FINALLY: AN "APPROVED" PROCESS FOR REVERSE EXCHANGES

by Mark Lee Levine, CRE

INTRODUCTION

Most commercial real estate practitioners, investors, CPAs, and attorneys have some involvement with tax-deferred exchanges under Code §1031.[1] Under Code §1031, there are provisions for what is loosely referred to as "tax-free exchanges" and is more correctly labeled as "tax-deferred exchanges."

Without examining the fundamentals of Code §1031, and assuming the reader is familiar with the basic requirements of Code §1031 to defer federal income tax on a qualified exchange of like-kind property used in the trade or business or for qualified investments, the discussion can proceed to the main focus of this Note,[2] *i.e.*, nonsimultaneous exchanges[3] that involve what are referred to as a "reverse exchange."[4]

The concept of nonsimultaneous exchanges are sometimes labeled as "deferred exchanges." They exist as a result of changes that have developed where an exchange did not occur simultaneously; that is, the taxpayer may have transferred property at one point in time and did not simultaneously receive replacement property.[5]

Assuming for the moment that the principles of tax-deferred exchanges are well in hand relative to Code §1031; and, assuming for the moment that the concept of deferred exchanges, that is nonsimultaneous

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exchanges are accepted (since this has been the position for some time),[6] the focus of this Note is on the ability of taxpayers to undertake such nonsimultaneous (deferred) exchanges by means of a reverse exchange.

OVERVIEW OF REVERSE EXCHANGES

One might have concluded that transfers of property in general might be subject to income tax.[7] That is a reasonable position to take, since this is the basic law for most transactions.[8] It would also be reasonable that even if an exchange was allowed, as noted, under Code §1031, one might infer that the exchange would take place on a simultaneous basis (X transfers X-1 to Y at the same time Y transfers Y-1 to X) with the relinquishment of the property by the taxpayer and the simultaneous replacement of that property by the taxpayer. This subject has been well discussed.[9] However, case law has made it clear that because of a change in Code §1031(a)(3), and Regulations thereunder,[10] the ability to utilize a tax-deferred exchange, nonsimultaneous in nature, is well established, if the taxpayer complies with the requirements under the Code.[11]

What has not been well established is the ability of a taxpayer to undertake an exchange, nonsimultaneous, where the taxpayer first acquired the replacement property and then subsequently transferred his or her relinquished property. (X transfers X's X-1 property to Y on Day 30, but receives Y-1, qualified property, from Y [or an intermediary] on Day 1.) Although one might have argued that it was reasonable for such order to take place, the exchange Regulations specifically prohibited this approach.[12]

Taxpayers voiced substantial opposition to the government's argument that a reverse exchange could not take place within Code §1031. Nevertheless, the Regulations asserted that a reverse exchange was improper and was not approved under Code §1031(a)(3).

Notwithstanding the government's position, there have been many suggested inroads for the use of a reverse exchange. This author communicated with one intermediary company[13] in which they recently informed the author that they had formed "over 1,000 reverse exchanges in our 10-year history." It seems questionable for an intermediary to assume that such position provides for bragging rights. It might, in turn, provide for 1,000 cases of exposure, given that the Service has made it very clear that it did not approve a reverse exchange position.

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Some salvation for this intermediary, and for others that have asserted the use of a reverse exchange, may be found as a result of recent developments in which a Revenue Procedure was issued, allowing for some reverse exchanges.[14]

Anticipating that such a release or approval was coming, a number of articles were issued touting the "possible" planning opportunities with the reverse exchange. *(See the Footnotes for some of these anticipatory articles.)*[15]

Nevertheless, to assume that a release would be forthcoming, but knowing it had not been released, and having the "benefit" of specific statements by the government that reverse exchanges were not within Code §1031,[16] I authored an article arguing that one should "say no" to reverse exchanges until and unless safe harbor guidance was issued.[17]

However, as mentioned, the Service recently announced that taxpayers now have a safe harbor, allowing for reverse like-kind exchanges, assuming they meet all the requirements of this Ruling.

