2008 TAX UPDATE AND PLANNING CONFERENCE

2008 REAL ESTATE TAX UPDATE

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I. RECENT LAWS, CASES AND RULINGS.

A. This outline generally covers the period from October 1, 2007 to October 21, 2008.

B. Federal Tax-Related Statutes Enacted:

1. Mortgage Forgiveness Debt Relief Act of 2007.

2. Heartland, Habitat, Harvest, And Horticulture Act of 2008.

3. Heroes Earnings Assistance And Relief Tax Act of 2008.

4. Housing Assistance Tax Act of 2008.

5. Emergency Economic Stabilization Act of 2008, Energy Improvement And Extension Act of 2008, and Tax Extenders And Alternative Minimum Tax Relief Act of 2008.

II. HOME MORTGAGE INTEREST DEDUCTION UPDATE.

A. Current Law.

1. Personal Interest is not deductible under IRC§163(h). Applies to non-corporate taxpayers.

2. "Qualified Residence Interest" is an exception to the rule of non-deductibility. IRC §163(h)(3).

a. Generally limited to $1,000,00 of "acquisition indebtedness."

1) Married individuals filing separately are limited to $500,000.

2) Applies to refinancings, as well.

b. Further limited to an additional $100,000 of "home equity indebtedness."

1) Once again, married individuals filing separately are limited to $50,000.

2) The amount of home equity indebtedness is reduced to the extent the fair market value of the residence is less than all acquisition indebtedness plus home equity indebtedness.

c. Applies to a “qualified residence.”

1) A “principal residence” is one form of qualified residence.

a) The term principal residence has the same meaning as principal residence for purposes of IRC §121 which deals with exclusion of gain on sale of personal residence.

b) Treas. Reg. §1.121-1(b)(1) and (2) provide for a “facts and circumstances” test.

c) Can include a house boat, housetrailer, or a unit in a stock cooperative.

d) If more than 1 residence, then determination is based on time and other facts and circumstances.

2) Also applies to 1 other residence if IRC §280A(d)(1) requirements are met.

a) Must be used by taxpayer for at least 14 days a year.

b) If rented, then must be used for at least 10% of the number of days rented, if greater.

B. Recent Change.

1. Under IRC §163(h)(3)(E), eligible taxpayers can treat as qualified residence interest, premiums paid for qualified mortgage insurance in connection with acquisition indebtedness.
2. The benefit is subject to a phase out for taxpayers whose adjusted gross income exceeds $100,000 ($50,000 in the case of a married individual filing separately).
3. This benefit had been set to expire on December 31, 2007.
4. However, the Mortgage Forgiveness Debt Relief Act of 2007 extended the last date to December 31, 2010.

II. FORGIVENESS OR CANCELLATION OF INDEBTEDNESS INCOME UPDATE.

A. Current Law.

1. General rule: Gross income includes income from discharge of indebtedness. IRC §61(a)(12).

2. Prior to the enactment of the Mortgage Forgiveness Debt Relief Act of 2007, IRC §108 provided 4 exceptions to the general rule.

a. A discharge of indebtedness in a Title 11 case is not included in gross income.

b. A discharge of indebtedness that does not render a taxpayer solvent is not included in gross income.

c. A discharge of qualified farm indebtedness is not included in gross income.

d. A discharge of qualified real property business indebtedness is not included in income so long as the affected taxpayer is not a C corporation.

B. Changes Made By Mortgage Forgiveness Debt Relief Act of 2007

1. Adds to IRC §108, new subsection IRC §108(a)(1)(E): Gross income excludes the discharge of qualified principal residence indebtedness, if discharged before January 1, 2010.

2. The Emergency Economic Stabilization Act of 2008 extends this provision to discharges occurring after January 1, 2010 and before January 1, 2013.

3. Qualified principal residence indebtedness is defined to mean “acquisition indebtedness,” as defined in IRC §163(h)(3)(B).

4. The limitation is increased from $1,000,000 to $2,000,000 ($1,000,000 in the case of married taxpayers filing separately).

5. The benefit applies to a taxpayer's principal residence. The term "principal residence" has the same meaning as is contained in IRC §121.

6. The amount of forgiveness income that is excluded must reduce the basis of the principal residence, but not below zero.

7. The discharge must be due solely to the decline in value of the principal residence or the financial condition of the taxpayer.

