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IRS nonacquiescence: Like-kind “reverse exchange” when title held by exchange facilitator

The IRS has released an Action on Decision (AOD) announcing nonacquiescence to an August 2016 opinion of the U.S. Tax Court, in which the court held that a property “reverse exchange” qualified for section 1031.

In *Estate of Bartell v. Commissioner*, 147 T.C. 140 (August 10, 2016), the transaction at issue was a “reverse exchange” in which improvements were constructed on the replacement property while the property was held by a third-party exchange facilitator. The transaction occurred before the issuance of Rev. Proc. 2000-37 (the reverse exchange safe harbor), and the Tax Court found that the existing case law did not provide any specific limit on the period of time that a third-party exchange facilitator may hold title to the replacement property before the exchange of properties must occur.

In reaching its decision, the Tax Court specifically rejected the IRS’s position that, prior to Rev. Proc. 2000-37, a third-party exchange facilitator must acquire the benefits and burdens of ownership of the property. Read the Tax Court’s 63-page [opinion](#) [PDF 224 KB] and read [TaxNewsFlash-United States](#) for an initial description of the case.

AOD 2017-06—appearing in the [Internal Revenue Bulletin 2017-33](#) [PDF 164 KB]—states the IRS nonacquiescence relates to the Tax Court’s holding that the taxpayer’s sale and acquisition of business property qualifies as a like-kind exchange under section 1031 even though 17 months before the exchange, an accommodating party facilitating the transaction acquired title to the replacement property and the taxpayer acquired the benefits and burdens of ownership of the property.

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