REVENUE PROCEDURE 2000-37: REVERSE EXCHANGES "APPROVED"

Under a release dated September 19, 2000, *(see copy at end of article)* the Service issued Revenue Proc. 2000-37.[18] In this Revenue Procedure, a safe harbor is provided. It is stated that the Service will not challenge the qualification of the property as replacement property or as relinquished property, as those terms are used within Treasury Reg. §1.1031(k). Further, it will not challenge the treatment of what is known as an exchange accommodation titleholder as one that is the beneficial owner of the property in question, assuming the taxpayer meets all the requirements under this Revenue Procedure.

The Procedure says that no gain or loss will be recognized if Code §1031 is met relative to the special time limits provided under Code §1031(a)(3).

These time limits generally provide that a taxpayer (X) must identify replacement property (Y-1 in the prior example) within 45 days of the transfer of the taxpayer's relinquished property (X-1); X and the taxpayer must also comply with an outside date to complete the transaction, which outside date is the earlier of 180 days after the transfer of the relinquished property or the due date of the taxpayer's return, with proper extensions, where applicable.[19]

The release specifically noted that the Treasury Department and the Service had regulations relative to exchanges wherein the preamble to the regulations specifically stated that the safe harbors in the regulations were not applicable to reverse-Starker exchanges. They define this as situations where the replacement property is acquired before the relinquished property is transferred.[20]

Notwithstanding the limits, as noted by the government on reverse exchanges that have existed since the regulations were issued, the Revenue Procedure noted that taxpayers have nevertheless undertaken transactions that might be considered to be reverse exchanges. Often the taxpayer might be engaged in what is sometimes labeled as a "parking" position. The Revenue Procedure stated that "parking" results in the taxpayer (X) parking or placing the replacement property (X-1) with an accommodation party (AP) (intermediary) (I)[21] until the time when the taxpayer can arrange for the transfer of his or her relinquished property to the appropriate party.

There are other possibilities. For example, the accommodation party (AP) [intermediary] (I) might acquire the replacement property (Y-1) on behalf of a taxpayer or in connection with a taxpayer.

The accommodating party (AP) or intermediary (I) would then exchange that property with the taxpayer for the relinquished property (X-1) owned by the taxpayer. After that, the relinquished property would be held until the taxpayer would help arrange for a transfer of the property to the ultimate acquirer of the property (some third party). The key in this setting would be to avoid having the accommodation party/intermediary treated as an agent of the taxpayer; rather, the argument is that the intermediary or accommodating party would be the owner of the property, because it had "incidents of ownership." These circumstances are in question and could raise areas of exposure to taxpayers in these types of settings. Therefore, the idea of the Revenue Procedure is to allow a safe harbor for taxpayers to properly accomplish the nonsimultaneous exchange on a reverse basis.

The Revenue Procedure makes it very clear that it only applies to issues for qualifying for a safe harbor relative to an exchange. These are sometimes now labeled as a Qualified Exchange Accommodation Arrangement (QEAA).

On a parenthetical type approach, the Procedure also noted that there are other federal income tax issues which are not addressed in this Revenue Procedure. For example, there are issues relative to fees for the accommodator, whether the accommodator would be precluded from claiming depreciation deductions, arguing that the accommodating party was actually a dealer, etc. Again, these issues are not addressed in this Procedure.

The Ruling also made it clear that if the formal requirements of the Revenue Procedure are not met, the Procedure does not apply.

Assuming that the requirements are met, the Service noted that it ". . . will not challenge the qualification of property as either 'replacement property' or 'relinquished property' (as defined in section 1031(k)-1(a)) for purposes of section 1031 and the regulations thereunder or the treatment of the exchange accommodation titleholder as the beneficial owner of such property for income tax purposes, if the property is held in a QEAA."

1. Basically the requirement is that the ownership of the property must be held by a person, that is, the exchange accommodation titleholder, who is not the taxpayer or a disqualified person, as that term is used under Treasury Reg. §1.1031-(k), and either such person is subject to federal income tax, or is otherwise qualified as a partnership or an S Corporation, with certain other requirements.

