

CREATIVE STRATEGY TO SECURE 360 DAYS TO FACILITATE A LIKE-KIND EXCHANGE

IRC Code Sec. 1031 allows for a current deferral of gain or loss on the exchange of like-kind property held for productive use in a trade or business or for investment property if certain statutory identification and replacement period requirements are met.

However, the Internal Revenue Service issued guidance 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, resulting in a potential 360-day period to complete and exchange.

Generally, the like-kind exchange rules include a strict 45-day identification period rule in which a replacement property must be identified and a similarly strict exchange period rule in which the exchange of the properties must generally occur within the 180-day period.

In a reverse exchange, the accommodating party can only hold the replacement property for 180 days so 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.

However, if the parked replacement property is one of several replacement properties desired by the taxpayer, 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 case, the exchange transaction spans two exchange periods starting with the accommodator's acquisition of the parked and ending on the exchanger's acquisition of the last replacement property—potentially spanning 360 days.

Consider the following example:

An exchanger in Wayne, NJ owns a retail building which he contracted to sell for \$5 million, to close in December 2010. The exchanger would like to take advantage of certain existing opportunities to purchase property in the Northeast at a significant discount. The investor negotiates to purchase one such property in Jericho, NY for \$2 million. The investor acquires this property using a reverse exchange which closes in June 2010. When the relinquished Wayne property is sold in December 2010 as part of a regular delayed exchange, the net sale proceeds are used to purchase the parked Jericho replacement property held by the accommodator. In the second half of the exchange transaction, the exchanger has 45 days following the sale of the relinquished property to identify other suitable replacement property to spend the remaining \$3 million needed to obtain 100 percent deferral and a maximum of 180 days to close on one or more identified replacement properties.

For further information on this or other like-kind exchange-related matters, please contact Joseph A. Tighe, CPA, a J.H. Cohn tax partner, at 973-618-6243 or via email at jtighe@jhcohn.com, or your J.H. Cohn engagement partner at 877-704-3500.

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