

**Internal Revenue Service**

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Date:

March 31, 2004

Taxpayer =  
  
QI =  
QI Administrator =  
Finance LP =  
Trust =  
Trustee =  
mx =  
dd =  
Year 1 =  
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Date 3 =  
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Category A =  
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Dear

Taxpayer received a private letter ruling dated March 27, 2003 (the “original ruling”), addressing the federal income tax treatment under § 1031 of the Internal Revenue Code and Income Tax Regulations thereunder of its program for exchanging mx (the “Like-Kind Exchange Program” or “LKE Program”). Taxpayer now seeks a supplemental ruling that certain modifications and additions to its LKE Program do not affect the previous rulings issued.

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STATEMENT OF FACTS:

Unless otherwise indicated, the facts and legal analysis set forth in the original ruling are affirmed and incorporated by reference.

A. Description of Taxpayer's LKE Program.

As described in the original ruling, Taxpayer established the LKE Program under § 1031 pursuant to the Master Exchange Agreement, dated \_\_\_\_\_, and as subsequently amended, among Taxpayer, individually and as Servicer, Finance LP, Trustee, QI and QI Administrator.<sup>1</sup> Under the LKE Program, which is structured to meet the requirements of the "qualified intermediary" safe harbor under § 1.1031(k)-1(g)(4), Taxpayer disposes of mx that meet the parameters established under the LKE Program for relinquished property ("RQ") and acquires mx that meet the LKE Program parameters for replacement property ("RP") through QI. In the Master Exchange Agreement, Taxpayer makes a blanket assignment to QI of its rights under sale contracts and purchase contracts. Taxpayer gives notice of these assignments to QI, to the purchasers of relinquished mx and to the sellers of replacement mx through a combination of blanket and transaction-specific notification methods. Currently, Taxpayer matches relinquished mx only with replacement mx acquired within 45 days of the date the relinquished mx were transferred. Taxpayer does not expressly or manually identify replacement mx, relying instead on the deemed identification provision of the second sentence of § 1.1031(k)-1(c)(1), which provides that RP received by the taxpayer before the end of the identification period will in all events be treated as identified before the end of the identification period. Thus, Taxpayer satisfies the statutory identification and receipt requirements under § 1031(a)(3) by receiving RP before the end of the 45-day identification period.

Under substantiating facts presented, we issued the following rulings in a letter dated March 27, 2003:

1. Properties described as belonging to Categories A, B and C are of like-kind even if they do not belong to the same general asset class. Also, properties in Categories B, C and D are of like kind or like class because they are within the same Product Class.

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<sup>1</sup> References to Taxpayer also include Trust and other entities disregarded for federal income tax purposes as separate from Taxpayer.

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2. Taxpayer's transfer of each RQ, or group of RQ, and the corresponding receipt of RP, or group of RP, in accordance with the Master Exchange Agreement will be treated as a separate and distinct exchange for purposes of §1031.
3. Each exchange in accordance with the Master Exchange Agreement of one or more RQ transferred for one or more RP will qualify for nonrecognition of gain or loss provided no money or other non-like-kind property is received by Taxpayer. If Taxpayer receives money or other non-like-kind property in an exchange, gain with respect to RQ transferred will be recognized in an amount not in excess of the sum of such money and the fair market value of such other non-like-kind property.
4. QI, acting in accordance with the Agreement, and if otherwise qualified, will be treated as a qualified intermediary as defined in § 1.1031(k)-1(g)(4)(iii) and will be treated as acquiring and transferring each RQ and each RP for purposes of § 1031.
5. Taxpayer will not be in actual or constructive receipt of money or other property from the disposition of RQ transferred in accordance with the Master Exchange Agreement (including any money or other property held in the Joint Accounts) unless and until Taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property in the Joint Accounts mature as provided in the Master Exchange Agreement.
6. Taxpayer's participation in accordance with the Master Exchange Agreement in identifying sales proceeds from the disposition of RQ and in sorting those proceeds from other funds (including processing, depositing, and other handling of checks representing proceeds from disposition of RQ) does not result in actual or constructive receipt of money or other property from the disposition of RQ.
7. If Taxpayer's programs for financing purchases of its RQ (either on a separate note, a warehouse receivable, or as part of a deferred purchase) are at arm's length, with market rates and terms, and if Taxpayer promptly transfers funds equal to the loan proceeds to or for the benefit of QI, Taxpayer's receipt of the borrower's note or other evidence of indebtedness does not constitute actual or constructive receipt of money or other property from the disposition of RQ.
8. With respect to RQ that is purchased by the lessee, Taxpayer's application of the lessee's lease security deposit against the purchase price of RQ does not constitute actual or constructive receipt of money or other property from the disposition of RQ, provided that such applications of security deposits occur promptly and are in accordance with either the lessee's specific instructions or