2. At the time the qualified indicia of ownership of the property is transferred to the exchange accommodation titleholder, it has to be the taxpayer's bona fide intent that the property to be held by the exchange accommodator represents either replacement property or relinquished property within Code §1031;

3. No later than five days after the transfer of the qualified indicia of ownership of the property to the exchange accommodation titleholder, the taxpayer and the exchange accommodation

titleholder must enter an agreement (labeled as the "Qualified Exchange Accommodation Agreement") to provide that the exchange accommodation titleholder is holding the property for the taxpayer to facilitate the exchange under Code §1031 and that the taxpayer and the accommodator agree to report the activity (as noted below) as provided in this Revenue Procedure.

Both parties must properly report their income tax attributes of the property on their Federal income tax returns.

4. Within 45 days of the transfer of the qualified indicia of ownership on the replacement property, as noted, to the accommodating party, the relinquished property must be properly identified, as that term is used within Treasury Reg. §1.1031(k)-1(c). (The taxpayer can identify multiple and alternative properties, within the meaning of the Regulation.)[22]

5. Within 180 days after the transfer of the qualified indicia of ownership, the property must be transferred, directly or indirectly, through an intermediary or otherwise, to the taxpayer as replacement property; or, the property must be transferred to a person who is not the taxpayer and who is not a disqualified person, as relinquished property; and

6. The combined time period that the relinquished property and the replacement property are held within the QEAA cannot exceed 180-days, as previously indicated.

Knowing that there will be a number of additional issues, the Revenue Procedure further provided for what are labeled as "permissible agreements." This means that property will not fail to be treated within this QEAA because of one or more of the following special arrangements:

1. An exchange or accommodation titleholder that satisfies the requirements of the qualified intermediary safe harbor rules under existing Treasury Reg. §1.1031(k) may enter an exchange agreement to serve as an intermediary;

2. The taxpayer (X), or a disqualified person, guarantees some or all of the obligations of the exchange accommodation titleholder, including secured or unsecured debt, or indemnifies the exchange accommodation titleholder for expenses and costs; (as an example, X-1 could guarantee performance on loans, title, etc.);

3. The taxpayer (X) or a disqualified person loans or advances funds to the exchange accommodation titleholder or guarantees a loan relative to this exchange;

4. The property is leased by the exchange accommodation titleholder to the taxpayer or a disqualified person;

5. The taxpayer or disqualified person manages the property or supervises it, or acts or provides services to the accommodation titleholder relative to the property;

6. The taxpayer and the exchange accommodation titleholder enter into agreements as to the purchase or sale of the property, including puts and calls at certain fixed or formula prices, for a period not in excess of 185 days from the date the property is acquired by the exchange accommodation titleholder; and

7. The taxpayer and the exchange accommodation titleholder enter agreements providing that any variation of the value of the relinquished property from its estimated value relative to the date of exchange accommodation titleholder's receipt of the property be taken into account upon the exchange accommodation titleholder's disposition of that property.

An additional permissible position is to allow that the property will not fail to meet the requirements as QEAA because of accounting, regulatory state, local, or foreign tax treatment of the arrangement between the taxpayer and the accommodator being different from the treatment described above.

For those taxpayers who find themselves in a position where a nonsimultaneous exchange is imperative to the transaction, they now have the added flexibility of the possibility of a safe harbor for a reverse, nonsimultaneous exchange, assuming compliance with Revenue Procedure 2000-37.

The effective date for this new position is for exchange accommodation titleholders that acquire qualified indicia of ownership on or after September 15, 2000. (This means that those transactions, such as the ones referred to earlier in this article, are not covered within this Ruling on the basis of some retrospective safe harbor position.)

The safe harbor provided by this new Revenue Procedure is beneficial to taxpayers, if for nothing else than it blesses the idea and position that one can provide for a reverse exchange. However, to meet the safe harbor position, taxpayers must be certain to follow the specifics, as noted.

