Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Date:
September 20, 2012

TY: March 31, 2012

LEGEND:

Taxpayer	=
Parent	=
State A	=
Z-Dealer	=
Non-Z-Dealer	=
QI	=
System	=

Dear

This responds to your request for a private letter ruling, dated May 7, 2012, regarding the procedures for giving notice of assignments of rights in deferred exchanges of like-kind property under § 1031 of the Internal Revenue Code, § 1. 1031(k)-1(g)(4) of the Income Tax Regulations and Rev. Proc. 2003-39, 2003-1 C.B. 971.

FACTS:

Taxpayer is a State A corporation that is a subsidiary of Parent. Taxpayer is primarily engaged in the business of leasing vehicles and issuing loans for the purchase of vehicles. It uses an accrual method of accounting and has a fiscal year ending March 31.

In its leasing business, Taxpayer exchanges tangible personal property under § 1031 by transferring vehicle(s) coming off-lease to unrelated parties and acquiring vehicles subject to leases from unrelated Z-Dealers.[1]

Taxpayer utilizes one qualified intermediary (QI), as defined in § 1.1031(k)-1(g)(4)(iii) of the regulations, to effectuate these exchanges under § 1031. In order to establish its exchange program, Taxpayer entered into a master exchange agreement (the "MEA") with QI as provided in § 1.1031(k)-1(g)(4) and Rev. Proc. 2003-39. The MEA includes a blanket assignment clause by which Taxpayer assigns its rights (but not its obligations) in its existing and future vehicle sales and purchase agreements to QI ("Assignment").

Taxpayer uses all vehicles exchanged in this exchange program in its business of leasing vehicles to customers/lessees. At the end of each lease term (or during the lease term if the lease ends earlier), Taxpayer will transfer the vehicle (an off-lease vehicle), through QI, to (i) customers/lessees; (ii) unrelated Z- Dealers; and (iii) Non-Z-Dealers. The sales to dealers, including Z-Dealers and Non-Z-Dealers, can occur by way of the internet and through auction sales and direct sales.

When a vehicle is sold or purchased in an exchange under its exchange program, Taxpayer provides blanket notice ("Notice") of its Assignment of its rights in its existing and future vehicle sales and purchase agreements as follows:

Situation 1: When Taxpayer transfers off-lease vehicles as its relinquished property (RQ) to existing customers/lessees, it includes the Notice on the credit applications and on the lease agreements with its lease customers. Also, because some leases were already in effect prior to the start of the exchange program, Taxpayer provides a one-time Notice to all existing customers/lessees through monthly invoice statements.

Situation 2: When Taxpayer transfers off-lease vehicles as RQ to unrelated Z-Dealers, it provides the Notice separately in its sales invoice, certificate of title, and purchase confirmation provided to the unrelated Z-Dealer purchasing the off-lease vehicle. This is in addition to Notice included in its lease agreement. Also, Taxpayer provides one-time Notice to each unrelated Z-Dealer.

Situation 3: When Taxpayer transfers off-lease vehicles as RQ to unrelated Z-Dealers through an internet vehicle purchase system (System), it provides the Notice on the log on the System's website screen. It also provides the Notice as one of the terms of purchase on the terms of purchase website screen. The Notice also appears on the bill of sale sent to the unrelated Z-Dealer.

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[1] Taxpayer also acquires vehicles subject to leases from related party Z-Dealers. When acquired from a related taxpayer, Taxpayer does not treat the acquired vehicle(s) as qualified replacement property eligible for matching in a like-kind exchange under § 1031.

Situation 4: When Taxpayer transfers off-lease vehicles as RQ to unrelated Z-Dealers through the System when the respective vehicle has been consigned to auction but the auction date has yet to occur, it provides the Notice on the log on the System's website screen. The Notice is also included as one of the terms of purchase on the terms of purchase screen on the System's website. Taxpayer also sends a fax to the auction, listing each consigned vehicle and including the Notice to the auction.

Situation 5: When Taxpayer transfers off-lease vehicles as RQ at auction, it sends a fax to the auction that lists each vehicle consigned to the auction. The fax also contains the Notice. The auction then includes the Notice in the vehicle's description, which is provided to all bidders who attend the auction. The sales packet, as provided to the purchaser when the purchaser acquires the vehicle from the auction, includes the Notice.

Situation 6: Sometimes Taxpayer transfers vehicles to Non-Z-Dealers (e.g. when a Non-Z-Dealer acquires the vehicle in a trade-in with lessee and purchases the vehicle from Taxpayer). When this occurs, Taxpayer provides the Notice to each purchasing Non-Z-Dealer (the "Initial Notice"). In addition, each year Taxpayer will resend the Notice to each Non-Z-Dealer to whom it has sold a vehicle (the "Annual Notice"). Also, Taxpayer will provide the Notice to each Non-Z-Dealer that was not included in the Annual Notice or Initial Notice on learning of its purchase of a vehicle from Taxpayer.[2] On the transfer of each vehicle to a Non-Z-Dealer, Taxpayer will follow up this Notice to the Non-Z-Dealer with a specific Notice each time the Non-Z-Dealer purchases a vehicle from Taxpayer. Taxpayer will also include the Notice in the bill of sale documents sent to the purchaser.

