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§1031 Exchange  
Solutions Nationwide

## Reverse and Improvement Exchange Parking Arrangements

### National Reverse & Improvement Division

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Member: Federation of Exchange Accommodators

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**IPX1031<sup>®</sup>** has provided its clients with  
**Superior Qualified Intermediary Services**  
for over two decades.

**Revenue Procedure 2000-37  
A Safe Harbor**

The status of a “reverse like-kind exchange” as a valid tax planning strategy under Internal Revenue Code Section 1031 (IRC §1031) has been recognized by the Internal Revenue Service, especially if the transaction falls within the scope of the safe harbor guidelines for parking arrangements specified in Revenue Procedure 2000-37.

A reverse like-kind exchange, or parking arrangement is the flip side of a deferred (delayed) exchange and occurs when the taxpayer (Exchanger) directly or indirectly acquires a likekind replacement property before disposing of their relinquished property. If the parking arrangement falls within the guidelines of Revenue Procedure 2000-37, the Exchanger does not have to worry about selling their relinquished property prior to acquiring a replacement property. The effect of Revenue Procedure 2000-37 is to provide Exchangers with greater flexibility in timing the acquisition and disposition of their real or personal investment property in a like-kind exchange.

Your Regional IPX1031<sup>®</sup> office can provide you with more information regarding Revenue Procedure 2000-37 and reverse and improvement exchange parking arrangements.

**Terminology for Reverse  
and Improvement Exchanges**

Revenue Procedure 2000-37 introduces new terms and phrases to tax deferred exchanges:

**EAT = Exchange Accommodation Titleholder.**

An entity that is treated as the owner of the parked property for federal income tax purposes. The EAT cannot be a disqualified person as defined in the Treasury Regulations for IRC §1031.

**QEA Arrangement = Qualified Exchange Accommodation Arrangement.**

The understanding between the EAT and the Exchanger, for the EAT to hold the parked property for the benefit of the Exchanger, to allow the Exchanger to facilitate a like-kind exchange under IRC §1031.

**QEAA = Qualified Exchange Accommodation Agreement.**

The written agreement between the EAT and the Exchanger to park either the Exchanger’s relinquished or replacement property and which is drafted pursuant to the safe harbor requirements specified in Revenue Procedure 2000-37.

**QJO = Qualified Indicia of Ownership.**

The requirement of the QEAA that the EAT must have either legal title to the parked property or some other indicia of ownership, such as a contract for deed or the ownership of all of the ownership interests in a disregarded entity that holds legal title to the parked property.

**“Like-Kind” Property**

The “like-kind” property requirement of IRC §1031 also applies to reverse and improvement exchanges. To qualify for an exchange the Exchanger’s relinquished and replacement properties must be property that has been and will be held either for productive use in a trade or business or for investment. In a real estate exchange all real estate is considered like-kind to all other real estate but real estate is not like-kind to personal property. By contrast, in a personal property exchange, to satisfy the like-kind requirement the property must be in either the same General Asset Class or Product Class or be generally considered of “like-kind” as defined in the U.S. Treasury Regulations.



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# Investment Property Exchange Services, Inc.

Security for the client's exchange is the number one concern at Investment Property Exchange Services, Inc. (IPX1031®). As a subsidiary corporation of Fidelity National Financial, Inc. (NYSE:FNF), IPX1031® has the strength and security of the nation's largest provider of title insurance, a \$100 Million fidelity bond and \$30 Million in professional liability insurance. IPX1031® takes its obligations to its clients very seriously. IPX1031® utilizes only special purpose entities to hold title to the Exchanger's property and follows strict guidelines for evaluating insurance requirements, potential environmental hazards, and third-party debt obligations to minimize the risks of holding title and to provide Exchangers with the assurance that their parked property and their exchange funds are secure with IPX1031®.