8. If only a portion of the loan that is discharged is qualified principal residence indebtedness, then this provision only applies the amount of discharge in excess of the non-qualified principal residence indebtedness.

9. California Law.
   a. Covers debt forgiven only in 2007 and 2008.
   b. Limits amount of qualified principal residence indebtedness to $800,000 for married persons or registered domestic partners ("RDP's") filing jointly, single persons, heads of household or widows/ widowers, and to $400,000 for married persons or RDP's filing separately.
   c. Limits the amount of debt relief to $200,000 for married persons or RDP's filing jointly, single persons, heads of household, or widows/widowers, and to $125,000 for married persons or RDP's filing separately.

III. REAL ESTATE PROVISIONS CONTAINED IN THE HOUSING ASSISTANCE TAX ACT OF 2008

A. Credit For First Time Homebuyers.

1. Credit of up to $7,500 ($3,750 in the case of married individuals filing separately) not to exceed 10% of the purchase price of a principal residence.

2. Applies to purchases between April 9, 2008 and July 1, 2009.

3. Phase out starts with $75,000 of modified adjusted gross income ($150,000 for married persons filing jointly) and is completed at $95,000 ($170,000 for married persons filing jointly).

B. Standard Deduction For State and Local Property Taxes.

1. Limited to $500 ($1,000 for married persons filing jointly).

2. Applies for 2008 and, as a result of the Tax Extenders And Alternative Minimum Tax Relief Act of 2008, for 2009.

IV. CHANGES TO SECTION 1031 EXCHANGES

A. Statutory Changes.

1. The Heartland, Habitat, Harvest and Horticulture Act of 2008 contains a provision that treats stock in certain mutual ditch, reservoir or irrigation companies as an exception to the definition of stock .

a. In general, IRC §1031 does not apply to exchanges of stocks and similar instruments.

b. Under the new provision, IRC §1031(i), stock from mutual ditch, etc. company will be treated as like kind if:

1) In general, the company is described in IRC § 501(c)(12)(A).

2) The shares have been recognized by the highest court in the state as constituting real property or an interest in real property.

2. The Housing Assistance Tax Act of 2008 made some changes to IRC §121 that could affect IRC §1031.

a. Under IRC §121, in general, a taxpayer can exclude up to $250,000 ($500,000 in the case of married couples filing jointly) from the sale of a principal residence if, during 2 or more of the preceding 5 years, it was used for such purposes.

b. Beginning in 2009, the amount of the exclusion will be reduced by the portion of the ownership period in which the property was used for a non-qualified use.

1) Uses the entire ownership period, not just the prior 5 years.

2) Applies to second homes, as well.

B. Compliance and Administrative Matters.

1. On July 30, 2008, the IRS announced that for 2008, 2 new questions would be added to Form 1065 (US Return of Partnership Income), Schedule B:

13. Check this box if, during the current or prior tax year, the partnership distributed any property received in a like-kind exchange or contributed such property to another entity (including a disregarded entity).

14. At any time during the tax year, did the partnership distribute to any partner a tenancy-in-common or other undivided interest in partnership property.

b. Both questions suggest that practitioners who believed that the IRS was turning a blind eye to "swap and drop" (exchange followed by a liquidation) and "drop and swap" transactions will need to re-evaluate their assumptions.

c. The presence of these questions suggest that at the least, the IRS is gathering additional information and, at most, the IRS will increase its audit activity, particularly with respect to "swap and drop" and "drop and swap" transactions.

d. Question 13 elicits information about “swap and drop” transactions.

1) Is there an implication that if the partnership waits 2 years, the swap and drop is OK?

2) What if the replacement property is acquired directly by a disregarded entity? Is the answer then, No?

e. Question 14 elicits information about “drop and swap” transactions.

f. Practitioners should give greater attention to structuring transactions that are neither “swap and drop” (unless there is a 2 year wait) or “drop and swap” transactions.

1) The problem with the drop and swap is that under the substantial economic effect rules found in the Regulations to IRC §704, if some partners exchange and others get cashed out, the gain from the boot is required to be allocated to all of the partners, not just the withdrawing ones.

2) Practitioners should consider using a combination exchange and installment sale technique.

A) See the Memorandum attached.

B) The note can be issued by a bank and secured by a letter of credit or, in all likelihood, by a friendly and solvent qualified intermediary ("QI").

