

**“Reverse” Like-Kind Exchanges
Under IRS Revenue Procedure 2000-37
Using Qualified Exchange Accommodation Arrangements (“QEAs”)
GENERAL RULES**

In customary Internal Revenue Code Section 1031 tax deferred exchange, the taxpayer sells an investment property that has appreciated in value (the “relinquished property”), places the net sales proceeds with a “qualified intermediary”, and subsequently purchases similar investment property of equal or greater value (the “replacement property”). These rules do not apply to an exchange in which the taxpayer purchases replacement property before the taxpayer sells his or her relinquished property.

However, if you use a qualified exchange accommodation arrangement as defined in IRS Revenue Procedure 2000-37 (“QEAA”), the transfers may qualify as a like-kind exchange allowing you to defer capital gains on the sale of the relinquished property. Under a QEAA, the replacement property is transferred to an exchange accommodation titleholder (“EAT”), who is the owner of the replacement property for federal income tax purposes pending your sale of your relinquished property. If the relinquished property is held pursuant to a proper QEAA, the IRS will accept the property as replacement property, and the treatment of an EAT as the beneficial owner of the property for federal income tax purposes.

1. Requirements for a QEAA. Replacement property will qualify for a tax deferred exchange under a QEAA only if the following requirements are met.
 - a. There is a written agreement between the taxpayer and the EAT meeting requirements discussed below..
 - b. The time limits for identifying the relinquished property and subsequently selling it and purchasing the replacement property are met (discussed below, generally 45 days and 180 days, respectively).
 - c. Ownership of replacement property is properly transferred to an EAT.

2. Written Agreement.
 - a. Under a QEAA, you and the EAT must enter into a written agreement no later than 5 business days after the property is transferred to the EAT. Although we do not recommend it, a “contract for deed” may qualify as a transfer of the property to an EAT. The agreement must provide the following.
 - i. The EAT is holding the property for your benefit to facilitate an exchange under the like-kind exchange rules and Revenue Procedure 2000-37.
 - ii. You and the EAT agree to report the acquisition, holding, and disposition of the property on your federal income tax returns in a manner consistent with the agreement.
 - iii. The EAT will be treated as the beneficial owner of the property for all federal income tax purposes. Property can be treated as being held in a QEAA even if the accounting, regulatory, or state tax treatment of the arrangement between you and the EAT is different from the federal income tax treatment

required above.

3. Bona Fide Intent. When the property is transferred to the EAT, it must be your bona fide intent that the property held by the EAT represents replacement property in an exchange intended to qualify for nonrecognition of gain under the like-kind exchange rules of Internal Revenue Code Section 1031.
4. Time Limits for Identifying and Transferring Property. Under a QEAA, the following time limits for identifying and transferring the property must be met.
 - a. No later than 45 days after the transfer of the replacement property to the EAT; you must identify the relinquished property in a manner consistent with the principles for tax deferred exchanges.
 - b. One of the following transfers must take place no later than 180 days after the transfer of the property to the EAT.
 - i. The replacement property is transferred to you, either directly or indirectly through a qualified intermediary under IRC Section 1031 Like-Kind Exchanges rules.
 - ii. The relinquished property is transferred to a person other than you or a disqualified person. A disqualified person includes a person who has been your employee, attorney, accountant, investment banker or broker, or real estate agent or broker within the 2-year period before the transfer of the relinquished property.
 - c. The combined time period the relinquished property and replacement property are held in the QEAA cannot be longer than 180 days.
5. Exchange Accommodation Titleholder (“EAT”). The EAT must meet all the following requirements.
 - a. Hold ownership at all times from the date of acquisition of the replacement property until the replacement property is transferred
 - b. Be someone other than you or a disqualified person, as defined above.
 - c. Be subject to federal income tax.
6. Permissible Arrangements. Property will not fail to be treated as being held in a QEAA as a result of certain legal or contractual arrangements which assist the taxpayer in insuring that the replacement property will become the taxpayer’s property under the QEAA. For example, the taxpayer may guarantee the funds necessary for the EAT to acquire the replacement property; the taxpayer may advance funds to the EAT related to the replacement property; the taxpayer may lease the replacement property from the EAT; the taxpayer may act as a supervisor or contractor to improve the replacement property during the EAT’s ownership of the same; and, the taxpayer and EAT may enter into an agreement obligating the EAT to sell the replacement property to the taxpayer. In fact most of the preceding arrangements will necessarily be a part of any “reverse” tax deferred exchange.