

Revenue Procedure 2004-51

SECTION 1. PURPOSE

This revenue procedure modifies sections 1 and 4 of Rev. Proc. 2000-37, 2000-2 C.B. 308, to provide that Rev. Proc. 2000-37 does not apply if the taxpayer owns the property intended to qualify as replacement property before initiating a qualified exchange accommodation arrangement (QEAA).

SECTION 2. BACKGROUND

.01 Section 1031(a) provides that no gain or loss is recognized on the exchange of property held for productive use in a trade or business or for investment if the property is exchanged solely for property of like kind that is to be held either for productive use in a trade or business or for investment.

.02 Section 1031(a)(3) allows taxpayers to structure deferred like-kind exchanges. Under § 1031(a)(3), property may be treated as like-kind property if it is (A) identified as property to be received in the exchange (replacement property) on or before the day that is 45 days after the date on which the taxpayer transfers the property relinquished in the exchange (relinquished property), and (B) received before the earlier of the date that is 180 days after the date on which the taxpayer transfers the relinquished property, or the due date (determined with regard to extensions) for the transferor's federal income tax return for the taxable year in which the transfer of the relinquished property occurs.

.03 Rev. Proc. 2000-37 addresses 'parking' transactions. See sections 2.05 and 2.06 of Rev. Proc. 2000-37. Parking transactions typically are designed to 'park' the desired replacement property with an accommodation party until such time as the taxpayer arranges for the transfer of the relinquished property to the ultimate transferee in a simultaneous or deferred exchange. Once such a transfer is arranged, the taxpayer transfers the relinquished property to the accommodation party in exchange for the replacement property, and the accommodation party transfers the relinquished property to the ultimate transferee. In other situations, an accommodation party may acquire the desired replacement property on behalf of the taxpayer and immediately exchange that property with the taxpayer for the relinquished property, thereafter holding the relinquished property until the taxpayer arranges for a transfer of the property to the ultimate transferee. Rev. Proc. 2000-37 provides procedures for qualifying parking transactions as like-kind exchanges in situations in which the taxpayer has a genuine intent to accomplish a like-kind exchange at the time that the taxpayer arranges for the acquisition of the replacement property and actually accomplishes the exchange within a short time thereafter.

.04 Section 4.01 of Rev. Proc. 2000-37 provides that the Internal Revenue Service will not challenge the qualification of property held in a QEAA "as either 'replacement property' or 'relinquished property' (as defined in § 1.1031(k)-1(a)) for purposes of § 1031 and the regulations thereunder, or the treatment of the exchange accommodation titleholder as the beneficial owner of such property...." Thus, taxpayers are not required to establish that the exchange accommodation titleholder bears the economic benefits and burdens of ownership and is the 'owner' of the property. The Service and Treasury Department are aware that some taxpayers have interpreted this language to permit a taxpayer to treat as a like-kind exchange a transaction in which the taxpayer transfers property to an exchange accommodation titleholder and receives that same property as replacement property in a purported exchange for other property of the taxpayer.

.05 An exchange of real estate owned by a taxpayer for improvements on land owned by the same taxpayer does not meet the requirements of § 1031. *See DeCleene v. Commissioner*, 115 T.C. 457 (2000); *Bloomington Coca-Cola Bottling Co. v. Commissioner*, 189 F.2d 14 (7th Cir. 1951). Moreover, Rev. Rul. 67-255, 1967-2 C.B. 270, holds that a building constructed on land owned by a taxpayer is not of a like kind to involuntarily converted land of the same taxpayer. Rev. Proc. 2000-37 does not abrogate the statutory requirement of § 1031 that the transaction be an exchange of like-kind properties.

.06 The Service and Treasury Department are continuing to study parking transactions, including transactions in which a person related to the taxpayer transfers a leasehold in land to an accommodation party 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.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers applying the safe harbor rules set forth in Rev. Proc. 2000-37 in structuring like-kind exchanges.

SECTION 4. APPLICATION

.01 Section 1 of Rev. Proc. 2000-37 is modified to read as follows:

SECTION 1. PURPOSE

This revenue procedure provides a safe harbor under which the Internal Revenue Service will treat an exchange accommodation titleholder as the beneficial owner of property for federal income tax purposes if the property is held in a "qualified exchange accommodation arrangement" (QEAA), as defined in section 4.02 of this revenue procedure.

.02 Section 4.01 of Rev. Proc. 2000-37 is modified to read as follows:

SECTION 4. QUALIFIED EXCHANGE ACCOMMODATION ARRANGEMENTS

.01 *In general.* The Service will treat an exchange accommodation titleholder as the beneficial owner of property for federal income tax purposes if the property is held in a QEAA. Property held in a QEAA may, therefore, qualify as either 'replacement property' or 'relinquished property' (as defined in § 1.1031(k)-1(a)) in a tax-deferred like-kind exchange if the exchange otherwise meets the requirements for deferral of gain or loss under § 1031 and the regulations thereunder.

.03 Section 4.05 is added to Rev. Proc. 2000-37 to read as follows:

.05 *Limitation.* This revenue procedure does not apply to replacement property held in a QEAA if the property is owned by the taxpayer within the 180-day period ending on the date of transfer of qualified *indicia* of ownership of the property to an exchange accommodation titleholder.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2000-37 is modified.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for transfers on or after July 20, 2004, of qualified *indicia* of ownership to exchange accommodation titleholders (as described in section 4.02(1) of Rev. Proc. 2000-37).

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is J. Peter Baumgarten of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Mr. Baumgarten at (202) 622-4920 (not a toll-free call).