3) Practitioners may also find it useful to undertake a division of the partnership pursuant to Treas. Reg. §1.708-(d).

A) See the Memorandum attached.

B) There will still be some overlap and the accounting is significant.

C) What if one of the divided partnerships does not find any replacement property?

D) What if one of the divided partnerships makes a superb investment and another of the partnership's investments is foreclosed on?

2. Final Regulations Under IRC §468B.
   a. These regulations govern the treatment of interest earned by the QI while holding cash from the sale of the Relinquished Property.
   b. The regulations adopt the theory that the money in question has been loaned by the exchange party to the QI.
   c. The “loan-to-QI” theory will not apply if the exchange party receives all of the interest on the exchange funds.

d. If the QI and exchange party share the interest and the exchange funds exceed $2,000,000, then there is a determination to see if the interest rate is “below market.”

1) The testing rate is the 91-day Treasury bill rate.

2) The $2,000,000 is based on the cash proceeds and not on the sale price.

e. The IRC §468B Regulations do not apply if the exchange proceeds are less than $2,000,000 and are held for no more than 6 months (versus 180 days).

3. California Wildfire Extensions.
   a. On October 29, 2007, the President issued a disaster declaration for Los Angeles, Orange, Riverside, San Bernarndino, San Diego, Santa Barbara and Ventura counties as a result of the wildfires. See Memorandum attached.
   b. Rev. Proc. 2007-56, 2007-34 IRB 388, Section 17, applies this exemption to IRC §1031 transactions.
   c. The exemption applied to exchanges begun prior to October 21, 2007.

d. The extension applies to any taxpayer residing in the affected counties regardless of where the Relinquished Property or the Replacement Property is located.

e. The extension permits eligible persons who began an exchange between April 24, 2007 and October 21, 2007, to extend the 180-day exchange period to the later of January 31, 2008 or 120 days after the original deadline date.

f. The extension permits eligible persons who began an exchange between September 6, 2007 and October 21, 2007, to extend the 45-day identification period to the later of January 31, 2008 or 120 days after the original deadline date.

g. Applies to Reverse Exchange transactions where the exchange accommodation titleholder ("EAT) acquired the Relinquished Property or Replacement Property on or before October 21, 2007.

h. There are 2 categories of eligible taxpayers:

1) "Affected" taxpayers: Generally, individuals and entities residing in the affected counties, regardless of the location of the Relinquished Property or the Replacement Property if a Reverse Exchange.

2) Taxpayers having "difficulty" in meeting deadlines.

i. Why do we care?

1) Disaster declarations have become very common.

2) If the taxpayer resides in the affected county, there is nothing further to do to comply.

3) Once a disaster is declared, practitioners need to check the IRS websites to see if additional locales have been added.

4. Treasury Inspector General For Tax Administration ("TIGTA") Report dated September 17, 2007. This Report contains the following recommendations and observations:

a. The IRS should conduct a study of tax returns to ensure appropriate IRS oversight of taxpayer compliance with IRC §1031 and make certain changes to various forms and publications.

b. The IRS should provide guidance on the application of IRC §1031 to vacation homes that are not used exclusively by their owners.

5. TIGTA Report dated August 27, 2008, discussed the risks associated with using a QI and the possible alternatives.
6. California QI Law.
    a. Effective on January 1, 2009.
    b. Applies to all QI's doing business in California including disposition of Relinquished Property located in California and holding by an EAT of Relinquished Property or Replacement Property located in California.
    c. Not a licensing provision.

d. QI must maintain at least a $1,000,000 fidelity bond OR cash or equivalents of at least $1,000,000 OR use a qualified escrow or trust account.

e. Must maintain at least $250,000 of E&O insurance or an equivalent cash deposit.

f. QI acts as a custodian and must meet the "prudent investor" standard for investments.

g. QI must give notice within 10 days of any greater than 50% change in ownership of QI.

7. IRS and FTB Audit Activity: Largely Anecdotal.
   a. Until recently, there had not been many IRS audits directed at exchanges.
      1) If an exchange was reported on a return, the Agent would examine it, but usually not very closely.
      2) Audit activity is now being seen, especially in the equipment area.
      3) Speculation that IRS audit activity will increase as a result of changes to Form 1065.

b. The FTB is actively auditing IRC §1031 transactions.

1) Actively looking at "drop and swap" transactions.

2) Not clear what FTB's position is on "drop and swaps."

