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“REVERSE STARKER” LIKE KIND EXCHANGES
— by Neil E. Harl

The 1979 decision of Starker v. United States \(^1\) revolutionized the world of like-kind exchanges\(^2\) by allowing the replacement property to be acquired months or even years after the disposition of the property disposed of in the exchange.\(^3\) While the Congress later limited the Starker exchange approach by imposing limits on the identification of the replacement property (on or before 45 days after the date of transfer of the property given up in the exchange)\(^4\) and on the time within which the replacement property must have been received (the earlier of 180 days after the date of transfer of the taxpayer’s property or the due date, including extensions, of the transferor’s tax return for the tax year in which the transfer occurred),\(^5\) neither the Congress nor the Internal Revenue Service had officially addressed the possibility of a “reverse Starker” like-kind exchange \(^6\) until publication of Rev. Proc. 2000-37\(^7\) in September of 2000. So-called reverse-Starker exchanges commonly involve acquiring the replacement property before relinquishing the property to be disposed of in the exchange.

The reverse-Starker safe-harbor

In publishing Rev. Proc. 2000-37,\(^8\) the Internal Revenue Service has issued guidelines for a “safe harbor” for reverse like-kind exchanges that involve “parking” 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.\(^9\) 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 then transfers the relinquished property to the ultimate transferee.\(^10\)

The guidelines state that IRS will not challenge the transaction if the property is held in a “qualified exchange accommodation arrangement” (QEAA).\(^11\) Property is considered to be held in a QEAA if all of the following requirements are met—

- Qualified indicia of ownership of the property is held by a person (the “exchange accommodation title holder or EAT) who is not the taxpayer or a disqualified person and either the EAT is subject to income tax or if the EAT is a partnership or S corporation for tax purposes, more than 90 percent of its interests or stock are owned by partners or shareholders who are subject to income tax.
- At the time the qualified indicia of ownership of the property is transferred to the EAT, it is the taxpayer’s bona fide intent that the property represent either replacement property or relinquished property in an exchange that is intended to qualify for...

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The plaintiff was injured while riding on a practice sled pulled by two horses used in pulling competitions. The plaintiff fell off the sled when the horses suddenly started to move after the sled had been halted. The plaintiff sued for negligence in the design and maintenance of the sled. The defendant argued that the defendant was not liable for the injury under the equine immunity statute, Wis. Stat.

**CASES, REGULATIONS AND STATUTES**

by Robert P. Achenbach, Jr.

$895.481$ and the recreational immunity statute, Wis. Stat. $895.52$. Only the first statute was applied in this case. The defendant argued that (1) the equine immunity statute applied only to equine professionals and (2) that an exception applied because the equipment was defective. The court held that the statute did not limit its application to professionals. The court also held that the statute applied to the accident involved in this case because there is an inherent risk that horses will move suddenly and without warning. The court held that the claim of a defect in the design and maintenance of the sled did not bar

**ANIMALS**

**EQUINE IMMUNITY STATUTE.** The plaintiff was injured while riding on a practice sled pulled by two horses used in pulling competitions. The plaintiff fell off the sled when the horses suddenly started to move after the sled had been halted. The plaintiff sued for negligence in the design and maintenance of the sled. The defendant argued that the defendant was not liable for the injury under the equine immunity statute, Wis. Stat.

**FOOTNOTES**

2. I.R.C. § 1031.
3. Starker v. United States, 602 F.2d 1341 (9th Cir. 1979).
4. I.R.C. § 1031(a)(3)(A). See Smith v. Comm’r, T.C. Memo. 1997-109, aff’d, 97-2 U.S. Tax Cas. (CCH) ¶ 50,928 (4th Cir. 1997) (no proof that replacement properties identified within 45 days after sale dates); Dobrich v. Comm’r, 99-2 U.S. Tax Cas. (CCH) ¶ 50,826 (9th Cir. 1999) (failure to identify replacement property within 45 days; also, taxpayers in constructive receipt of income).
5. I.R.C. § 1031(a)(3)(B); Treas. Reg. § 1.1031(k)-1(b)(2)(ii). See St. Laurent v. Comm’r, T.C. Memo. 1996-150 (replacement property transfer not completed within 180-day period; replacement property not like-kind); Christensen v. Comm’r, T.C. Memo. 1996-254, aff’d, 98-1 U.S. Tax Cas. (CCH) ¶ 50,352 (9th Cir. 1998) (transfers not completed within specified period; argument unsuccessful that four month extension of time to file could have been obtained).
6. The preamble to the final regulations on like-kind exchanges stated that the deferred exchange rules under I.R.C. § 1031(a)(3) do not apply to reverse-Starker exchanges (where the replacement property is acquired before the relinquished property is transferred) and that the final regulations do not apply to such exchanges. T.D. 8346, 1991-1 C.B. 150, 151. The preamble to the final regulations stated that the Department of the Treasury and the Internal Revenue Service would continue to study the applicability of the like-kind exchange rules to such transactions. Id.
8. I.R.B. 2000-40, 308 (allows accommodation party to be treated as owner of the property for tax purposes, enabling transactions to qualify as like-kind exchange).
9. Id.
10. Id.
11. Id.
13. The revenue procedure (Rev. Proc. 2000-37, I.R.B. 40, 308) does not address why the safe harbor provisions do not state that the property must be received by the earlier of 180 days after the date of transfer of the taxpayer’s property or the due date, including extensions, of the transferor’s tax return for the tax year in which the transfer occurred. I.R.C. § 1031(a)(3)(B).
15. Id.
17. Id.