Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:ITA:05 – PLR-136325-03

Date:
December 10, 2003

A =
B =
Date 1 =
Date 2 =

Dear :

This letter responds to your submission of Date 1, and supplemental correspondence of Date 2, regarding the income tax consequences under § 1001 of the Internal Revenue Code (the Code) of the proposed partition of a tenants-in-common interest in property into three separate, individually-owned parcels. You have requested a ruling that the partition does not constitute a sale, exchange, or other disposition that would cause you to recognize any gain or loss under § 1001 of the Code.

FACTS

The property at issue (the Property) is a parcel of real estate owned by you, A, and B (the Owners) as tenants-in-common. The Owners received their tenants-in-common interests in the property by way of gifts from their now deceased mother. The Owners' mother gifted the entire Property by transferring small, undivided interests in the Property to the Owners in many separate transactions. Each Owner has since transferred their interest in the Property to a grantor trust for their benefit.

You have made the following representations:

(1) The Owners' one-third tenants-in-common interests are identical in every respect.

(2) The Property is a single parcel.

(3) The Owners will institute a proceeding to partition the Property under applicable state law.

(4) Pursuant to the partition proceeding, each of the Owners will acquire legal ownership of one of three separate parcels.

(5) An unrelated professional appraiser will value each parcel, and the boundaries will be adjusted accordingly to make certain that the parcels are approximately equal in value.

(6) None of the Owners will benefit disproportionately from the partition and no gift will result from the partition.

(7) There is no mortgage or debt on the property immediately prior to the partition, and there will be no mortgage or debt on the separate parcels immediately after the partition.

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

LAW AND ANALYSIS

Section 61(a)(3) of the Code provides that gross income includes gains derived from dealings in property.

Section 1001(a) of the Code provides that the gain from the sale or other disposition of property is the excess of the amount realized over the adjusted basis provided in § 1011 of the Code for determining gain, and the loss is the excess of the adjusted basis over the amount realized.

Section 1001(c) of the Code provides that, except as otherwise provided in Subtitle A of the Code, the entire amount of the gain or loss, determined under § 1001 of the Code, 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.

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. 300, holds that if three 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 (although some or all of any realized gain might be deferred under §1031). Rev. Rul. 79-44, 1979-2 C.B. 265, reaches the same conclusion on similar facts.

CONCLUSION

The Property is owned as tenants-in-common by you, A, and B. Because the Property is a single parcel that will be partitioned pursuant to an action under state law, 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 Property will not be treated as a sale or exchange. Accordingly, no gain or loss will be realized under § 1001 of the Code as a result of the partition.

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 requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the provisions of a power of attorney currently on file, we are sending a copy of this letter ruling to the taxpayer's authorized representative.

Sincerely,
John Aramburu
Senior Counsel, Branch 5
Office of Associate Chief Counsel
(Income Tax and Accounting)

Enclosures (2):
Copy of this letter
Copy for section 6110 purposes