3) Response 1: Apply Court Holding case and treat the partnership as having made the sale.

4) Response 2: Disregard Magneson, even though it is a 9th Circuit case, because (a) under the 1994 Uniform Partnership act adopted in California, a partnership is a separate entity and (b) the receipt of a limited partnership is not a continuation of the investment.

5) Response 3: Not certain what to do.
6) FTB and Tenants-In-Common.
7) First Position: FTB has stated, in effect, that it will not be bound by Rev. Proc. 2002-22. See Memorandum attached.
8) Second Position: A roll-up agreement required by a lender is evidence that the parties always intended to be partners.

C. What Is Like-Kind Property?

1. Rev. Proc. 2008-16 creates a safe-harbor for vacation homes.

a. Relinquished Property.

1) Must be leased by the taxpayer during each of the 2 preceding 12-month periods for at least 14 days at fair rental value.

2) Cannot be used by the taxpayer for personal use for more than 14 days in each such 12-month period or, if greater, 10% of the days it was rented at fair rental value.

b. Replacement Property: Must meet the same fair rental and personal use standards for the first 2 12-month periods following acquisition.

c. Personal use is broadly defined.

d. This provision does not apply to a relative who uses the property as his or her principal residence and pays fair rental value.

e. Planning Possibility. Taxpayer moves out of personal and rents property at fair rental value for 2 14-day periods during the 2 succeeding 12-month periods. Taxpayer exchanges into another residence and repeats the process. The taxpayer converts Replacement Property to personal use in the 25th month.

2. Moore v. Commissioner, TC Memo 2007-134. Mere personal use of vacation homes, with the expectation of an increase in value, does not make the residence property held for investment or for use in a trade or business for purposes of IRC §1031.

3. PLR 200805012 holds that transferable development rights ("TDR's") are like-kind to investment or trade or business real estate.

a. Note that under IRC §6110(k)(3), the holdings in private letter rulings apply only to their applicant and cannot be cited as precedent. However, under Treas. Reg. §1.6662-4(d)(3(ii) and (iii) private letter rulings may be considered as substantial authority.

b. A taxpayer exchanges otherwise eligible real estate for Replacement Property that included the TDR's.

c. The IRS observed that under local ordinances, the TDR's existed permanently and were not at the discretion of any governmental authority.

1) Further, state law defined real property to include TDR's.
2) Likened to the purchase of a leasehold.

d. Interestingly, the TDR's were acquired to further develop property already owned by the taxpayer. Is this an end run around the rule that you cannot exchange into property you already own?

e. Note: Practitioners should carefully examine whether TDR's being sold or purchased meet the standards set forth in this PLR.

4. PLR 200743010 involves an IRC §1033 Involuntary conversion but has language that pertains to IRC §1031.

a. The taxpayer owned property that was partially destroyed by a hurricane.

b. The IRS agreed with the taxpayer that §1033 should apply to the entire complex because it was a single economic unit.

c. Does this mean that 2 pieces of property which are non contiguous but part of an economic unit (e.g., an office building and a non-adjacent parking lot) can be considered as 1 Replacement Property?

5. IRS Notice 2008-25. If GO ("Gulf Opportunity") Zone property is exchanged and the taxpayer claimed the 50% additional first year depreciation deduction for such property, the deduction will be recaptured unless the Replacement Property is also GO Zone property or is used in the GO Zone in the active conduct of a trade or business.

6. IRS Fact Sheet 2008-18.
   a. In February 2008, the IRS published a Fact Sheet on Tax Deferrals on Gains Reinvested in Properties as Part of a Like-Kind Exchange.
   b. There is very little notable in this Fact Sheet except the statement: Improvements that are conveyed without land are not like-kind to land.

7. In FAA 20074401F, the IRS Office of Chief Counsel concluded that newspaper mastheads, advertiser accounts and subscriber accounts were in the nature of goodwill. Therefore, they were not eligible for like-kind exchange treatment.

8. The QI trade association successfully lobbied Congress to keep a provision out of the Heartland, Habitat, Harvest And Horticulture Act of 2008 that would have made “collectibles” ineligible for exchanges under §1031.

   a. Collectibles include art, classic cars, etc.

   b. Notwithstanding this victory, use extreme caution when advising clients on exchanging of collectibles.