CONCLUSION

The conservative answer is to avoid reverse exchanges, given the limitations and the specific language in Treasury Reg. §1.1031-(k), prohibiting reverse exchanges. However, this Revenue Procedure makes it clear that such reverse exchanges are permitted, so long as taxpayers clearly comply with the safe harbor provisions of Revenue Proc. 2000-37.

It has long been my suggestion to clients that they structure their transactions as simultaneous exchanges, avoiding many of the hurdles and limitations that exist for nonsimultaneous exchanges, whether in a format of a reverse exchange or simply a deferred exchange that occurs on a nonsimultaneous basis. In my mind, this suggestion continues as good advice. However, for those taxpayers who find themselves in a position where a nonsimultaneous exchange is imperative to the transaction, they now have the added flexibility of the possibility of a safe harbor for a reverse, nonsimultaneous exchange, assuming compliance with Revenue Procedure 2000-37.[REI]

NOTES

1. See 26 U.S.C.A. (IRC 1986), Section 1031, hereinafter generally referred to as Code Section 1031 (Code §1031).
2. For more details on this entire area, see Levine, Mark Lee, *Exchanging Real Estate*, PP&E, INC., Denver, Colorado (3 Volumes) (2001). This text is also on-line at www.recyber.com. See also the Levine text, *Real Estate Transactions, Tax Planning*, The West Group, St. Paul, Minn. (2001 Edition).
3. See Code §1031 and the specific provisions that allow for a nonsimultaneous exchange under Code §1031(a)(3). For more in this area, see also the initial "lead" case, Starker v. United States, 602 F.2d 1341 (9th Cir., 1979). This case is discussed in detail in the Levine text, *Real Estate Transactions, Tax Planning*, Section 577, The West Group, St. Paul, Minn. (2001 Edition).
4. The concept of "reverse exchanges" is not stated within Code §1031. Rather, it has come about because there are circumstances, as described later in the article, where the taxpayer acquires the replacement property prior to transferring the relinquished property. This is labeled as a "reverse exchange." For more in this area, see the Levine text, cited *supra*, Footnote 3.
5. See the Levine text, cited *supra*, Footnote 3.
6. For a detailed discussion on the origin of nonsimultaneous exchanges, see the authorities cited in the Levine text, *supra*, Footnote 3, as well as the detailed discussion of this issue in the Starker case, *supra*, Footnote 3. For a collection of authorities on this issue, and a discussion of the concept of the government's position, see Section 577 of the Levine text cited *supra*, Footnote 3; see also Treasury Reg. §1.1031(k).
7. See Code §61.
8. See Code §61 and §62.
9. See *supra*, Footnotes 2 and 3.
10. See Treasury Reg. §1.1031(k).
11. See Code §1031(a)(3).
12. See Treasury Reg. §1.1031(k).
13. See Levine, Mark Lee, "Just Say 'No' To Reverse Exchanges," *Florida Real Estate Journal* (October 1999), pp.16-31.
14. See Revenue Proc. 2000-37, 2000WL1338979, released September 19, 2000.
15. See Sutton, Philip, "Guidance May Be Coming For Reverse Like-Kind Deals," *Real Estate Forum*, (April, 2000), p. 104. See also some of the authorities cited in the Levine, *Exchanging Real Estate* text, cited *supra*, Footnote 2.
16. See the Preamble to Treasury Reg. §1.1031(k).
17. See Levine, Mark Lee, "Just Say 'No' To Reverse Exchanges," *Florida Real Estate Journal* (October 1999), pp.16-31. See also this discussion in the Levine, *Exchanging Real Estate* text, cited *supra*, Footnote 2.
18. See Revenue Proc. 2000-37, 2000WL1338979 (released September 19, 2000) which addressed the provisions relative to Treasury Reg. §1.1031(k)-1.
19. See Code §1031(a)(3) and see Treasury Reg. §1.1031(k)-1.
20. T.D. 8346, 1991-1 C.B. 150. The Service indicated it would continue studying this issue.
21. See *supra*, Footnote 18.
22. *Ibid.*

Copy: LIKE-KIND EXCHANGES; REPLACEMENT PROPERTY; "PARKING" ARRANGEMENTS

Internal Revenue Service (I.R.B.)
Revenue Procedure 2000-37
2000-40 I.R.B. 308, 2000 WL 1338979 (IRS RPR)

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26 CFR 1.1031(a)-1: Property held for productive use in trade or business or for investment; 1.1031(k)-1: Treatment of deferred exchanges.

