

Exchange News  
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New IRS Revenue Procedure 2000-37: Procedures for Accommodation of Reverse Exchanges. There are times when an exchangor must take title to a desired replacement property before he can transfer the property to be relinquished. This is known as a reverse exchange and is not allowed under the IRC 1031 Like-Kind Exchange regulations.

The exchange industry has for a number of years requested the IRS establish some type of procedure to accommodate this situation. In the absence of IRS guidance exchangors have been using third parties to take title to the eventual replacement property, having them own and operate the property, sometimes building improvements, until such time as the exchangor could transfer their relinquished property and purchase the replacement property from the third party owner. These were called "parking arrangements".

IRS Revenue Procedure 2000-37, establishes "safe harbor" procedures to formally provide for and document such "parking arrangements". The procedure requires that the relinquished or eventual replacement property be held by the "exchange accommodation titleholder" in a "qualified exchange accommodation arrangement" which meets the following requirements:

- (1) the exchange accommodation titleholder will have legal title to the property or "such other indicia of ownership".
- (2) it is the bona fide intent of the taxpayer to do an exchange.
- (3) a written Qualified Exchange Accommodation Agreement is prepared within five days of transfer of ownership to the exchange accommodation titleholder, and the written agreement provides that: (a) the exchange accommodation titleholder is holding the property for the benefit of the taxpayer in order to complete an exchange under Section 1031, (b) the exchange accommodation titleholder will be treated as the beneficial owner of the property for federal income tax purposes, and (c) will file federal tax returns as necessary.
- (4) within 45 days after transfer of ownership to the exchange accommodation titleholder the relinquished property must be identified. The taxpayer may identify alternate or multiple relinquished property.
- (5) no later than 180 days after transfer of ownership to the exchange accommodation titleholder, the replacement property must be transferred to the taxpayer.

The exchange accommodation titleholder may not be the taxpayer or a disqualified party as set forth in IRS Regulation 1.1031(k)-1(k). This includes a related party, or someone who has served as the taxpayer's agent over the past two years, including their attorney, real estate broker, employee, or accountant.

The following legal or contractual arrangements may be made without invalidating the Qualified Exchange Accommodation Arrangement:

- (1) the taxpayer or a disqualified person may guarantee the obligations of the exchange accommodation titleholder, including debt, or may indemnify the exchange accommodation titleholder against cost and expenses.
- (2) the taxpayer or disqualified person may loan or advances funds to the exchange accommodation titleholder, or guarantee a loan or advance to the exchange accommodation titleholder.
- (3) the taxpayer or disqualified person lease the property from the exchange accommodation titleholder.
- (4) the taxpayer or disqualified person manages the property, supervises improvement of the property, acts as a contractor, or otherwise provides services to the exchange accommodation titleholder with respect to the property.
- (5) the taxpayer and exchange accommodation titleholder entering into a contract relating to the purchase or sale of the property.
- (6) the exchange accommodation titleholder also serving as the Qualified Intermediary.

**In summary**, while the Revenue Procedure establishes specific “safe harbor” procedures it permits continued use of currently used “parking arrangements”. The three most important differences are:

- (1) the need for a written Qualified Exchange Accommodation Agreement,
- (2) the restriction on the use of a disqualified person as the exchange accommodation titleholder.
- (3) the 180 day limit which starts when the eventual replacement property is transferred to the exchange accommodation titleholder. When improvements are to be built on the replacement property the 180 day limit may severely limit the use of the option to use the “safe harbor” procedures.

Realty Exchange Corporation will continue to serve as the Qualified Intermediary in these type of exchanges and as appropriate will refer exchangors to firms that have been established to serve as the exchange accommodation titleholder.

If you desire a copy of Revenue Procedure 2000-37 – please give us a call or e-mail us and include your name and mailing address.

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Have a question? Need an answer?

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