



EXCHANGOR CARRYBACK FINANCING ON THE RELINQUISHED PROPERTY

Often exchangors are requested to offer seller carryback financing on the Relinquished Property to the Buyer.

Carryback Financing on the Relinquished Property may jeopardize the exchangor's ability to properly complete an exchange because the amount of the carryback financing might *not* qualify for delayed forward exchange treatment unless the carryback financing is used to acquire the Replacement Property.

For there to be any chance for the carryback financing to qualify for the exchange, the Qualified Intermediary must be the Holder of the Promissory Note and the Beneficiary on the Deed of Trust (or other alternative financing instrument) given by the Relinquished Property Buyer.

The carryback financing may then be used to acquire the Replacement Property, or the Promissory Note may be sold to a third party and the cash proceeds used to purchase the Replacement Property

TRANSFERRING THE CARRYBACK FINANCING TO THE SELLER OF THE REPLACEMENT PROPERTY

If the Seller of the Replacement Property will accept the Note and Deed of Trust held by the Qualified Intermediary and the carryback financing is transferred to the Replacement Property Seller within the exchange time deadlines, the carryback financing will qualify as part the exchange.

TAX DEFERRED

The Seller of the Replacement Property may be taxed on the amount of the carryback financing if that financing is transferred to that seller as though he had received cash at closing depending upon the nature of the Note being transferred to him. It is unlikely that a Replacement Property Seller will be willing to accept such tax consequences in such an instance. Therefore, it is improbable that this methodology will be used by most exchangors successfully.

CONVERTING THE CARRYBACK FINANCING TO CASH

The exchangor could purchase the Note and Deed of Trust from the Qualified Intermediary, thus providing the cash necessary for the purchase of Replacement Property. The Qualified Intermediary could also sell the Note and Deed of Trust (normally at a discount) to a third party. The cash from the Note's sale could then be used by the Qualified Intermediary to purchase the Replacement Property.

The amount of discount taken to sell the Note a third party may be substantial. This discount could exceed the tax benefits of utilizing the Note in the exchange. It is wise to check the availability of selling such "unseasoned paper" before deciding to convert Seller carryback financing to cash.

In the event that the Qualified Intermediary is unsuccessful in either transferring the Note and Deed of Trust to the Replacement Property's Seller or selling the Note and Deed of Trust to a third party purchaser, the Note and Deed of Trust will be assigned to the exchangor at the conclusion of the exchange period.

The IRS has determined that the exchangor who receives this Note and Deed of Trust from the Qualified Intermediary at the conclusion of the exchange, because it was not sold or transferred, shall still be able to take advantage of the installment sale treatment of IRS §453 notwithstanding the holding of the Note and Deed of Trust by the Qualified Intermediary.

SPLIT THE PROPERTY AND SELL A PORTION FOR CASH AND A PORTION ON SELLER FINANCED TERMS

If the exchangor owns property free and clear, he may divide the transaction for exchange purposes into two (2) parts. Assume a \$200,000 apartment house with an offer of \$100,000 down and \$100,000 being financed on a Note and Deed of Trust at 10% over five years. The exchangor would sell an undivided one-half interest on the Note and Deed of Trust and receive §453 installment sale tax treatment on that portion. The seller would pay the taxes on the principal and interest in the years it is received. The balance of the property, the other undivided one-half interest, will go to the Qualified Intermediary and from the Qualified Intermediary to the Buyer. The Buyer will receive 100% of the property. The Qualified Intermediary will receive \$100,000 cash to be used for the acquisition of the replacement property.

THIS LITERATURE IS PRODUCED TO PROVIDE A GENERAL OVERVIEW OF THE TAX-DEFERRED EXCHANGE PROCESS. YOU SHOULD NOT DEPEND UPON THIS LITERATURE WHEN DETERMINING WHETHER OR NOT YOU MAY WANT TO COMPLETE A TAX-DEFERRED EXCHANGE. YOUR DECISION TO DO SO RESTS ENTIRELY WITH YOU, WITH THE ADVISE OF YOUR OWN ACCOUNTING AND LEGAL PROFESSIONAL, WHETHER THAT BE YOUR ACCOUNTANT, C.P.A. OR ATTORNEY. WE ARE QUALIFIED INTERMEDIARY'S AND ARE BY I.R.S. REGULATION PRECLUDED FROM ACTING AS YOUR QUALIFIED INTERMEDIARY IF WE HAVE BEEN YOUR ATTORNEY OR ACCOUNTANT DURING THE TWO(2) YEAR PERIOD BEFORE YOUR EXCHANGE. AS YOU CAN SEE, OUR SERVICES AS FACILITATOR DO NOT REPLACE THE TRULY PROFESSIONAL SERVICES OF YOUR ATTORNEY OR ACCOUNTANT!