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Member Alert

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Opinion Issued in *Estate of Bartell* Case

Long Awaited Taxpayer Victory Affects Construction, Reverse Exchanges; IRS has 90 Days to Appeal

The Tax Court finally issued an opinion in the *Estate of Bartell* case on August 10th, almost 10 years following the trial. The case dealt with a non-safe harbor reverse construction exchange where the accommodator did not put any equity into the project, the accommodation period lasted for 17 months, and the taxpayer guaranteed the construction loan.

The IRS argued that the appropriate test for a non-safe harbor reverse exchange was whether the accommodator had the substantial benefits and burdens of ownership. The court, however, ruled in favor of the taxpayer on the basis that the accommodator had not acted as the taxpayer's agent.

This decision currently appears to be a major victory for taxpayers who want to accomplish construction exchanges lasting more than 180 days as well as reverse exchanges that might exceed 180 days. However, the IRS has 90 days to appeal this decision and it is likely to do so.

Affirmation on appeal is not certain. Anyone seeking to rely on this opinion must be careful to avoid both language of agency in the exchange documents as well as features that might suggest an agency relationship.

Note that this exchange occurred in the Ninth Circuit. The Tax Court relied heavily on the fact that Ninth Circuit cases have allowed wide latitude in structuring exchanges.

We will be discussing this incredible development at the [Annual Conference](#) in more detail, including how to structure these exchanges, the implications outside of the Ninth Circuit, etc. Registration for the FEA 2016 Annual Conference on September 14th-16th is open now at www.1031.org.

[Read the *Estate of Bartell* opinion here.](#)

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