



TAX ALERT: CHANGE IN REVERSE EXCHANGE RULES

New Revenue Procedure 2004-51 modifies Revenue Procedure 2000-37 which established in September 2000 the *safe harbor* procedures to do a reverse exchange.

Revenue Procedure 2004-51 states that the safe harbor rules do not apply if the taxpayer owned the property, intended to qualify as replacement property, within 180 days before transferring the property to a third party Exchange Accommodation Titleholder (EAT) in accordance with a Qualified Exchange Accommodation Agreement (QEAA). This restriction applies to all transfers of ownership to an EAT on or after July 20, 2004.

A practice has been that if a taxpayer owned a lot on which he or she desired to build their exchange replacement property, they would transfer the lot to an EAT in accordance with Revenue Procedure 2000-37. The EAT would then contract to have the improvements built.

In due course the taxpayer would enter into an exchange agreement with a qualified intermediary and transfer their investment or business relinquished property to a purchaser.

Within 45 days they would identify as their replacement property the lot they had owned along with a description of the improvements being built by the EAT. Then they would take title to their old property with improvements within 180 days of when it was transferred to the EAT.

The new Revenue Procedure 2004-51 will eliminate this practice and the use of the *safe harbor* Revenue Procedure 2000-37 if the taxpayer owned the replacement property during the period 180 days prior to transfer of indicia of ownership to an EAT.

While there are still questions relative to the use of a leasehold interest to have replacement property improvements built on property owned by the taxpayer, the IRS also states in Revenue Procedure 2004-51 they are continuing to study the issue, including “transactions in which a person related to the taxpayer (*which includes the taxpayer*) transfers a leasehold interest in land to an accommodation party (*like a builder*) and the accommodation party makes improvements to the land and transfers the leasehold with the improvements to the taxpayer in exchange for other real estate”.

If you have owned the desired replacement property anytime during the 180-day period prior to when you transferred it to the EAT, you may not complete a reverse exchange in accordance with the *safe harbor* provisions of Revenue Procedure 2000-37.

For a PDF copy of the US Department of Treasury Revenue Procedure 2004-51, go to:

www.ustreas.gov/press/releases/reports

This publication is designed to provide accurate information on tax-deferred exchanges. The publisher is not engaged in rendering legal or accounting services. If legal or tax advice is required, the services of a competent professional should be sought.

Realty Exchange Corporation

7400 Heritage Village Plaza, Suite 102, Gainesville, VA 20155

703-754-9411 ~ 800-795-0769 ~ Fax 703-754-0754

www.1031.us