Situation 7: When Taxpayer acquires vehicles subject to leases from unrelated Z-Dealers, Taxpayer (i) provides a stand-alone announcement to each participating unrelated Z-Dealer that contains the Notice; (ii) provides the Notice in the Z-Dealer agreements with the respective unrelated Z-Dealers; (iii) includes the Notice in the credit application utilized in each purchase transaction including credit applications available through Taxpayer's website; (iv) includes the Notice on its website; (v) includes the Notice in its lease agreement; and (vi) provides the Notice in its acceptance confirmation sent to a selling unrelated Z-Dealer.

RULING REQUESTED:

[2] Taxpayer will maintain a list of all Non-Z-Dealers to whom it provides the blanket Notice. If a vehicle is sold to a Non-Z-Dealer without prior Notice, Taxpayer will recognize gain on such sale and Taxpayer will send a Blanket Notice to such dealer and add such dealer to the list of dealers who receive the Annual Blanket Notice. Taxpayer's like-kind exchange program involves non-Z-Dealers only if they receive Blanket Notice on or before the date of sale.

Taxpayer requests a ruling that its notification procedures satisfy the requirements of §1.1031(k)-1(g)(4) and Rev. Proc. 2003-39 for (1) transfers of off-lease vehicles to existing customers/lessees; (2) transfers of off-lease vehicles to unrelated Z-Dealers when a vehicle is returned to a dealer; (3) transfers of off-lease vehicles to unrelated Z-Dealers through the System; (4) transfers of off-lease vehicles to unrelated Z-Dealers through the System when a vehicle has been consigned to auction but the auction date has yet to occur; (5) transfers of off-lease vehicles at auction; (6) transfers of vehicles to Non-Z-Dealers (e.g. Non-Z-Dealer acquires vehicle in a trade-in with lessee and purchases the vehicle from Taxpayer) occurring on or after the day such dealer has received Notice; and (7) acquisitions of vehicles subject to leases from unrelated Z-Dealers.

STATEMENT OF LAW:

Section 1031(a)(1) of the Code provides that no gain or loss is 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 like kind to be held either for productive use in a trade or business or for investment.

Section 1031(a)(3) provides, with respect to a transaction in which the exchange of property between a taxpayer and a third party are not simultaneous (a deferred exchange), that for purposes of § 1031(a), any property received by the taxpayer is treated as property that is not like-kind property if-- (A) the property is not identified as property to be received in the exchange on or before the day that is 45 days after the date on which the taxpayer transfers the property relinquished in the exchange, or (B) the property is received after the earlier of-- (i) 180 days after the date on which the taxpayer transfers the property relinquished in the exchange, or (ii) the due date (determined with regard to extension) for the transferor's tax return for the taxable year in which the transfer of the relinquished property occurs.

Section 1.1031(k)-1 of the regulations provides rules for the application of § 1031 in the case of a “deferred exchange.” Section 1.1031(k)-1(a) defines a deferred exchange as an exchange in which, pursuant to an agreement, the taxpayer transfers RQ and subsequently receives qualifying replacement property (RP). Section 1.1031(k)-1(f) provides that, in a deferred exchange, if a taxpayer actually or constructively receives money or other property before the taxpayer actually receives the RP, then gain or loss may be recognized. Further, if the taxpayer actually or constructively receives money or other property in the full amount of the consideration for the RQ before the taxpayer receives the RP, the transaction will constitute a sale and not a deferred exchange, even though the taxpayer may ultimately receive the RP.

Section 1.1031(k)-1(g) establishes safe harbors, the use of which result in a determination that a taxpayer is not in actual or constructive receipt of money or other property for purposes of § 1031. Specifically, §1.1031(k)-1(g)(4)(i) provides that, in the

case of a taxpayer's transfer of RQ involving a QI, the taxpayer's transfer of RQ and subsequent receipt of RP is treated as an exchange, and the determination of whether the taxpayer is in actual or constructive receipt of money or other property before the taxpayer receives the RP is made as if the QI is not the agent of the taxpayer.

Section 1.1031(k)-1(g)(4)(ii) clarifies that the QI will not be considered the taxpayer's agent only if the agreement between the taxpayer and the QI expressly limits the taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property held by the QI.

Section 1.1031(k)-1(g)(4)(iii) defines a QI as a person who (1) is not the taxpayer, the agent of the taxpayer, or a person who bears a relationship to the taxpayer as described in either § 267(b) or § 707(b) (substituting 10% for 50% in each subsection); and (2) enters into an agreement with the taxpayer that requires the person to acquire the RQ from the taxpayer, transfer the RQ, acquire the RP, and transfer the RP to the taxpayer.

