

VEDDER PRICE

Real Estate Bulletin

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About Vedder Price

Vedder, Price, Kaufman & Kammholz is a national, full-service law firm with approximately 200 attorneys in Chicago, New York City and Livingston, New Jersey.

Real Estate

The Real Estate Practice Group at Vedder, Price, Kaufman & Kammholz is organized and staffed to provide a full range of legal services to its client base of developers, for-profit and not-for-profit owners, property managers, brokers, syndicators and investors, lenders, tenants, contractors, and architects. We assist clients throughout the United States, Canada, Mexico, and the United Kingdom on such matters as:

- ✦ Land use and zoning
- ✦ Acquisition and development of commercial, industrial, hotel, and multi-family

September, 2000

IRS ADOPTS SAFE HARBOR FOR REVERSE EXCHANGES

On Friday, September 15, 2000, the Internal Revenue Service ("IRS") finally issued its

Reverse Exchange Revenue Proclamation. This means that the IRS has, at long last, formally created a safe harbor for the reverse exchange procedure that we have been using based on *implied* authority under Section 1031 of the Internal Revenue Code.

For our more conservative clients, this Proclamation provides the comfort to undertake a reverse exchange without fear of IRS disqualification. For those who are unfamiliar with reverse exchanges, they occur when you must purchase your new facility (the "replacement" property) before you sell your existing facility (the "relinquished" property). This sequence of events is the opposite or "reverse" of the usual "sell first, buy second" process. These reverse exchange situations arise for myriad reasons, such as a seller's need to close by a given date for tax or other reasons and a business' need to install equipment or to complete remodeling before relocating.

The Proclamation endorses the procedure we have been using and adds a time constraint that was previously unknown. Briefly, the approved procedure permits you to acquire the new facility and "park" it with a third-party accommodator for up to six months while you conclude the sale of your existing facility. The proceeds of sale from the existing facility are then paid to a qualified intermediary, which purchases your new facility from the third-party accommodator. These transactions still must be done pursuant to written qualified exchange and accommodation agreements. Also, we continue to recommend using an exchange company as your third-party accommodator and qualified intermediary to eliminate disqualified third-party risks.

Some of you may be wondering how the purchase of the new

- projects
- ✂ Broker rights and remedies
- ✂ Financing securitization and synthetic leasing
- ✂ Architecture and construction agreements
- ✂ Leases and subleases
- ✂ Condominium and cooperative housing entities and homeowners' associations
- ✂ Property management
- ✂ Real estate tax assessment and exemption issues
- ✂ Adaptive re-use
- ✂ Litigation
- ✂ Environmental compliance and litigation

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facility is financed if the sale of the existing facility has not occurred and a third-party accommodator is the title holder. The Proclamation permits you to loan or advance funds to the third-party accommodator or to guarantee a loan or advance to the third-party accommodator. In the latter case, you make the arrangements with your financial institution to provide a loan to the third-party accommodator to purchase the new facility and you guarantee the loan. Your purchase agreement with the third-party accommodator is usually pledged as collateral for the loan along with the new facility. When you acquire the new facility from the third-party accommodator, you assume the loan. Either your "earnest money" on your purchase is applied to the payments, if any, due on the loan during the six-month period, or your loan contains an interest reserve for the initial payments.

If you have any questions regarding tax-deferred exchange transactions, please contact [Pearl Zager](#), practice leader for the Real Estate Group at Vedder Price, at 312/609-7548 or any other Vedder Price attorney with whom you have worked.

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