

IRS Letter Ruling 200912004

December 02, 2008

This responds to your request for a private letter ruling, dated August 22, 2008, regarding the application of § 1031 of the Internal Revenue Code to your proposed program exchanges. The specific question you raise is whether cars, light general purpose trucks (usually referred to hereafter as "light-duty trucks") and vehicles that share characteristics of both cars and light-duty trucks are of like kind for purposes of § 1031.

FACTS:

*****, Taxpayer operates a leasing business. In its leasing business, Taxpayer purchases vehicles for lease and sells the vehicles as the lease terminates. The vehicles Taxpayer purchases and sells include cars, light-duty trucks, and vehicles that share characteristics of both cars and light-duty trucks (e.g., crossovers, sport utility vehicles (SUVs), minivans, cargo vans and similar vehicles). All of Taxpayer's trucks have an actual unloaded weight of less than 13,000 pounds.*****. Taxpayer holds these vehicles for use in its trade or business of leasing vehicles to generate rental income.

*****, Taxpayer implemented a like-kind exchange program (LKE Program) pursuant to which Taxpayer exchanges vehicles through a qualified intermediary under a master exchange agreement. These program exchanges are represented by Taxpayer to be exchanges qualifying for nonrecognition of gain or loss under § 1031 of the Code.

*****. Taxpayer ***** proposes ***** to combine into single exchange groups all of its cars, light-duty trucks and vehicles that share characteristics of both cars and light-duty trucks, arguing that all such vehicles are of like kind under § 1031.

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

Section 1.1031(a)-1(b) of the Income Tax Regulations provides, in part, that as used in § 1031(a), the words "like kind" have reference to the nature or character of the property and not to its grade or quality. One kind or class of property may not, under § 1031(a), be exchanged for property of a different kind or class. The fact that any real estate involved in an exchange is improved or unimproved is not material, for that fact relates only to the grade or quality of the property and not to its kind or class.

Section 1.1031(a)-1(c) provides, in part, that no gain or loss is recognized if (1) a

taxpayer exchanges property held for productive use in his trade or business, together with cash, for other property of like kind for the same use, such as a truck for a new truck or a passenger automobile for a new passenger automobile to be used for a like purpose; or (2) a taxpayer who is not a dealer in real estate exchanges city real estate for a ranch or farm, or exchanges a leasehold of a fee with 30 years or more to run for real estate, or exchanges improved real estate for unimproved real estate.

Section 1.1031(a)-2(a) provides, in part, that personal properties of a like class are considered to be of a "like kind" for purposes of § 1031. In addition, an exchange of properties of a like kind may qualify under § 1031 regardless of whether the properties are also of a like class. In determining whether exchanged properties are of a like kind, no inference is to be drawn from the fact that the properties are not of a like class.

With respect to personal property, § 1.1031(a)-2(b)(1) provides, in part, that depreciable tangible personal property is exchanged for property of a "like kind" under § 1031 if the property is exchanged for property of a like kind or like class. Depreciable tangible personal property is of a like class to other depreciable tangible personal property if the exchanged properties are either within the same General Asset Class or within the same Product Class. Property classified in a General Asset Class may not be classified within a Product Class.

Section 1.1031(a)-2(b)(2) provides, in part, that property within a General Asset Class consists of depreciable tangible personal property described in one of asset classes 00.11 through 00.28 and 00.4 of Rev. Proc. 87-56, 1987-2 C.B. 674. These General Asset Classes describe types of depreciable tangible personal property frequently used in many businesses. There are two listed General Asset Classes relevant to the exchanges at issue in this case, asset class 00.22 (which includes cars and taxis) and asset class 00.241 (which includes light general purpose trucks, including trucks for use over the road with an actual unloaded weight of less than 13,000 pounds).

Under § 1.1031(a)-2(b)(2), Taxpayer's cars and light-duty trucks are in different asset classes and, therefore, are not of like class for purposes of § 1031. However, § 1.1031(a)-2(a) provides that an exchange of properties that are not of like class may qualify for non-recognition under § 1031 if they are of like kind. Moreover, under § 1.1031(a)-2(a), in "determining whether exchange properties are [of] a like kind no inference is to be drawn from the fact that the properties are not of a like class." Thus, properties can be in different asset classes and still be like kind.

The evolution of motor vehicles over the past few decades has blurred the distinctions between cars and light-duty trucks. Manufacturers now advertise that their light-duty trucks offer the ride, handling, and amenities of cars plus the additional seating and cargo capacity that families need to transport themselves and their personal-use property. Also, a person does not need a special operator's license to drive light-duty trucks. Moreover, the distinctions between cars and light-duty trucks that existed during the last century have been reduced significantly by the gradual introduction of "crossover" vehicles, which share some characteristics of both cars and light-duty trucks. Because of these

changes, sales of light-duty trucks have greatly increased relative to sales of cars. Finally, federal regulators treat cars and light-duty trucks with greater similarity for fuel economy and emissions standards. In view of these changed circumstances, we conclude that, for purposes of § 1031, the only differences in the cars, light-duty trucks and crossover vehicles leased by Taxpayer relate to the grade or quality of the vehicle. In view of these developments, we conclude that the vehicles leased by Taxpayer, as described above, are of the same nature and character.

RULING:

Cars, light general purpose trucks (for use over the road having actual unloaded weight of less than 13,000 pounds) and vehicles that share characteristics of both cars and light general purpose trucks (e.g., crossovers, sport utility vehicles, minivans, cargo vans and similar vehicles) are of like kind for purposes of § 1031.

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.

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 rulings contained in this letter are 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: *****