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with the terms of the sales agreement between Taxpayer and lessee.

Under the Master Exchange Agreement, only mx acquired from dd qualify as replacement mx in Taxpayer’s LKE Program. Since the inception of the LKE Program, the number of mx that Taxpayer purchases from dd has declined. As a consequence, Taxpayer does not acquire sufficient replacement mx to match all of its relinquished mx.

B. Proposed Modification of LKE Program

Taxpayer has an opportunity to acquire additional replacement mx

acquire additional replacement mx for its LKE Program. Taxpayer can

To include the mx that Taxpayer will acquire

as replacement mx in its LKE Program, Taxpayer and QI amended the master exchange agreement as follows:

1. to amend the definition of Acquisition Contract to include the rights of Taxpayer under the transactions to acquire the mx such that these rights will also be assigned to QI under the blanket assignment pursuant to section 4.1 of the master exchange agreement;

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2. to provide for notification to the third parties, using the same language used for the notification of dd, of the assignment of Taxpayer's rights to QI on or prior to ;
3. to provide that Taxpayer may make manual identifications of mx with respect to relinquished mx that are transferred during the 180-day period prior to ; and
4. to amend the master exchange agreement to provide that, in a case where a manual identification of replacement mx has been made with respect to a relinquished mx, the LKE disposition proceeds relating to the relinquished mx can be released only after the expiration of the exchange period for that relinquished mx.

Taxpayer will begin to accumulate LKE disposition proceeds from relinquished mx disposed of on or before as QI funds for the purchase of mx. Such accumulated QI funds will not be used during the period prior to to purchase newly originated replacement mx from dd. Instead, during this period, Taxpayer will advance its own funds to purchase any newly originated replacement mx. Thus, upon execution of the amendment to the master exchange agreement, the LKE Program will include as replacement mx not only leased mx originated by dd, but also mx acquired

. In addition, Taxpayer will have the right, during the 180-day period preceding , to manually identify mx as replacement mx. Thus will expand the pool of replacement mx against which relinquished mx transferred during the requisite time frame may be matched.

Taxpayer will make manual identifications of the mx by delivering to QI written documentation identifying by make, model and year three mx for each relinquished mx. Such documentation will be delivered semi-monthly. Taxpayer will also continue to acquire newly originated replacement mx from dd on and after the effective date of the amendment to the master exchange agreement. Taxpayer will match each relinquished mx with either (i) replacement mx acquired within 45 days of the date the relinquished mx was transferred, or (ii) replacement mx manually identified within 45 days of the date the relinquished mx was transferred and acquired within the exchange period.

## LAW AND ANALYSIS

Section 1031(a)(1) generally 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

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such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment.

Section 1031(a)(3) provides that for purposes of this subsection, any property received by the taxpayer shall be treated as property which is not like-kind property if-- (A) such property is not identified as property to be received in the exchange on or before the day which is 45 days after the date on which the taxpayer transfers the property relinquished in the exchange, or (B) such property is received after the earlier of--(i) the day which is 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 return of the tax imposed by this chapter for the taxable year in which the transfer of the relinquished property occurs.

Section 1.1031(k)-1(c)(1) provides, in part, that replacement property is identified before the end of the identification period only if certain requirements are satisfied with respect to the replacement property. However, any replacement property that is received by the taxpayer before the end of the identification period will in all events be treated as identified before the end of the identification period.