D. Related Party and Entity Issues.

1. PLR 200728008.

a. Taxpayer, through a QI, sells Relinquished Properties to a related party.

b. Taxpayer acquires 2 Replacement Properties from unrelated parties, one through a QI and a second through an Exchange Accommodation Titleholder ("EAT") in a Reverse Exchange transaction.

c. Within 2 years, the related party sells the Relinquished Properties.

d. Held: Good §1031 exchange.

e. Practice note: Look to see if the Replacement Property is acquired from a related party.

2. PLR 200730002.
   a. Three related parties are 33-1/3% tenant-in-common owners of 2 inherited parcels. One parcel is worth twice as much as the second.
   b. The 3 parties undertake an exchange so that 1 of them owns 100% of the less valuable parcel and the other 2 are equal owners of the more valuable parcel.
   c. The co-owners of the more valuable parcel dispose of it in an exchange transaction.
   d. Held: IRC §1031(f) does not apply to the exchange of the tenancy-in-common interests because there was no tax avoidance motive.

3. PLR 200732012.
   a. A partnership owns 100% of LLC 2 which, in turn, owns 100% of LLC 1. A typical mezzanine structure.
   b. LLC 1 owns a hotel which it desires to exchange,
   c. LLC 1 assigns its rights under the Exchange Agreement to LLC 2 which, in turn, assigns its rights to the partnership.
   d. Following the disposition of the hotel, the partnership forms LLC 3 to acquire the Replacement Property.
   e. Held: The actions of LLC 1, LLC 2 and LLC 3 are attributed to the partnership and the exchange is approved.

4. PLR 200812012.
   a. A testamentary trust of long standing was scheduled to terminate according to the terms of the will that established it.
   b. The trust, through a disregarded limited partnership, owned investment real estate and had completed a Forward and Reverse Exchange.
   c. The disposition by the trustee of the interests in the disregarded limited partnership, which resulted in a termination under IRC §708(b)(1), did not preclude like-kind treatment.
   d. Relying in part on the required termination of the trust, the Service held that the "holding" requirement of IRC §1031 was satisfied even though the limited partnership was terminated and the property was transferred.
   e. One has to contrast this conclusion with the IRS' apparent new concern about "drop and swap" transactions.

5. PLR 200810016.
   a. The taxpayer, through a QI, sold the Relinquished Property to an unrelated person.
   b. The taxpayer acquired the Replacement Property from a related person.
   c. The related party then acquired Replacement Property in an exchange transaction.
   d. Both the taxpayer and the related party held their properties for 2 years.

e. Held: Good exchange.

1) IRC §1031(f)(1) does not apply because the exchange was accomplished through a QI.

2) The related party did not cash out.

Therefore, IRC §1031(f)(4) is inapplicable.

f. PLR 200810017, PLR 200820017 and PLR 200820025 reached similar conclusions.

g. Note than in PLR 200820017, the related party undertook an exchange, but realized a minimum amount of boot. Still OK.

6. In PLR 200829023, a partnership with some IRC §704(c) gain did an exchange and recognized some boot.

   a. Boot was less than the amount of pre-contribution gain.

   b. Permitted a LIFO allocation, overriding general rule of IRC §704(c).

   c. LIFO allocation was considered another reasonable method.

E. Other IRC §1031 Developments.

1. ILM 200836024.

a. The taxpayer arranged to acquire Replacement Property in a Reverse Exchange transaction. See Memorandum attached.

b. Thereafter, the taxpayer disposed of the Relinquished Property in an exchange transaction.

c. The Replacement Property held by the EAT was acquired by the taxpayer, through the QI, using a portion of the Relinquished Property sales proceeds.

d. The taxpayer never acquired Replacement Property for the balance of the Relinquished Property proceeds.

e. Held: Gain from the Reverse Exchange is deferred, but gain from the balance of the incomplete forward exchange must be recognized.

2. PLR 200813019.
   a. A taxpayer sold Relinquished Property pursuant to an exchange transaction. The 180th day did not occur until the following year.
   b. The taxpayer did not acquire Replacement Property and the exchange failed.
   c. The accountant, through oversight, did not elect installment sale treatment which would have deferred the gain to the following year.
   d. Therefore, the taxpayer would have had to recognize gain in Year 1.
   e. The IRS agreed to revoke the election and to permit the gain to be taxed in Year 2 as a result of the oversight.