Section 1.1031(k)-1(g)(4)(iv) generally provides that regardless of whether a QI acquires and transfers property under general tax principles, solely for purposes of § 1.1031(k)-1(g)(4)(iii)(B)--

(A) A QI is treated as acquiring and transferring property if the QI acquires and transfers legal title to that property;

(B) A QI is treated as acquiring and transferring the RQ if the QI (either on its own behalf or as the agent of any party to the transaction) enters into an agreement with a person other than the taxpayer for the transfer of the RQ to that person and, pursuant to that agreement, the RQ is transferred to that person, and

(C) A QI is treated as acquiring and transferring RP if the QI (either on its own behalf or as the agent of any party to the transaction) enters into an agreement with the owner of the RP for the transfer of that property and, pursuant to that agreement, the RP is transferred to the taxpayer.

Section 1.1031(k)-1(g)(4)(v) provides that solely for purposes of § 1.1031(k)-1(g)(4)(iii) and (g)(4)(iv), a QI is treated as entering into an agreement if the rights of a party to the agreement are assigned to the QI and all parties to that agreement are notified in writing of the assignment on or before the date of the relevant transfer of property. For example, if a taxpayer enters into an agreement for the transfer of RQ and thereafter assigns its rights in that agreement to a QI and all parties to that agreement are notified in writing of the assignment on or before the date of the transfer of the RQ, the QI is treated as entering into that agreement. If the RQ is transferred pursuant to that agreement, the QI is treated as having acquired and transferred the RQ.

Rev. Proc. 2003-39, provides guidance on the qualification of programs involving ongoing exchanges of tangible personal property using a single QI (hereinafter referred

to as an “LKE Program”) under § 1031. As provided in section 3.02 of Rev. Proc. 2003-39, an LKE Program is an ongoing program meeting certain requirements and involving multiple exchanges of 100 or more properties. For purposes of this letter, the most relevant requirements are that the taxpayer:

(1) uses a single, unrelated QI to accomplish the exchanges in the LKE Program;

(2) enters into a written agreement (“master exchange agreement”) with the QI;

(3) assigns to the QI, in the master exchange agreement, the taxpayer's rights (but not necessarily its obligations) in some or all of its existing and future agreements to sell RQ and/or to purchase RP; and

(4) provides written notice of the assignment to the other party to each existing and future agreement to sell RQ and/or to purchase RP.

Section 6.02 of Rev. Proc. 2003-39 provides that the taxpayer's assignment in the master exchange agreement to the QI of the taxpayer's rights (but not necessarily its obligations) in some or all of its existing and future agreements to sell RQ and/or to purchase RP, and the taxpayer's written notice of the assignment to the other party to each agreement to sell RQ and/or to purchase RP on or before the date of the relevant transfer of property, will be effective to satisfy the notice requirement in § 1.1031(k)-1(g)(4)(v).

ANALYSIS:

For QI to be treated as the party receiving and transferring RQ and RP under § 1.1031(k)-1 and Rev. Proc. 2003-39, the Notice must be to all parties to the agreements for sale or purchase of the RQ or RP; it must be in writing; and it must be given on or before the date of the relevant transfer. There is no requirement, however, that the Notice identify or contain a description of the specific property being transferred by sale or purchase. For example, as provided in Rev. Proc. 2003-39, if a blanket assignment to QI occurs, then blanket notice of such assignment satisfies the notice requirement under the regulations and the revenue procedure provided all parties to each sale or purchase agreement receives written notice of the assignment on or before the date of transfer. However, if all parties to a sale or purchase agreement do not timely receive the blanket written notice of the blanket assignment, then the notice is ineffective and the safe harbor provided at 1.1031(k)-1(g)(4)(v) is inapplicable for that transaction.

Taxpayer provides blanket written notices of its blanket assignments to QI of sale and purchase agreements of RQ and RP to the parties to those agreements through a wide variety of mediums and documents pertaining to each transaction. Each notice appears specifically designed to comply with the requirements that notice be given to all parties to the agreement, in writing and in a timely manner. Notices, as described in each of

the aforementioned forms and mediums, are sufficient to treat QI as receiving and transferring RQ and RP.

RULING:

As described, Taxpayer's Notice procedures satisfy the notification requirements of §1.1031(k)-1(g)(4) and Rev. Proc. 2003-39 for (1) transfers of off-lease vehicles to existing customers/lessees; (2) transfers of off-lease vehicles to unrelated Z-Dealers when a vehicle is returned to a dealer; (3) transfers of off-lease vehicles to unrelated Z-Dealers through the System; (4) transfers of off-lease vehicles to unrelated Z-Dealers through the System when a vehicle has been consigned to auction but the auction date has yet to occur; (5) transfers of off-lease vehicles at auction; (6) transfers of vehicles to Non-Z-Dealers occurring on or after the day such dealer has received Notice; and (7) acquisitions of vehicles subject to leases from unrelated Z-Dealers.

CAVEATS:

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or 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 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. 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 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
Chief, Branch 4
(Income Tax & Accounting)

cc: