

REVENUE PROCEDURE 2004-51

“PROVIDES CLARIFICATIONS IN PARKING ARRANGEMENT EXCHANGES”



Key Portions of Rev. Proc. 2004-51 are Reflected Below

Compliments of

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 there under, 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.

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). *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.*

The Service and Treasury Department are continuing to study parking transactions, including transactions in which a person related to the taxpayer transfers 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. This revenue procedure applies to taxpayers applying the safe harbor rules set forth in Rev. Proc. 2000-37 in structuring like-kind exchanges.

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

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.

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

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 there under.

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

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.



A National IRC §1031 “Qualified Intermediary”

National Headquarters

800-282-1031

Eastern Region Office

866-394-1031

apiexchange.com

info@apiexchange.com

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