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Rev. Rul. 77-337

Advice has been requested whether, under the circumstances described below, the exchange of property qualifies under the nonrecognition provisions of section 1031 of the Internal Revenue Code of 1954.

An individual taxpayer, A, was the sole owner of the stock of corporation X. X's only asset was a shopping center. A liquidated X pursuant to section 333 of the Code and, as a result, acquired the shopping center. Immediately following the liquidation, in a prearranged plan, A transferred the shopping center in exchange for property of a like kind owned by B, an unrelated party.

Section 333 of the Code provides, in general, that upon the liquidation of a corporation under certain specified conditions, the amount of gain recognized by a qualified electing noncorporate shareholder is computed on each share owned by the shareholder and each share's gain is limited to the greater of the share's ratable share of the corporation's earnings and profits accumulated after February 28, 1913, or the share's ratable share of the sum of the money received by the shareholder plus the fair market value of stock or securities so received that were acquired by the distributing corporation after December 31, 1953. See section 1.333-4(b) of the Income Tax Regulations. In the case of a qualified electing noncorporate shareholder, that part of the recognized gain on a share of stock that is not in excess of the ratable share of accumulated earnings and profits is taxed as a dividend and the remainder of the gain that is recognized is treated as a capital gain. Section 1.333-4(c).

Section 334(c) of the Code provides that the basis of assets (other than money) received in a liquidation to which section 333 applies shall be the same as the shareholder's basis in the stock decreased by money received and increased by gain recognized under section 333 and the amount of unsecured liabilities assumed by the shareholder. See section 1.334-2 of the regulations.

Section 1031(a) of the Code provides, in part, that no gain or loss shall be recognized if property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment.

Section 1223(1) of the Code provides, in part, that in determining the period for which the taxpayer has held property received in an exchange, there shall be included the period for which the taxpayer held the property exchanged if the property received has, for the purpose of determining gain or loss from the sale or exchange, the same basis in whole or in part in the taxpayer's hands as the property exchanged.

When property is received by a shareholder in the complete liquidation of a corporation and is thus treated as received in full payment in exchange for stock of the corporation, the period for which the taxpayer holds the property received in the liquidation includes the period for which the taxpayer held the stock of the liquidating corporation. See Rev. Rul. 74-522, 1974-2 C.B. 271.

In Rev. Rul. 75-292, 1975-2 C.B. 333, an individual taxpayer, in a prearranged transaction transferred land and buildings used in the taxpayer's trade or business to an unrelated corporation in exchange for land and an office building owned by the corporation and used in its trade or business. Immediately thereafter, the individual taxpayer transferred the land and office building to the individual's newly created corporation. Rev. Rul. 75-292 holds, in part, that the exchange does not qualify for nonrecognition of gain or loss under section 1031(a) of the Code with respect to the individual taxpayer, because the individual taxpayer did not exchange the land and buildings for property to be held either for productive use in trade or business or for investment. The newly created corporation's eventual productive use of the land and office building in trade or business is not attributable to its sole shareholder.

The proposed transaction between A and B was a prearranged plan whereby X was liquidated to facilitate a further exchange between A and B of their respective properties. The productive use of the shopping center by X prior to the liquidation cannot be attributed to A and, hence, A did not hold an interest in the shopping center for productive use in trade or business or for investment. Compare Rev. Rul. 75-292.

Accordingly, A's exchange of the shopping center for B's property does not qualify for nonrecognition of gain or loss under section 1031(a) of the Code.

Any gain or loss resulting from the exchange will be recognized to A to the extent of the difference between A's basis in the shopping center acquired as a result of the liquidation as determined pursuant to section 334(c) of the Code and the regulations thereunder, and the fair market value of B's property at the time of the exchange.

Pursuant to section 1223(1) of the Code and Rev. Rul. 74-522, the holding period of the shopping center acquired by A at the time of liquidation includes the period for which A held the stock in X.