Like-kind exchanges; replacement property; "parking" arrangements. This procedure provides a safe harbor under which the Service will not challenge (a) the qualification of property as either "replacement property" or "relinquished property" for purposes of section 1031 of the Code or (b) the treatment of the ""exchange accommodation titleholder" as the beneficial owner of such property for federal income tax purposes, if the property is held in a "qualified exchange accommodation arrangement" (QEAA).

SECTION 1. PURPOSE
This revenue procedure provides a safe harbor under which the Internal Revenue Service will not challenge (a) the qualification

of property as either ""replacement property" or "relinquished property" (as defined in s 1.1031(k)- 1(a) of the Income Tax Regulations) for purposes of s 1031 of the Internal Revenue Code and the regulations thereunder or (b) the treatment of the ""exchange accommodation titleholder" as the beneficial owner of such 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.

SECTION 2. BACKGROUND

.01 Section 1031(a)(1) 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) provides that property received by the taxpayer is not treated as like-kind property if it: (a) is not identified as property to be received in the exchange on or before the day that is 45 days after the date on which the taxpayer transfers the relinquished property; or (b) is received after 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 extension) for the transferor's federal income tax return for the year in which the transfer of the relinquished property occurs.

.03 Determining the owner of property for federal income tax purposes requires an analysis of all of the facts and circumstances. As a general rule, the party that bears the economic burdens and benefits of ownership will be considered the owner of property for federal income tax purposes. See Rev. Rul. 82-144, 1982-2 C.B. 34.

.04 On April 25, 1991, the Treasury Department and the Service promulgated final regulations under s 1.1031(k)-1 providing rules for deferred like-kind exchanges under s 1031(a)(3). The preamble to the final regulations states that the deferred exchange rules under s 1031(a)(3) do not apply to reverse-Starker exchanges (i.e., exchanges where the replacement property is acquired before the relinquished property is transferred) and consequently that the final regulations do not apply to such exchanges. T.D. 8346, 1991-1 C.B. 150, 151; see Starker v. United States, 602 F.2d 1341 (9 superth Cir. 1979). However, the preamble indicates that Treasury and the Service will continue to study the applicability of the general rule of s 1031(a)(1) to these transactions. T.D. 8346, 1991-1 C.B. 150, 151.

.05 Since the promulgation of the final regulations under s 1.1031(k)-1, taxpayers have engaged in a wide variety of transactions, including so-called ""parking" transactions, to facilitate reverse like-kind exchanges. 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 then 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 such property with the taxpayer for the relinquished property, thereafter holding the relinquished property until the taxpayer arranges for a transfer of such property to the ultimate transferee. In the parking arrangements, taxpayers attempt to arrange the transaction so that the accommodation party has enough of the benefits and burdens relating to the property so that the accommodation party will be treated as the owner for federal income tax purposes.

.06 Treasury and the Service have determined that it is in the best interest of sound tax administration to provide taxpayers with a workable means of qualifying their transactions under s 1031 in situations where the taxpayer has a genuine intent to accomplish a like-kind exchange at the time that it arranges for the acquisition of the replacement property and actually accomplishes the exchange within a short time thereafter. Accordingly, this revenue procedure provides a safe harbor that allows a taxpayer to treat the accommodation party as the owner of the property for federal income tax purposes, thereby enabling the taxpayer to accomplish a qualifying like-kind exchange.

