

DO YOU WANT 360 DAYS TO EXCHANGE?

“COMBINE A REVERSE EXCHANGE FOLLOWED BY A DELAYED EXCHANGE”



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SAFE HARBOR GUIDANCE

Tax deferred exchanges have been part of the U.S. Tax Code since 1921. Since that time, the government has approved certain methods to structure exchange transactions that are so called “safe harbors.” For example, in 1991 the U.S. Treasury issued final regulations that provided important guidance on the structure of delayed exchanges including the 45 day identification period and 180 day exchange period timelines and certain other procedural requirements necessary to complete a tax deferred exchange safely. On September 15, 2000, the Internal Revenue Service released Revenue Procedure 2000-37 that provided guidelines for structuring reverse exchanges (a transaction in which replacement property is acquired by an accommodating party before the sale of the relinquished property and held as replacement property to complete the exchange). A replacement property may be acquired and held (sometimes called “parked”) by the accommodating party for up to 180 calendar days. Recently, the IRS provided guidance (See ILM 200836024) approving the combination of a reverse parking arrangement exchange and a forward delayed exchange resulting in two sequential 180 day exchange periods associated with one exchange transaction.

Since the accommodating party in a reverse exchange can only hold the replacement property for 180 days, the relinquished property must generally be sold by the taxpayer within that 180 day accommodation period. If the parked replacement property is the only property that is desired by the taxpayer to complete the exchange, then the exchange is complete upon the accommodator’s transfer of the replacement property to the exchanger. But what if the parked replacement property is just one of several replacement properties desired by the taxpayer? In that event, the standard delayed exchange that commences with the sale of the relinquished property may be used to acquire other replacement properties over the second 180 day exchange period commencing with the sale of the relinquished property. In this fashion, the exchange transaction spans two exchange periods starting with the accommodator’s acquisition of the parked property and ending on the exchanger’s acquisition of the last replacement property, potentially spanning 360 calendar days.

Many areas in the nation have experienced significant price declines in the past couple of years. Although this trend may leave a seller with less equity in his or her relinquished property, there is a silver lining: prices for replacement property have decreased as well providing investors with a once in a lifetime opportunity to purchase quality real estate at steeply discounted prices.

How might the combination of a reverse exchange and a delayed exchange permit an exchanger to take advantage of current market conditions? Suppose that an exchanger owns a single family rental property in San Jose, California, worth \$600,000. The exchanger would like to take advantage of excellent purchase opportunities in the Sacramento region where he can now acquire single family rental homes at a significant discount. The investor negotiates to purchase three replacement properties with an aggregate value of \$450,000 by using a reverse exchange in which closes at the end of June, 2009. When the relinquished property in San Jose is finally sold in December, 2009 as part of a regular delayed exchange, the net sale proceeds are used to purchase the three parked replacement properties held by the accommodator. Now, in this second leg of the exchange transaction, the exchanger has 45 days following the sale of the relinquished property to identify other suitable replacement property and a maximum of 180 days to close on one or more identified replacement properties.



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