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TY:

LEGEND

Taxpayer   =
Trust   =
Affiliate   =
QRS   =
State A   =
State B   =
Property   =
RQ   =
Date 1   =
Date 2   =
Date 3   =
EATX   =
EAT Parent =

Dear

This is in reply to Taxpayer's request for a private letter ruling, dated December 19, 2011, concerning whether § 1031 of the Internal Revenue Code applies to defer gain in a transaction in which Taxpayer and a related party entered into separate qualified exchange accommodation arrangements for parking the same property held by a single exchange accommodation titleholder.

FACTS

Parties to the Proposed Transaction

Trust is a State A trust, classified as a real estate investment trust (REIT) for federal income tax purposes. Taxpayer is a State B limited partnership and Affiliate is a State A limited partnership. Each entity uses the annual accounting period ending December 31 and an overall accrual method of accounting for maintaining its accounting books and records and filing its federal income tax returns.

Trust owns approximately 95.6 percent of Taxpayer and is its sole general partner. Outside partners own the remaining 4.4 percent of Taxpayer. Trust also owns interests in other subsidiaries. Trust conducts its operations and owns properties through Taxpayer and the other subsidiaries.

Taxpayer owns 99 percent of Affiliate. QRS, a State B corporation, owns the remaining 1 percent in Affiliate. Because Trust owns 100 percent of QRS, QRS is a qualified REIT subsidiary and a disregarded entity for federal income tax purposes under § 856(i). Accordingly, Affiliate's profits, gains, deductions, and losses are allocable to Trust or Taxpayer for federal income tax purposes.

Proposed Transaction

Taxpayer and Affiliate each owned one or more separate multifamily residential apartment properties. These entities each targeted Property for acquisition as replacement property through transactions separately structured as like-kind exchanges. Taxpayer and Affiliate each own one or more properties that are of like kind to Property for purposes of § 1031(a) and § 1.1031(a)-1(b) of the Income Tax Regulations.

The seller of Property required that the sale/purchase of Property close on Date 1. Neither Taxpayer nor Affiliate had disposed of any property for exchange by that date. Therefore, each initiated a "reverse" like-kind exchange under the safe harbor provisions of Rev. Proc. 2000-37, 2000-2 C.B. 308. Each entered into a qualified exchange accommodation arrangement (QEAA) with EATX, an exchange accommodation titleholder. EATX is a limited liability company wholly owned by EAT Parent. EAT Parent is not related to Taxpayer or Affiliate.

Taxpayer represents that Taxpayer and Affiliate have each complied with the requirements of Rev. Proc. 2000-37. This includes the requirement that Taxpayer have a bona fide intent to acquire Property as replacement property in a like-kind exchange under § 1031 at the time EATX acquired qualified indicia of ownership in Property. Affiliate has also submitted representations that it had an identical intent with respect to Property. In addition, Taxpayer's qualified exchange accommodation arrangement

(QEAA) provides that Taxpayer acknowledges that EATX had entered into a concurrent QEAA for Property with Affiliate, which gave Affiliate rights to acquire Property, in whole or part, to complete like-kind exchanges.

Under Taxpayer's QEAA, Taxpayer's right to acquire Property is subject to it giving notice to EATX of its intention to acquire Property, in whole or part. This was subject, however, to a proviso that Taxpayer's rights terminate upon prior delivery of such notice by Affiliate. The agreement also provides that if Affiliate gives prior notice of its intent to acquire Property, EATX has no further obligation to transfer Property to Taxpayer, whether in connection with the exchange described in the agreement or otherwise. The agreement also provides that if Affiliate states its intention to acquire only a portion of Property, EATX's obligations to transfer the balance of Property to Taxpayer are unaffected. Affiliate simultaneously entered into its own QEAA with EATX for Property, listing Taxpayer as the other party that may acquire Property under Taxpayer's QEAA, under substantially the same terms and conditions.

On Date 1, EATX acquired title to Property using funds that Taxpayer advanced. On Date 2 (which was within the 45-day identification period) Taxpayer and Affiliate each identified property that each proposed to transfer as relinquished property according to terms of its respective QEAA with EATX. Taxpayer identified three potential relinquished properties and Affiliate identified one. Prior to Date 3, Taxpayer's qualified intermediary sold RQ (one of the three properties Taxpayer identified as potential relinquished property). On Date 3 as provided in Taxpayer's QEAA, EATX transferred Property to Taxpayer to complete Taxpayer's exchange.

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 that is to be held either for productive use in a trade or business or for investment.

