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Federal Taxes Weekly Alert,

## IRS OKs reverse like-kind swap where related parties identify same replacement property

### PLR 201416006

A new PLR deals with the unique situation of multiple related parties each vying to acquire the same property using a reverse like-kind exchange under [Code Sec. 1031](#) and [Rev Proc 2000-37, 2000-2 CB 308](#). IRS ruled that the taxpayer successfully consummating the reverse like-kind exchange could defer tax under [Code Sec. 1031](#), even though it and two related parties entered into separate qualified exchange accommodation arrangements for "parking" the same property held by an exchange accommodation titleholder (i.e., the same swap facilitator).

*Background.* Under [Code Sec. 1031](#), gain or loss isn't recognized currently on the exchange of property held for productive use in a trade or business or for investment for property of like kind that will be held for productive use in a trade or business or for investment. The replacement property must be identified within 45 days after the date that the property given up in the exchange is relinquished. Additionally, the taxpayer must actually receive the replacement property no later than (a) 180 days after the date that the property given up in the exchange is relinquished, or (b) the due date (with regard to extensions) for the taxpayer's return for the year in which the relinquished property is given up, whichever is earlier. ( [Code Sec. 1031\(a\)\(3\)](#) )

When a two-way (or direct) exchange of like-kind property isn't possible, the solution often is a multiparty deferred exchange. In a regular deferred exchange, Seller gives up his property first and receives the replacement property at a later time. Often, however, the replacement property must be received first, before Seller has transferred his property. In this situation, the transaction is structured as a reverse multiparty like-kind exchange.

*Reverse exchange safe harbor.* In [Rev Proc 2000-37, 2000-2 CB 308](#), IRS said it wouldn't challenge the qualification of property as either replacement or relinquished property, or the treatment of the

exchange accommodation titleholder (EAT) as the beneficial owner of either type of property, if the property is held (or "parked") in a qualified exchange accommodation arrangement (QEAA).

Property is held in a QEAA if all the following requirements are met:

- (1) Qualified indicia of ownership (QIO) of the property must be acquired by the EAT, who is not the taxpayer or a disqualified (e.g., related) person and who is subject to federal income tax.
- (2) When the QIO of the property is transferred to the EAT, it is the taxpayer's bona fide intent that the property represent either replacement property or relinquished property in an exchange intended to qualify for **Code Sec. 1031** treatment.
- (3) No later than five business days after QIO of the property are transferred to the EAT, the taxpayer and the EAT enter into a written QEAA providing that the EAT is holding the property for the benefit of the taxpayer to facilitate an exchange under **Code Sec. 1031** and **Rev Proc 2000-37**, and that the EAT will be treated as the beneficial owner of the property for all federal income tax purposes. Both parties must report the federal income tax attributes of the property on their federal returns in a manner consistent with this agreement.
- (4) No later than 45 days after the transfer of a QIO of the replacement property to the EAT, the relinquished property is properly identified in a way consistent with the identification requirements in **Reg. § 1.1031(k)-1(c)**. The taxpayer may properly identify alternative and multiple properties under the rules of **Reg. § 1.1031(k)-1(c)(4)**.
- (5) No later than 180 days after the transfer of QIO of the property to the EAT, (a) the property is transferred (either directly or indirectly) through a qualified intermediary (as defined in **Reg. § 1.1031(k)-1(g)(4)**) to the taxpayer as replacement property; or (b) the property is transferred as relinquished property to a third party buyer who is not a disqualified person.
- (6) The combined time period that the relinquished property and the replacement property are held in a QEAA does not exceed 180 days.

*Facts.* Taxpayer and Affiliates 1 and 2 each owned separate commercial office buildings, and each was interested in acquiring Property as replacement property through transactions separately structured as reverse like-kind exchanges. Each entered into a QEAA with the same unrelated EAT, identified as EATX. Taxpayer and its Affiliates represented that each complied with the requirements of **Rev Proc 2000-37**, including the requirement that Taxpayer and each Affiliate have a bona fide intent to acquire Property as replacement property in a **Code Sec. 1031** like-kind exchange when EATX acquired QIO in Property.

In its QEAA, Taxpayer acknowledged that EATX had entered into a concurrent QEAA for Property with each Affiliate, giving each rights to acquire Property, in whole or part, to complete like-kind exchanges. Also, Taxpayer's right to acquire Property is subject to it giving notice to EATX of its intention to acquire Property, in whole or part. However, the agreement said Taxpayer's rights would terminate upon prior delivery of such notice by either Affiliate. The agreement also provided that if an Affiliate gave prior notice of its intent to acquire Property, EATX had no further obligation to transfer Property to Taxpayer, whether in connection with the exchange described in the agreement or otherwise.

Each Affiliate, in turn, simultaneously entered into its own QEAA with EATX for Property, listing Taxpayer and the other Affiliate as the other parties that may acquire Property under Taxpayer's QEAA, under substantially the same terms and conditions.

Taxpayer will assign its right in the contract to buy Property to EATX, which will thereafter acquire title to Property using funds that Taxpayer, Affiliate 1, Affiliate 2, or any related entity advances. Within 45 days thereafter, Taxpayer, Affiliate 1, and Affiliate 2 will each identify property that each proposes to transfer as relinquished property according to the terms of its respective QEAA with EATX. Taxpayer and EATX will enter into an exchange agreement under which Taxpayer will assign to EATX its right under the QEAA to acquire the Property. Within 180 days from the time that EATX acquires title to the Property, EATX will transfer title to the Property to Taxpayer in exchange for Taxpayer's relinquished property, consistent with the rules of [Reg. § 1.1031\(k\)-1\(g\)\(4\)](#) .



**RIA observation:** The PLR doesn't explain why Taxpayer and its Affiliates went through such complex machinations. However, it could be that owner of Property wanted to sell it immediately, before Parent and its Affiliates could decide which of their like-kind properties to give up in a multiparty exchange. The QEAs they set up with EATX gave them some time to decide which property to relinquish.

*Favorable ruling.* The PLR concludes that [Rev Proc 2000-37](#) , does not bar an accommodation party from serving as an EAT to multiple taxpayers, including related parties, under multiple and simultaneous QEAs for the same parked property. Taxpayer's QEAA is not invalid merely because Taxpayer's right to acquire property terminates upon prior notice by either of its Affiliates to EATX of its intent to acquire property.

Thus, the PLR concludes that based on the information submitted, and each representation made (including the representation that Taxpayer and Affiliates 1 and 2 had a bona fide intent to acquire Property pursuant to each of its QEAs), Taxpayer's QEAA to acquire Property in whole or in part is a QEAA as defined in [Rev Proc 2000-37](#) , separate and distinct from the QEAs entered into by each of the Affiliates, (with separate application of the identification rules of [Reg. § 1.1031\(k\)-1\(c\)\(4\)](#) ).

**References:** For like-kind exchanges, see [FTC 2d/FIN ¶ I-3050](#) ; [United States Tax Reporter ¶ 10,314](#) ; [TaxDesk ¶ 224,204](#) ; [TG ¶ 10450](#) .