## Use Caution When Choosing the "EAT"

Although Revenue Procedure 2000-37 has removed some of the Exchanger's tax risk for reverse like-kind exchanges structured within its guidelines, reverse and improvement exchanges are far from risk free. It is critical for Exchangers to understand that Exchange Accommodation Titleholders (EAT) are not equal and that the service and security available from EAT's vary greatly. IPX1031® has the necessary expertise, strength and security to protect both the Exchanger and the EAT by overcoming each of these concerns and providing the Exchanger with a smooth reverse or improvement exchange parking arrangement.

**Bankruptcy.** Bankruptcy of an EAT is probably the ultimate catastrophe for an Exchanger. While the bankruptcy courts have generally given reverse exchange taxpayers some relief, Exchangers faced with the bankruptcy of their EAT will undoubtedly incur significant legal expenses to get their property released from the bankruptcy estate. In addition to the monetary cost, bankruptcy courts may not be sensitive to the 180-day safe-harbor reverse exchange time deadline.

**Liens.** There are many varieties of liens that can attach during an EAT's ownership of the parked property. The best protection an Exchanger can have is to make sure that the EAT has the financial resources to deal with any involuntary liens that may be attached to the parked property that may arise from other EAT transactions.

**Irresponsible Business Practices.** The Exchanger needs to make sure that the EAT follows sound business practices to ensure a safe and smooth parking transaction. Several important issues of concern are: Does the EAT require hazard and liability insurance naming the EAT as an additional insured? Does the EAT require a Phase I environmental site assessment to verify that the property does not have any environmental hazards that would require expensive remediation? Does the EAT use separate special purpose entities to hold title to each parked property?



## Important Timing Considerations

The time deadlines for reverse like-kind exchanges in Revenue Procedure 2000-37 parallel the deferred exchange time deadlines of IRC §1031. As in delayed exchanges, Exchangers desiring to obtain the benefit of the safe harbor must meet the 45-day and 180-day time deadlines in Revenue Procedure 2000-37.

The first of the safe-harbor exchange deadlines occurs on the 45th day after the EAT acquires the parked property. On or before midnight on the 45th day, the Exchanger must identify, in writing, the potential relinquished properties for the exchange. The property identification is not necessary if the parking transaction requires the EAT to park the relinquished property.

To comply with the second of the safe-harbor exchange deadlines, the EAT must then transfer either a parked replacement property to the Exchanger or a parked relinquished property to a third party on or before the 180th day after the EAT acquired the parked property.

It is important to remember that the 180-day parking period outlined in Revenue Procedure 2000-37 and the 180-day exchange period of IRC §1031 work independently of one another and the Exchanger must satisfy the requirements of both to receive the desired tax deferred exchange treatment.

## Permissible Safe Harbor Arrangements

Revenue Procedure 2000-37 provides Exchangers with great latitude and does not require the Exchanger and the EAT to deal with each other on an arm's length basis for several types of legal and contractual arrangements. Included on this safe harbor list are arrangements that allow the following: (1) the Exchanger can loan funds to the EAT, even if the loan does not bear interest, and can guaranty funds loaned by a third-party to the EAT; (2) the parked property can be leased to the Exchanger for use or occupancy without paying the EAT a market rent; (3) the Exchanger can control and manage the construction of improvements on the parked property, or even act as general contractor; (4) the Exchanger can guaranty the obligations of the EAT to third parties and can indemnify the EAT for losses; (5) The QEAA can contain contract "puts" and "calls" that allow the Exchanger to take the parked property from the EAT at a fixed price, or can provide a contract price that accounts for the "true" fair market value of the parked property; and (6) the EAT can also act as the Qualified Intermediary in the exchange transaction.

# Parking Structures for Reverse and Improvement Exchanges

There are four main structures for parking arrangements. Three of the four structures require the EAT to step into the place of the Exchanger and to acquire title to the replacement property. The fourth variation requires the EAT to acquire title to the relinquished property from the Exchanger. The details involved in each structure are available in the IPX1031 "Brief Exchange" publication available from your Regional IPX1031® office. Diagrams of the two most common parking arrangements are illustrated below.