3. PLR 200807005.
   a. In connection with an exchange party's acquisition of Replacement Property, the exchange party acquired all of the partnership interests in a partnership owning the Replacement Property.
   b. Held: OK.
   c. The taxpayer caused the Replacement Property to be held by a disregarded partnership.
   d. Held: OK.
   e. Similar result to Rev. Rul. 99-5 and Rev. Rul. 99-6.

4. PLR 200803003 and 200803014.
   a. A bank owns a QI.
   b. The bank performs investment advisory brokerage services, private planning, insurance, trust, and retail banking services, some of which are performed for QI customers.
   c. Held: For purposes of Treas. Reg. §1.1031(k)-1((k), these services do not cause the bank to be a disqualified person.

5. PLR 200842019.

a. Taxpayer leases space in an office building owned by Corporation A.

b. Corporation B, the parent of Corporation A, also leases space in the same office building.

c. Taxpayer, at its own cost, has improved its space with leasehold improvements which have been partially-amortized. The PLR states that improvements paid for by the tenant generally are considered the tenant's property. Treas. Reg. §1.167(a)-4.

d. Taxpayer has also installed office furniture and equipment in its space. The office equipment is IRC §1245 property.

1) Some of this property has been completely depreciated and some has been partially-depreciated. All of such property is currently in use.

2) All of this property is considered to be of the same asset class for purposes of Treas. Reg. §1.1031(a)-2(b)(1).

e. Both Taxpayer and Corporation B need to expand their space.

f. The ruling does not state, but it appears that but for the transaction described below, Corporation B had planned to purchase Taxpayer's leasehold improvements and office equipment from Taxpayer, which would have resulted in a taxable gain to Taxpayer.

g. Taxpayer, Corporation B and a New Landlord have entered into the following transaction:

1) Taxpayer enters into an “Agreement to Lease” with New Landlord to construct new space for Taxpayer.

2) New Landlord agrees to install leasehold improvements and office equipment. New Landlord will pay some of the costs and Corporation B will pay the balance of the costs.

3) Taxpayer will direct the installation of the leasehold improvements and office equipment.

4) Taxpayer will transfer its old lease, together with its leasehold improvements and office equipment, to a QI.
5) The QI will transfer the old lease, together with the leasehold improvements and office equipment to Corporation B.
6) The QI will enter into the new lease with New Landlord and New Landlord will also transfer the newly-constructed leasehold improvements and office equipment to QI.
7) QI will then transfer the new lease, together with the newly-constructed leasehold improvements and office equipment, to Taxpayer to complete the exchange.

h. The Agreement to Lease must be different from a lease, otherwise the leasehold improvements would be constructed on property owned by Taxpayer and there would be no exchange.

i. Alternatively, Taxpayer could have used a Reverse Exchange structure and an EAT. Query: Could the leasehold improvements been constructed in 180 days?

j. Held:

1) The exchange of leaseholds is a like-kind exchange for purposes of IRC §1031. Presumably, both leases, including options, were over or under 30 years.

2) All of the equipment was of the same asset class: 00.11 and, therefore, was like-kind.

3) Replacement property does not need to be in existence at the time it is identified. Treas. Reg. §1.1031(k)-1(e)(1). Query: Why did the Service cite this provision if the exchange occurred concurrently as described? When did the exchange occur?

4) Citing J.H. Baird v. Commissioner, 39 TC 608 (1962), the Service held that Replacement Property can be built to a taxpayer's specifications.

5) In connection with the office equipment, the basis of property received by Taxpayer will be determined on a property-by-property basis beginning by determining the basis of each property transferred and then making adjustments under Treas. Reg. §1.1031(j)-1(c) for gain recognized, exchange group surplus, exchange group deficiency, and excess liabilities.

k. Even though the office equipment was all considered to be of the same asset class, the PLR explains that if tangible Property A worth $100 and tangible Property B worth $250 are exchanged for tangible Property C, which is like-kind to Property A and worth $85, and for tangible Property D, which is like-kind to Property B, but not to Property A, and is worth $265, then $15 of gain is not deferred.

F. Other Related Developments.

1. PLR 200826005 involved a 2-person tenancy-in-common arrangement.

2. The Service approved a tenancy-in-common agreement where:

a. One tenant could approve the other tenant's pledge of its TIC interest.

b. One tenant could indemnify the other tenant for non-prorata share of loan guarantees.