan, and the Taxpayer Loan each in its own name and each for its own account. Accommodation Party operates its business through its own bank accounts, which are held in its name and for its account. In none of the operative documents is Accommodation Party referred to as Taxpayer’s agent.

With respect to the second factor, Taxpayer has not contractually authorized Accommodation Party to bind Taxpayer by Accommodation Party’s actions.

With respect to the third factor, Accommodation Party does not transmit money it receives for its account to Taxpayer. Under the Lease, Taxpayer is obligated to pay Accommodation Party a monthly base rent for Accommodation Party’s account.

Applying the fourth factor, Accommodation Party’s rental income under the Lease is pursuant to its lessor-lessee relationship with Taxpayer and Accommodation

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Party's ownership of the Property. Taxpayer's rental income from the subtenants under the subleases is pursuant to Accommodation Party's assignment of such subleases to Taxpayer under the assignments of lessor's interests in leases and assumption of liability under the leases.

The fifth factor is that "the agency relationship must not be dependent upon the fact that the principal owns it." Accommodation Party and Taxpayer are separate legal entities. Neither Accommodation Party nor Exchange Company is owned by or related to Taxpayer. Furthermore, as demonstrated by the preceding analysis, Accommodation Party is not acting on behalf of Taxpayer, but rather is acting for its own account. Exchange Company, as the sole member of Accommodation Party, will report Accommodation Party's rental income and expenses on its tax returns.

With respect to the sixth factor, Accommodation Party's business purpose is not to carry on the normal duties of an agent. As stated in its operating agreement and as demonstrated by its actions, (1) Accommodation Party is engaged in the business of acquiring, owning, holding, leasing, financing, refinancing and disposing of real property and its associated personal property and (2) Accommodation Party will conduct its business and will hold title to all of its property in its own name and for its own account.

Further, the Tax Court has consistently held that the fact that an accommodator is used to facilitate a like-kind exchange does not mean that the accommodator is an agent of the taxpayer. For example, in Baird, the sale proceeds were held in an account "under the name of Realty, Escrow Agent for Baird" and Baird had to approve all construction and related invoices. Similarly, in Fredericks, the accommodator acquired title to the relinquished property and the replacement property and obtained financing and constructed improvements for the purpose of facilitating the taxpayer's like-kind exchange. Thus, the fact that Accommodation Party is facilitating Taxpayer's exchange of the Park for the Property does not mean Accommodation Party is Taxpayer's agent.

Accordingly, Accommodation Party is not Taxpayer's agent.

Based on the foregoing analysis and Taxpayer's representations, we rule as follows:

- (1) Taxpayer's exchange of the Park for the Property will qualify for nonrecognition treatment under § 1031.
- (2) The Property will qualify as "replacement property" as defined in § 1.1031(k)-1(a) for purposes of § 1031 and the regulations thereunder.

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

Sincerely yours,
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cc: