

ILM 201605017 (1/29/2016) Personal Use of Aircraft

The aircraft in this exchange was used both for business and personal use by the taxpayer. In this memorandum, the IRS Chief Counsel stated that the aircraft was considered one property for 1031 purposes, and the taxpayer must show that he used it primarily for business and investment purposes.

Facts. A, an individual, owned the relinquished property aircraft through a disregarded single-member LLC. The LLC provided management, accounting, financial, administrative and other business services to A's businesses and investments, which were dispersed throughout the United States. Thus, the aircraft was used partially for business and investment use and partially for personal use by A.

Analysis. The memorandum first stated that the aircraft would be treated as one property for Section 1031, and not two properties used for different purposes. Thus, there would be no apportionment between the personal and business use. The memorandum found that the plain language of § 1031 suggests that property either meets the "held for" requirement or it does not. It pointed out that the IRS had an opportunity in Rev. Proc. 2008-16 to treat one property, used both for personal and qualified purposes, as two separate properties, with § 1031 applying to the qualified use portion but not the personal use portion. (Rev. Proc. 2008-16 deals with vacation homes that are also rented). Instead, Rev. Proc. 2008-16 provided that if the conditions of the safe harbor were met, the entire property met the "held for" requirement for purposes of § 1031.

Next, the memorandum looked at whether the aircraft met the "held for" requirement. It noted that § 1031 does not provide for a simple quantitative use formula, but intent must be determined by the unique facts and circumstances in each transaction. The memorandum stated agreed that if the personal use exceeded 50%, then the aircraft did not meet the "held for" requirement. However, it instructed that field to consider these additional facts in determining the amount of personal use: (1) measurement of business/investment use versus personal use based on flight hours, not just flights; (2) percentages of business/investment use versus personal for flights and flight hours for the year before the year of the exchange; and (3) which flights and flight hours were determined to be repositioning flights and the nature of the flight following the repositioning flight.

The memorandum also noted that the "held for" requirement is not automatically met just because the personal use is less than 50%. For example, Rev. Proc. 2008-16 establishes a personal use safe harbor that is significantly less than 50 percent. Close scrutiny should be used for any property the taxpayer uses for personal purposes.