SECTION 3. SCOPE

.01 Exclusivity. This revenue procedure provides a safe harbor for the qualification under s 1031 of certain arrangements between taxpayers and exchange accommodation titleholders and provides for the treatment of the exchange accommodation titleholder as the beneficial owner of the property for federal income tax purposes. These provisions apply only in the limited context described in this revenue procedure. The principles set forth in this revenue procedure have no application to any federal income tax determinations other than determinations that involve arrangements qualifying for the safe harbor.

.02 No inference. No inference is intended with respect to the federal income tax treatment of arrangements similar to those described in this revenue procedure that were entered into prior to the effective date of this revenue procedure. Further, the Service recognizes that "parking" transactions can be accomplished outside of the safe harbor provided in this revenue procedure. Accordingly, no inference is intended with respect to the federal income tax treatment of "parking" transactions that do not satisfy the terms of the safe harbor provided in this revenue procedure, whether entered into prior to or after the effective date of this revenue procedure.

.03 Other issues. Services for the taxpayer in connection with a person's role as the exchange accommodation titleholder in a QEAA shall not be taken into account in determining whether that person or a related person is a disqualified person (as defined in s 1.1031(k)-1(k)). Even though property will not fail to be treated as being held in a QEAA as a result of one or more arrangements described in section 4.03 of this revenue procedure, the Service still may recast an amount paid pursuant to such an arrangement as a fee paid to the exchange accommodation titleholder for acting as an exchange accommodation titleholder to the extent necessary to reflect the true economic substance of the arrangement. Other federal income tax issues implicated, but not addressed, in this revenue procedure include the treatment, for federal income tax purposes, of payments described in section 4.03(7) and whether an exchange accommodation titleholder may be precluded from claiming depreciation deductions (e.g., as a dealer) with respect to the relinquished property or the replacement property.

.04 Effect of Noncompliance. If the requirements of this revenue procedure are not satisfied (for example, the property subject to a QEAA is not transferred within the time period provided), then this revenue procedure does not apply. Accordingly, the determination of whether the taxpayer or the exchange accommodation titleholder is the owner of the property for federal income tax purposes, and the proper treatment of any transactions entered into by or between the parties, will be made without regard to the provisions of this revenue procedure.

SECTION 4. QUALIFIED EXCHANGE ACCOMMODATION ARRANGEMENTS

.01 Generally. The Service will not challenge the qualification of property as either "replacement property" or "relinquished property" (as defined in s 1.1031(k)-1(a)) for purposes of s 1031 and the regulations thereunder, or the treatment of the exchange accommodation titleholder as the beneficial owner of

such property for federal income tax purposes, if the property is held in a QEAA.

.02 Qualified Exchange Accommodation Arrangements. For purposes of this revenue procedure, property is held in a QEAA if all of the following requirements are met:

(1) Qualified indicia of ownership of the property is held by a person (the "exchange accommodation titleholder") who is not the taxpayer or a disqualified person and either such person is subject to federal income tax or, if such person is treated as a partnership or S corporation for federal income tax purposes, more than 90 percent of its interests or stock are owned by partners or shareholders who are subject to federal income tax. Such qualified indicia of ownership must be held by the exchange accommodation titleholder at all times from the date of acquisition by the exchange accommodation titleholder until the property is transferred as described in section 4.02(5) of this revenue procedure. For this purpose, "qualified indicia of ownership" means legal title to the property, other indicia of ownership of the property that are treated as beneficial ownership of the property under applicable principles of commercial law (e.g., a contract for deed), or interests in an entity that is disregarded as an entity separate from its owner for federal income tax purposes (e.g., a single member limited liability company) and that holds either legal title to the property or such other indicia of ownership;

(2) At the time the qualified indicia of ownership of the property is transferred to the exchange accommodation titleholder, it is the taxpayer's bona fide intent that the property held by the exchange accommodation titleholder represent either replacement property or relinquished property in an exchange that is intended to qualify for nonrecognition of gain (in whole or in part) or loss under s 1031;

