

.03 Generally, only the payer may sign the letter requesting the extension for recipient copies. A transmitter must have a contractual agreement with the filers to submit extension requests on their behalf. This should be stated in your letter of request for recipient copy extensions. If you are requesting an extension for multiple payers electronically or magnetically, you must use the format specifications in Sec. 3.

.04 Requests for a **recipient** extension of time to file for more than 50 payers are **required** to be submitted electronically or magnetically. IRS encourages requests for 10 to 50 payers to be filed electronically or magnetically. (See Sec. 3, for the record layout.) The request may be filed electronically, on tape cartridges, or 3½-inch diskettes.

Sec. 5. Form 8508, Request for Waiver From Filing Information Returns on Magnetic Media

.01 If a payer is required to file on magnetic media but fails to do so (or fails to file electronically in lieu of magnetic media filing) and does not have an approved waiver on record, the payer will be subject to a penalty of \$50 per return in excess of 250. (For penalty information, refer to the Penalty Section of the *2004 General Instructions for Forms 1099, 1098, 5498, and W-2G*.)

.02 If payers are required to file original or corrected returns on magnetic media, but such filing would create an undue hardship, they may request a waiver from these filing requirements by submitting Form 8508, Request for Waiver From Filing Information Returns on Magnetic Media, to IRS/MCC. Form 8508 can be obtained on the IRS website at www.irs.gov or by calling toll-free 1-800-829-3676.

.03 Even though a payer may submit as many as 249 corrections on paper, IRS encourages electronic or magnetic filing of corrections. Once the 250 threshold has been met, filers are required to submit any returns of 250 or more electronically or magnetically. However, if a waiver for original documents is approved, any corrections for the same type of returns will be covered under this waiver.

.04 Generally, only the payer may sign Form 8508. A transmitter may sign if given power of attorney; however, a letter signed by the payer stating this fact must be attached to Form 8508.

.05 A transmitter must submit a separate Form 8508 for each payer. Do not submit a list of payers.

.06 All information requested on Form 8508 must be provided to IRS for the request to be processed.

.07 The waiver, if approved, will provide exemption from the magnetic media filing requirement for the current tax year only. Payers may not apply for a waiver for more than one tax year at a time; application must be made each year a waiver is necessary.

.08 Form 8508 may be photocopied or computer-generated as long as it contains all the information requested on the original form.

.09 Filers are encouraged to submit Form 8508 to IRS/MCC at least 45 days before the due date of the returns. Generally, IRS/MCC does not process waiver requests until January. Waiver requests received prior to January are processed on a first come, first serve basis.

.10 All requests for a waiver should be sent using the following address:

IRS—Martinsburg Computing Center
Information Reporting Program
240 Murall Drive
Kearneysville, WV 25430

.11 File Form 8508 for the W-2 series of forms with IRS/MCC, not SSA.

.12 Waivers are evaluated on a case-by-case basis and are approved or denied based on criteria set forth in the regulations under section 6011(e) of the Internal Revenue Code. The transmitter must allow a minimum of 30 days for IRS/MCC to respond to a waiver request.

.13 If a waiver request is approved, keep the approval letter on file. **DO NOT** send a copy of the approved waiver to the service center where the paper returns are filed.

.14 An approved waiver only applies to the requirement for filing information returns electronically/magnetically. The payer must still timely file information returns on the official IRS paper forms or an acceptable substitute form with the appropriate service center.

*26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part 1, §§ 1031; 1.1031(a)-1; 1.1031(k)-1.)*

Rev. Proc. 2004-51

SECTION 1. PURPOSE

This revenue procedure modifies sections 1 and 4 of Rev. Proc. 2000-37,

2000-2 C.B. 308, to provide that Rev. Proc. 2000-37 does not apply if the taxpayer owns the property intended to qualify as replacement property before initiating a qualified exchange accommodation arrangement (QEAA).

SECTION 2. BACKGROUND

.01 Section 1031(a) provides that no gain or loss is recognized on the exchange

of property held for productive use in a trade or business or for investment if the property is exchanged solely for property of like kind that is to be held either for productive use in a trade or business or for investment.

.02 Section 1031(a)(3) allows taxpayers to structure deferred like-kind exchanges. Under § 1031(a)(3), property may be treated as like-kind property if it is (A) identified as property to be received in

the exchange (replacement property) on or before the day that is 45 days after the date on which the taxpayer transfers the property relinquished in the exchange (relinquished property), and (B) received before the earlier of the date that is 180 days after the date on which the taxpayer transfers the relinquished property, or the due date (determined with regard to extensions) for the transferor's federal income tax return for the taxable year in which the transfer of the relinquished property occurs.

.03 Rev. Proc. 2000-37 addresses "parking" transactions. See sections 2.05 and 2.06 of Rev. Proc. 2000-37. Parking transactions typically are designed to "park" the desired replacement property with an accommodation party until such time as the taxpayer arranges for the transfer of the relinquished property to the ultimate transferee in a simultaneous or deferred exchange. Once such a transfer is arranged, the taxpayer transfers the relinquished property to the accommodation party in exchange for the replacement property, and the accommodation party transfers the relinquished property to the ultimate transferee. In other situations, an accommodation party may acquire the desired replacement property on behalf of the taxpayer and immediately exchange that property with the taxpayer for the relinquished property, thereafter holding the relinquished property until the taxpayer arranges for a transfer of the property to the ultimate transferee. Rev. Proc. 2000-37 provides procedures for qualifying parking transactions as like-kind exchanges in situations in which the taxpayer has a genuine intent to accomplish a like-kind exchange at the time that the taxpayer arranges for the acquisition of the replacement property and actually accomplishes the exchange within a short time thereafter.

.04 Section 4.01 of Rev. Proc. 2000-37 provides that the Internal Revenue Service will not challenge the qualification of property held in a QEAA "as either 'replacement property' or 'relinquished property' (as defined in § 1.1031(k)-1(a)) for purposes of § 1031 and the regulations thereunder, or the treatment of the exchange accommodation titleholder as the beneficial owner of such property..." Thus, taxpayers are not required to es-

tablish that the exchange accommodation titleholder bears the economic benefits and burdens of ownership and is the "owner" of the property. The Service and Treasury Department are aware that some taxpayers have interpreted this language to permit a taxpayer to treat as a like-kind exchange a transaction in which the taxpayer transfers property to an exchange accommodation titleholder and receives that same property as replacement property in a purported exchange for other property of the taxpayer.

.05 An exchange of real estate owned by a taxpayer for improvements on land owned by the same taxpayer does not meet the requirements of § 1031. See *DeCleene v. Commissioner*, 115 T.C. 457 (2000); *Bloomington Coca-Cola Bottling Co. v. Commissioner*, 189 F.2d 14 (7th Cir. 1951). Moreover, Rev. Rul. 67-255, 1967-2 C.B. 270, holds that a building constructed on land owned by a taxpayer is not of a like kind to involuntarily converted land of the same taxpayer. Rev. Proc. 2000-37 does not abrogate the statutory requirement of § 1031 that the transaction be an exchange of like-kind properties.

.06 The Service and Treasury Department are continuing to study parking transactions, including transactions in which a person related to the taxpayer transfers a leasehold in land to an accommodation party and the accommodation party makes improvements to the land and transfers the leasehold with the improvements to the taxpayer in exchange for other real estate.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers applying the safe harbor rules set forth in Rev. Proc. 2000-37 in structuring like-kind exchanges.

SECTION 4. APPLICATION

.01 Section 1 of Rev. Proc. 2000-37 is modified to read as follows:

SECTION 1. PURPOSE

This revenue procedure provides a safe harbor under which the Internal Revenue Service will treat an exchange accommodation titleholder as the beneficial owner of property for federal income tax purposes if the property is held in a "qualified

exchange accommodation arrangement" (QEAA), as defined in section 4.02 of this revenue procedure.

.02 Section 4.01 of Rev. Proc. 2000-37 is modified to read as follows:

SECTION 4. QUALIFIED EXCHANGE ACCOMMODATION ARRANGEMENTS

.01 *In general.* The Service will treat an exchange accommodation titleholder as the beneficial owner of property for federal income tax purposes if the property is held in a QEAA. Property held in a QEAA may, therefore, qualify as either "replacement property" or "relinquished property" (as defined in § 1.1031(k)-1(a)) in a tax-deferred like-kind exchange if the exchange otherwise meets the requirements for deferral of gain or loss under § 1031 and the regulations thereunder.

.03 Section 4.05 is added to Rev. Proc. 2000-37 to read as follows:

.05 *Limitation.* This revenue procedure does not apply to replacement property held in a QEAA if the property is owned by the taxpayer within the 180-day period ending on the date of transfer of qualified *indicia* of ownership of the property to an exchange accommodation titleholder.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2000-37 is modified.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for transfers on or after July 20, 2004, of qualified *indicia* of ownership to exchange accommodation titleholders (as described in section 4.02(1) of Rev. Proc. 2000-37).

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is J. Peter Baumgarten of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Mr. Baumgarten at (202) 622-4920 (not a toll-free call).