Section 1.1031(k)-1(c)(3) provides, in part, that replacement property is identified only if it is unambiguously described in the written document or agreement. Personal property generally is unambiguously described if it is described by a specific description of the particular type of property. For example, a truck generally is unambiguously described if it is described by a specific make, model, and year.

Section 1.1031(k)-1(c)(4)(i) provides that a taxpayer may identify more than one replacement property. Regardless of the number of relinquished properties transferred by the taxpayer as part of the same deferred exchange, the maximum number of replacement properties that the taxpayer may identify is--(A) Three properties without regard to the fair market values of the properties (the "3-property rule"), or (B) Any number of properties as long as their aggregate fair market value as of the end of the identification period does not exceed 200 percent of the aggregate fair market value of all the relinquished properties as of the date the relinquished properties were transferred by the taxpayer (the "200-percent rule").<sup>2</sup>

Section 1.1031(k)-1(g)(4)(iii) provides that a qualified intermediary is a person who-- (A) Is not the taxpayer or a disqualified person (as defined in § 1.1031(k)-1(k)), and (B) Enters into a written agreement with the taxpayer (the "exchange agreement") and, as required by the exchange agreement, acquires the relinquished property from the

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<sup>2</sup> Section 1.1031(k)-1(c)(3) also includes additional rules outlining the parameters of the identification safe harbor set up under these regulations, but which are beyond the scope of the issue under consideration.

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taxpayer, transfers the relinquished property, acquires the replacement property, and transfers the replacement property to the taxpayer.

Section 1.1031(k)-1(g)(4)(iv) provides, in part, that, regardless of whether an intermediary acquires and transfers property, under general tax principles an intermediary is treated as acquiring and transferring replacement property if the intermediary (either on its own behalf or as the agent of any party to the transaction) enters into an agreement with the owner of the replacement property for the transfer of that property and, pursuant to that agreement, the replacement property is transferred to the taxpayer.

Section 1.1031(k)-1(g)(4)(v) provides that an intermediary is treated as entering into an agreement if the rights of a party to the agreement are assigned to the intermediary 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 relinquished property and thereafter assigns its rights in that agreement to an intermediary and all parties to that agreement are notified in writing of the assignment on or before the date of the transfer of the relinquished property, the intermediary is treated as entering into that agreement. If the relinquished property is transferred pursuant to that agreement, the intermediary is treated as having acquired and transferred the relinquished property.

Under the facts presented here, the only substantial new feature added to Taxpayer's LKE Program is the new source for acquisition of mx as RP,

In addition, Taxpayer states that for mx acquired from this source, it will identify RP manually in accordance with the procedures outlined in § 1.031(k)-1(c) rather than rely exclusively on deemed identification by acquiring the RP within the 45-day identification period as permitted in the last sentence of § 1.1031(k)-1(c)(1).

Furthermore, Taxpayer will assign to QI its rights to acquire the mx, and all required notices of this blanket assignment will be given. This is in substantial conformity to the requirements outlined in § 1.1031(k)-1(g)(4)(iii), (iv) and (v) that treat a qualified intermediary as receiving and transferring replacement property if the rights of the taxpayer to acquire replacement property are assigned to the intermediary and all parties to the agreement are so notified.

The amendments to the master exchange agreement do not affect Taxpayer's LKE Program insofar as the application of § 1031 is concerned. The fact that replacement mx is derived from a different source

, will not cause immediate recognition of gain from these transactions.

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Similarly, manual identification complying with the methods of identification prescribed in the applicable regulations will not change the tax treatment of these items.

Accordingly, the modifications and additions to the LKE Program and the Master Exchange Agreement described above do not affect the analysis, conclusions and rulings set forth in the original ruling letter. Taxpayer may continue to rely upon those rulings notwithstanding the aforementioned modifications and additions.

**CAVEATS:**

A copy of this letter must be attached to any income tax return to which it is relevant. We enclose a copy of the letter for this purpose. Also enclosed is a copy of the letter showing the deletions proposed to be made when it is disclosed under § 6110. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences 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 Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative(s).

Sincerely,

Robert A. Berkovsky  
Chief, Branch 4  
Office of Associate Chief Counsel  
(Income Tax & Accounting)