(3) No later than five business days after the transfer of qualified indicia of ownership of the property to the exchange accommodation titleholder, the taxpayer and the exchange accommodation titleholder enter into a written agreement (the "qualified exchange accommodation agreement") that provides that the exchange accommodation titleholder is holding the property for the benefit of the taxpayer in order to facilitate an exchange under s 1031 and this revenue procedure and that the taxpayer and the exchange accommodation titleholder agree to report the acquisition, holding, and disposition of the property as provided in this revenue procedure. The agreement must specify that the exchange accommodation titleholder 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 income tax returns in a manner consistent with this agreement;

(4) No later than 45 days after the transfer of qualified indicia of ownership of the replacement property to the exchange accommodation titleholder, the relinquished property is properly identified. Identification must be made in a manner consistent with the principles described in s 1.1031(k)-1(c). For purposes of this section, the taxpayer may properly identify alternative and multiple properties, as described in s 1.1031(k)- 1(c)(4);

(5) No later than 180 days after the transfer of qualified indicia of ownership of the property to the exchange accommodation titleholder, (a) the property is transferred (either directly or indirectly through a qualified intermediary (as defined in s 1.1031(k)-1(g)(4))) to the taxpayer as replacement property; or (b) the property is transferred to a person who is not the taxpayer or a disqualified person as relinquished property; and

(6) The combined time period that the relinquished property and the replacement property are held in a QEAA does not exceed 180 days.

.03 Permissible Agreements. Property will not fail to be treated as being held in a QEAA as a result of any one or more of the following legal or contractual arrangements, regardless of whether such arrangements contain terms that typically would result from arm's length bargaining between unrelated parties with respect to such arrangements:

(1) An exchange accommodation titleholder that satisfies the requirements of the qualified intermediary safe harbor set forth in s1.1031(k)-1(g)(4) may enter into an exchange agreement with the taxpayer to serve as the qualified intermediary in a simultaneous or deferred exchange of the property under s 1031;

(2) The taxpayer or a disqualified person guarantees some or all of the obligations of the exchange accommodation titleholder, including secured or unsecured debt incurred to acquire the property, or indemnifies the exchange accommodation titleholder against costs and expenses;

(3) The taxpayer or a disqualified person loans or advances funds to the exchange accommodation titleholder or guarantees a loan or advance to the exchange accommodation titleholder;

(4) The property is leased by the exchange accommodation titleholder to the taxpayer or a disqualified person;

(5) The taxpayer or a 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;

(6) The taxpayer and the exchange accommodation titleholder enter into agreements or arrangements relating to the purchase or sale of the property, including puts and calls at fixed or formula prices, effective for a period not in excess of 185 days from the date the property is acquired by the exchange accommodation titleholder; and

(7) The taxpayer and the exchange accommodation titleholder enter into agreements or arrangements providing that any variation in the value of a relinquished property from the estimated value on the date of the exchange accommodation titleholder's receipt of the property be taken into account upon the exchange accommodation titleholder's disposition of the relinquished property through the taxpayer's advance of funds to, or receipt of funds from, the exchange accommodation titleholder.

.04 Permissible Treatment. Property will not fail to be treated as being held in a QEAA merely because the accounting, regulatory, or state, local, or foreign tax treatment of the arrangement between the taxpayer and the exchange accommodation titleholder is different from the treatment required by section 4.02(3) of this revenue procedure.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for QEAAs entered into with respect to an exchange accommodation titleholder that acquires qualified indicia of ownership of property on or after September 15, 2000.

SECTION 6. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1701. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information are contained in section 4.02 of this revenue procedure, which requires taxpayers and exchange accommodation titleholders to enter into a written agreement

that the exchange accommodation titleholder will be treated as the beneficial owner of the property for all federal income tax purposes. This information is required to ensure that both parties to a QEAA treat the transaction consistently for federal tax purposes. The likely respondents are businesses and other for-profit institutions, and individuals.

The estimated average annual burden to prepare the agreement and certification is two hours. The estimated number of respondents is 1,600, and the estimated total annual reporting burden is 3,200 hours.

The estimated annual frequency of responses is on occasion.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is J. Peter Baumgarten of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. Baumgarten at (202) 622-4950.