Under § 1031(a)(3) and § 1.1031(k)-1, a deferred exchange may qualify for tax deferral if the taxpayer identifies the replacement property on or before 45 days after the taxpayer transfers the relinquished property, and receives the replacement property within the replacement period. The replacement period ends on 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 (including extensions) for the taxpayer's return of the tax imposed by this chapter for the taxable year in which the transfer of the relinquished property occurs.

Rev Proc. 2000-37 provides a safe harbor for structuring reverse exchanges through parking arrangements. Under this revenue procedure, the Service treats an exchange

accommodation titleholder (EAT) as the beneficial owner of property for federal income tax purposes if the property is held in a QEAA. *See* Section 1 of Rev. Proc. 2000-37, as modified by Section 4.01 of Rev. Proc. 2004-51, 2004-2 C.B. 294. In other words, this revenue procedure provides guidance on how to complete like-kind exchanges where the taxpayer's sale of relinquished property does not precede the EAT's acquisition of replacement property through an arrangement with the taxpayer.

Rev. Proc. 2000-37 sets forth the following safe-harbor requirements for establishing a QEAA:

1. The EAT, which is not the taxpayer or a disqualified person and which is subject to federal income tax, must acquire a qualified indicia of ownership (QIO) in the parked property.
2. At the time EAT acquires a QIO, the taxpayer has a bona fide intent that the parked property be either replacement or relinquished property in an exchange intended to qualify for deferral of gain or loss under § 1031.
3. The EAT and the taxpayer enter into a written qualified exchange accommodation agreement no later than five business days after the EAT acquires a QIO in the parked property, providing that the EAT is holding the property for the benefit of the taxpayer in order to facilitate an exchange under § 1031 and this revenue procedure. The agreement must specify that the EAT will be treated as the beneficial owner of the parked property for federal income tax purposes and that both the EAT and the taxpayer must report federal income tax attributes on their respective income tax returns in a manner consistent with this agreement.
4. No later than 45 days after the transfer of a QIO of the replacement property to the EAT, the taxpayer must properly identify the relinquished property in a manner consistent with the principles described in   § 1.1031(k)-1(c). For this purpose, the taxpayer may properly identify alternative or multiple properties as provided in § 1.1031(k)-1(c)(4)
5. No later than 180 days after the transfer of a QIO of the property to the EAT, the property is transferred either directly or indirectly through a   qualified intermediary to the taxpayer as replacement property (or as relinquished property to a third party buyer who is not a disqualified person).
6. The combined time that the QEAA may hold replacement and relinquished property may not exceed 180 days.

Taxpayer represents that it satisfied the requirements for a deferred exchange in § 1.1031(k)-1 and the safe harbor for reverse exchanges in Rev. Proc. 2000-37. At the time EATX acquired a QIO in Property, it was not clear whether Taxpayer or Affiliate, each of which had identified relinquished properties, would complete the transfer of one or more such identified properties to complete the exchange within the 180-day period permitted for a QEAA under Rev. Proc. 2000-37.

Rev. Proc. 2000-37 allows Taxpayer to complete a reverse like-kind exchange without concern that EATX's ownership of Property will be attributed to Taxpayer. EATX may enter into QEAAs with more than one entity, including persons related to Taxpayer, each of which has a bona fide intent to acquire the same property as the replacement property for their respective exchanges. Rev. Proc. 2000-37, as modified by Rev. Proc. 2004-51, does not prohibit an accommodation party from serving as an EAT to multiple taxpayers under multiple and simultaneous QEAAs for the same parked property. That Affiliate's QEAA failed because Taxpayer timely acquired Property under its QEAA using the same EAT does not invalidate Taxpayer's QEAA.

CONCLUSION

Based strictly on the information submitted, and each representation made (including the representation that Taxpayer and Affiliate each had a bona fide intent to acquire Property pursuant to each of its QEAAs), we conclude that Taxpayer's QEAA to acquire Property constitutes a separate and distinct QEAA as defined in Rev. Proc. 2000-37 (with separate application of the identification rules of § 1.1031(k)-1(c)(4)), even though Affiliate simultaneously entered into a separate QEAA with the same EAT to acquire the same property.

Except as provided in the preceding paragraph, we do not express or imply an opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. For example, we do not express an opinion whether Taxpayer and Affiliate each had a bona fide intent to acquire Property pursuant to their QEAAs. *See* § 4.02(1) of Rev. Proc. 2012-3, 2012-1 I.R.B. 113, 121. Further, Taxpayer may rely on this ruling only if Taxpayer has otherwise fully complied with (i) all requirements for deferral of gain under § 1031 and its regulations, (ii) Rev. Proc. 2000-37 and 2004-51, and (iii) the provisions of its exchange agreement with its qualified intermediary and its QEAA with EATX.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative(s).

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Michael J. Montemurro
Branch Chief, Branch 4
(Income Tax & Accounting)

cc: