

Reverse Exchanges or ‘Parking’ Transactions

- Designed to “park” replacement property or relinquished property with an accommodating party until the taxpayer arranges for transfer of relinquished property to a buyer in a simultaneous or deferred exchange.

Reasons for Reverse Exchanges

- **Contingencies on relinquished property not removed in time**
- **No buyer for relinquished property**
- **Prevent loss of earnest money deposit**
- **Prevent loss of financing commitment**
- **Locate replacement property first**

Revenue Procedure 2000-37

- **Effective September 15, 2000**
- **Terms:**
 - **QEAA = “qualified exchange accommodation arrangement”**
 - **EAT = “exchange accommodation titleholder”**
 - **QEA agreement = qualified exchange accommodation agreement**
 - **QIO = “qualified indicia of ownership”**

Qualified Exchange Accommodation Arrangements

- **EAT restrictions**
- **Intent requirements**
- **Written agreement requirements**
- **Time Limits:**
 - **45 day relinquished property identification**
 - **180 day transfer time limit (within safe harbor)**
 - **Combined relinquished & replacement hold periods don't exceed 180 days (within safe harbor)**

What is an 'EAT'?

- Not taxpayer or disqualified person
- Subject to federal income tax
- Qualified intermediary and EAT can be the same entity
- Holds legal title or other QIO, e.g. contract for deed
 - Example of structure:



Intent

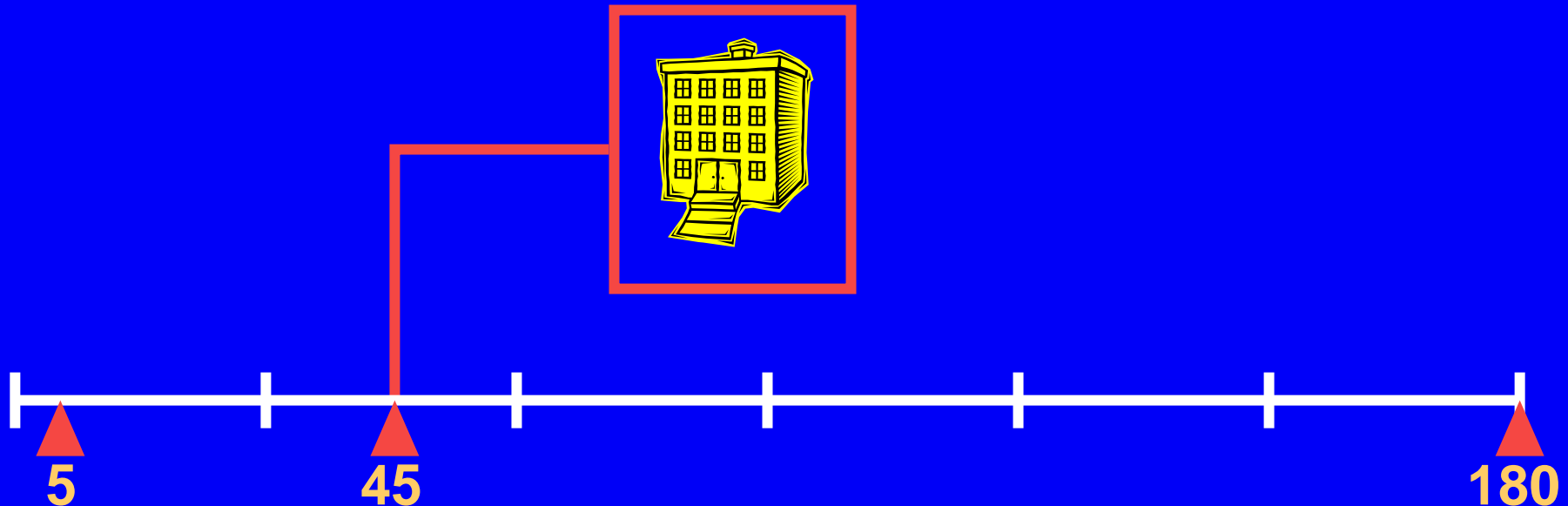
- Intent to hold property under I.R.C. § 1031 & Rev. Proc. 2000-37 as either
 - Replacement property; or
 - Relinquished property
- At time of transfer to the EAT

Written Agreement

- **EAT holds for taxpayer's benefit to facilitate exchange under section 1031 and Rev. Proc. 2000-37**
- **Taxpayer and EAT agree to report the property's acquisition, holding & disposition in accordance with Rev. Proc. 2000-37**
- **EAT treated as beneficial owner for federal tax purposes**
 - **Practical Issue: Who depreciates?**
- **Entered into within 5 days after transfer**

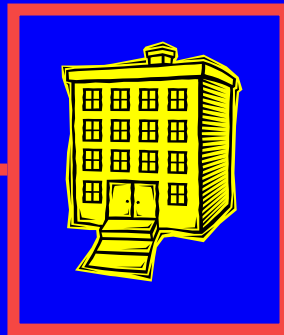
45 Day Identification

- Relinquished property identified no later than 45 days after transfer of the replacement property
 - Identification rules apply. Treas. Reg. 1.1031(k)-1(c)(4)



180 Day Transfer

- No later than 180 days after transfer of property to the EAT, the property must be transferred
 - as relinquished property to the ultimate transferee, or
 - as replacement property to the taxpayer



Combined Hold Time

- **The combined time period that the relinquished property and the replacement property are held in a QEAA does not exceed 180 days (safe harbor)**
- **Practical Issue: what if you cannot meet the 180 day period because of circumstances?**
 - **Construction delays**
 - **Cannot sell relinquished property**
 - **Agency issues appear beyond 180 days**
 - **Outside reverse exchange safe harbor**

Permitted Agreements

- **EAT may be Qualified Intermediary. Not recommended.**
- **Taxpayer may guarantee or indemnify EAT**
- **Taxpayer may loan or advance funds or guarantee a loan**
- **EAT may lease the property to the Taxpayer**

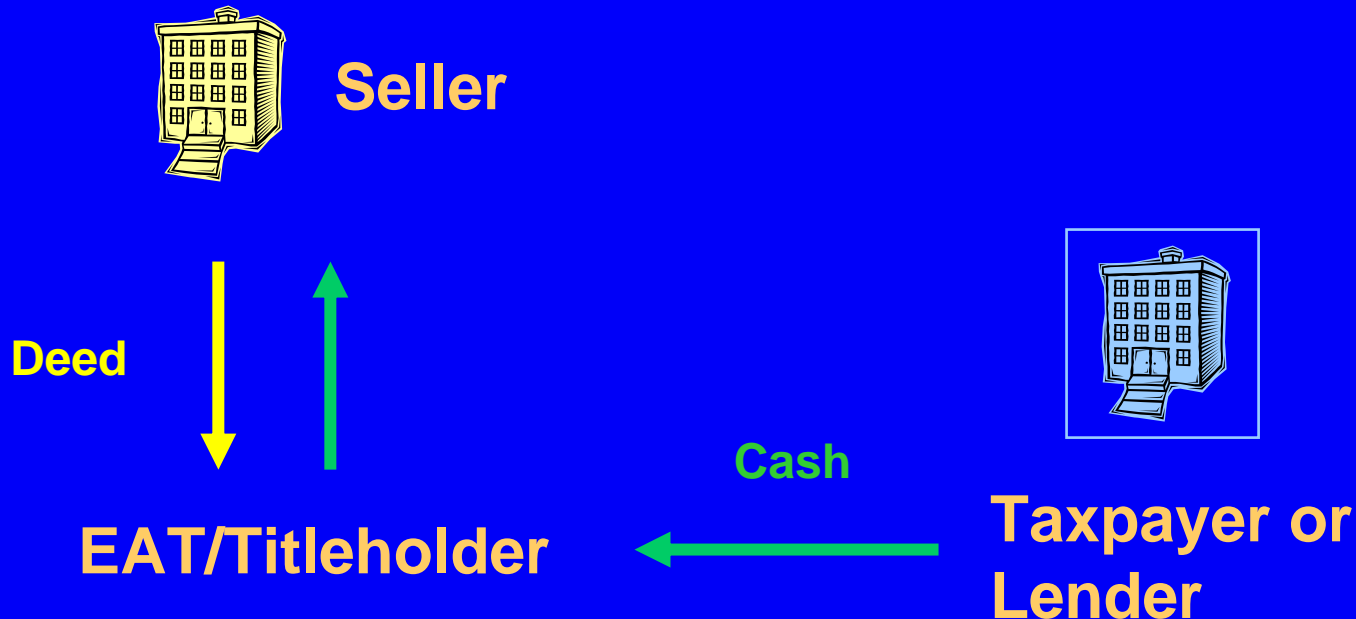
Permitted Agreements

- Taxpayer may manage the property or supervise construction
- Purchase and sale agreements including puts or calls at fixed or formula prices
- Adjustments for increases or decreases in value during the hold period

Reverse Exchange Process Examples

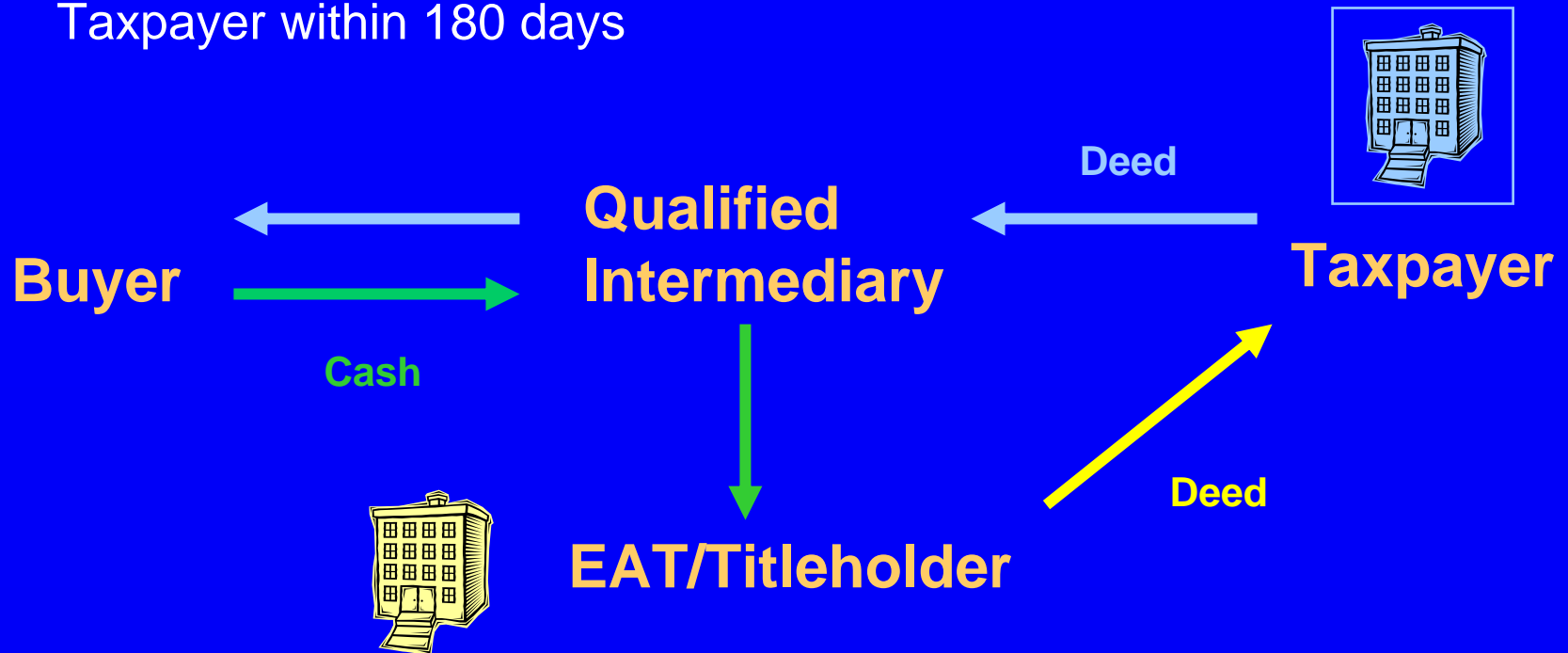
Replacement Property - “Exchange Last”

1. Contract between Seller and Taxpayer
2. QEAA between Taxpayer and EAT
3. Contract assigned to EAT
4. EAT buys replacement property with funds from Taxpayer or other financing
5. EAT leases or confers management to taxpayer
6. Taxpayer identifies one or more relinquished properties



Replacement Parked – 2nd Leg

7. Contract between Taxpayer and Buyer
8. Exchange agreement between Taxpayer and QI
9. Contract assigned to QI and right to buy replacement property assigned to QI
10. Closing on relinquished property with direct deed to Buyer
11. Closing on replacement property with deed from EAT to Taxpayer within 180 days



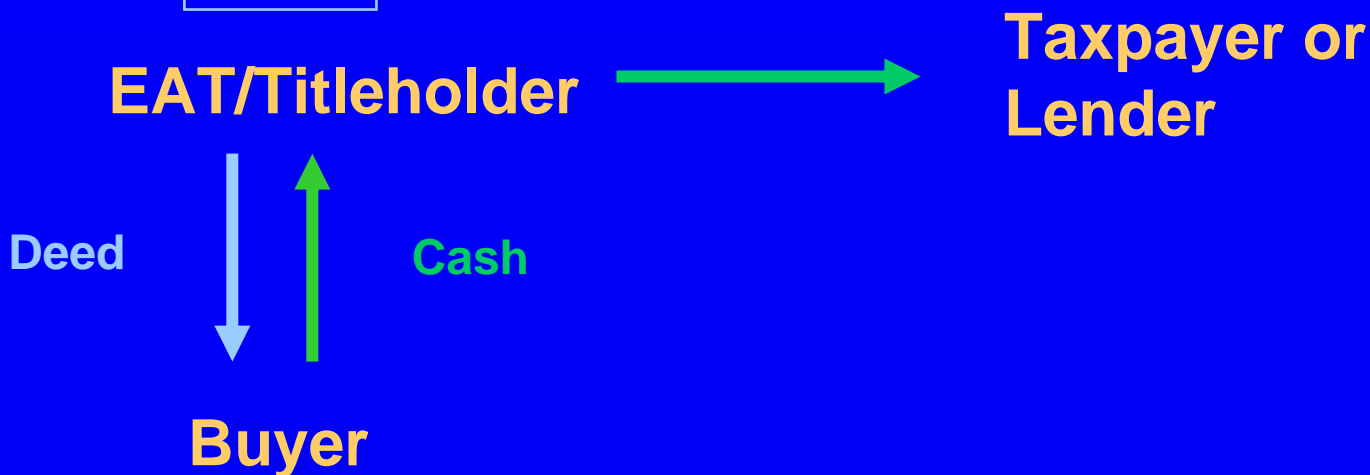
Relinquished Parked - “Exchange First”

1. Contract between Seller and Taxpayer
2. Exchange agreement and rights assigned from Taxpayer to QI
3. QEAA between Taxpayer and EAT
4. QEAA and Contract assigned from Taxpayer to QI
5. Transfer of relinquished property to EAT
6. Replacement property closing with deed to Taxpayer
7. Identification of relinquished property



Relinquished Parked – 2nd Leg

8. Contract between Taxpayer and Buyer
9. Contract assigned to EAT
10. Closing on relinquished property with deed from EAT to Buyer within 180 days



Other Cases of Interest

- **Revenue Procedure 2004-51**
 - Places restrictions on ownership for improvement exchanges
- **TAM 200039005**
 - “Exchange Last” structure
 - Written agreement in place between Taxpayer and EAT before EAT acquires title?
- **DeCleene v. Commissioner, 115 T.C. No. 34 (Nov. 17, 2000)**
 - Build to suit with reverse exchange
 - Rev. Proc. 2000-37 did not apply
 - EAT did not have any benefits or burdens of ownership.