



Tax Reduction Letter

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Private Letter Ruling 8310016

December 1, 1982

This is in reply to a letter dated August 12, 1982, submitted on your behalf by your authorized representative, requesting a ruling with respect to the applicability of section 1031 of the Internal Revenue Code to an exchange of rental property held by the Trust for a personal residence that the Trust intends to sell immediately thereafter.

The pertinent facts are understood to be as set forth below:

- The Trust owns a beach house that it has been renting since January 1982. T is an individual who owns a personal residence. T wants to exchange the residence for the beach house held by the Trust. The Trust intends to sell the personal residence when it acquires it.
- Section 1031(a) of the Code provides that no gain or loss shall be recognized if property held for productive use in trade or business or for investment (excluding certain enumerated property) is exchanged solely for property of like kind to be held either for productive use in trade or business or for investment.
- In order to qualify for section 1031 nonrecognition, three elements must be present: (1) the property transferred by the taxpayer must have been held by him either for productive use in a trade or business or for investment, (2) the property received by the taxpayer must be held by him either for productive use in a trade or business or for investment, and (3) the properties transferred and received must be of like kind.

In Rev. Rul. 75-292, 1975-2 C.B. 333, property received in a like-kind exchange was immediately transferred to a corporation in a section 351 transaction. Rev. Rul. 75-292 holds that the like-kind exchange did not qualify for nonrecognition under section 1031 of the Code because the taxpayer did not intend to hold the property received in the exchange, intending instead to transfer it to the corporation.

Rev. Rul. 75-292 stands for the proposition that property received by a taxpayer in a like-kind exchange is not considered to be held for investment or for productive use in a trade or business if the taxpayer intends immediately to sell the acquired property. See Rev. Rul. 75-291, 1975-2 C.B. 332, and Rev. Rul. 77-297, 1977-2 C.B. 304.

In this case the Trust intends to sell the personal residence when it acquires it. Therefore the residence will not qualify as property held for investment or for productive use in a trade or business in the hands of the Trust.

Accordingly, based on the information submitted, we conclude as follows:

- The exchange by the Trust of the beach house for a personal residence that the Trust intends to sell when acquired will not qualify as a non-taxable exchange under section 1031 of the Code.

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

Pursuant to the power of attorney in file with this office, we are sending a copy of this letter to your authorized representative.

Anthony Manzanares, Jr.

Chief, Individual Income Tax Branch