

Combination Exchanges

When a taxpayer intends to acquire multiple Replacement Properties, with some properties closing before the Relinquished Property sale and some properties closing after, both the Forward and Reverse Exchange structures can be combined to maximize the tax deferral. That was the conclusion reached by the IRS Chief Counsel's office, stating that a taxpayer may engage in a Reverse Exchange and a Forward Deferred Exchange and use the same Relinquished Property in both exchanges. CCA 200836024 (May 12, 2008).

In that situation, the taxpayer parked a Replacement Property with an Exchange Accommodation Titleholder (EAT) as part of a Reverse Exchange. The taxpayer later transferred a Relinquished Property using a Qualified Intermediary (QI) and acquired the parked Replacement Property in a Forward Exchange. That transaction did not use up all of the exchange funds, so the taxpayer identified additional Replacement Properties. She was unable to acquire any of those properties, and at the end of the exchange period she received the balance of the funds and paid tax on the recognized gain.

There was a concern that the transactions were contrary to the IRS Regulations, because there could be up to 360 days between the day the Replacement Property was parked and the day the Deferred Exchange was completed. Also, it would entitle the taxpayer to two separate 45 day identification periods.

The IRS found that there were actually two exchanges taking place, not just one. Each exchange had its own 45 day identification period. Rev. Proc. 2000-37 permits a property to be parked in a Reverse Exchange for a period of up to 180 days. Similarly, in a Deferred Exchange the Replacement Property must be acquired within the exchange period, which can be up to 180 days from the date the Relinquished Property was transferred. The time periods for each exchange run independently of each other.

Also, §4.03 of Rev. Proc. 2000-37 permits the EAT to enter into an exchange agreement with a taxpayer to serve as the QI in a Deferred Exchange. That section seems to anticipate and allow transactions in which a parked property is transferred in connection with a Deferred Exchange.

Therefore, if the statutory and regulatory guidelines are followed for the Deferred Exchange, and the taxpayer stays within the guidelines of Rev. Proc. 2000-37, it is permissible to combine both techniques using the same Relinquished Property. The key is to remember that the Reverse and Forward are separate transactions, each with their own time periods and requirements. Savvy taxpayers will put the two together to optimize their tax benefits.