

Fall 2002 Newsletter

When does the transfer or receipt of property occur in a Like Kind Exchange? The beginning of the 45 day identification period and the 180 day exchange period are both triggered by the "transfer" of the first relinquished property. For Federal income tax purposes ownership of real property occurs upon the transfer of the "benefits and burdens" of ownership. The following are several factors that are considered in determining if ownership has transferred -

(1) whether legal title passed; (2) how the parties treat the transaction; (3) whether an equity was acquired in the property; (4) whether the contract creates a present obligation on the seller to execute and deliver a deed and a present obligation on the purchaser to make payments; (5) whether the right of possession is vested in the purchaser; (6) which party pays the property taxes; (7) which party bears the risk of loss or damage to the property; and (8) which party receives the profits from the operation and sale of the property. [from Chapter 6, "Tax-Free Exchanges Under Section 1031", by Jerry Long and Mary Foster, published by West Group.]

Most often we use the settlement date on the Settlement Statement (HUD-1) as the "transfer" date. Unfortunately, this date is often earlier than the actual transfer date due to a last minute delay in settlement.

Action: Exchangors should check their settlement statement and their 45 and 180 day suspense dates to be sure they reflect the proper "transfer" date.

Bonded and Insured. In today's changing world there are often assurances that must be in place for any business. We are no exception. Often we are asked what type of security we provide for exchangor funds during the exchange period. As a member of the Federation of Exchange Accommodators we have obtained an exclusive member fidelity bond, and errors and omissions insurance issued by Continental Casualty Company, a subsidiary of CNA Insurance. In addition, exchange escrow funds are only held in FDIC insured banks.

Transfer of the Relinquished Property to the Exchange Accommodation Titleholder. Some times the need arises for the taxpayer to get control of the eventual replacement property prior to the sale of the relinquished property. IRS Revenue Procedure 2000-37 allows for just that. A third party Exchange Accommodation Titleholder (EAT) can purchase either the replacement property or the relinquished property.

Recently, we served as the Qualified Intermediary in an exchange in which the EAT took title to the relinquished property thus permitting the taxpayer to purchase the replacement property in the proper sequence as part of a regular exchange.

The relinquished property then stays on the market and the EAT transfers it to the eventual buyer. This transfer must occur within 180 days after the EAT receives the relinquished property.

Reporting the Exchange. If you closed on your relinquished property in 2002, you must report the completed exchange on IRS Form 8824, 'Like Kind Exchange' as part of your normal tax return. **You may not file your tax return for 2002 until the exchange is completed.**

For those who closed on their relinquished property after October 17, 2002 and have not completed their exchange the end of the 180 exchange period is April 15, 2003, **unless** you file an on-time extension to get the full 180 days to complete the exchange. If the exchange is not completed and you fail to file an extension on time the IRS could claim April 15, 2003 ended your exchange period and thus disallow the exchange.