



Exchange News

Realty Exchange Corporation

Since 1990 - Your Nationwide Qualified Intermediary for Tax-Deferred Exchange of Real Estate.

Do You Need to File an On-Time Extension? If you closed on a relinquished property after October 18, 2004, and **will not receive your replacement property** until after the normal 2004 income tax filing due date (April 15, 2005 for individuals), you must file for an on-time extension for the filing of your 2004 federal tax return. Taxpayers use IRS Form 4868 to file for an automatic extension.

A Single Property Can Qualify for Both Exclusion and Deferral of Gain. New IRS Revenue Procedure 2005-14, effective January 27, 2005, applies to taxpayers who exchange a single property that satisfies the requirements for both the exclusion of gain from the exchange of a principal residence under §121, and the non-recognition of gain from the exchange of like-kind property under §1031.

To qualify for the principal residence exclusion of up to \$250,000 of gain (up to \$500,000 if married and filing jointly), the taxpayer must have owned and lived in the property for two of the last five years, but does not have to live in the property at the time of the exchange. To qualify for the §1031 like-kind exchange deferral of the gain, the taxpayer at the time of the exchange must be holding the property for rental, business or investment purposes, and the new replacement property must also be held for business, rental or investment purposes. The §121 exclusion is taken first. Any §1250 depreciation taken on the property after May 6, 1997, must be recaptured and may not be excluded under §121. However, it may be deferred under §1031. Boot received (both cash and/or debt reduction) of up to \$250,000 is excluded under §121. Additional boot may become taxable income.

In addition to the exchange of a principal residence converted to a rental or business property, the revenue procedure provides guidance and examples for when on one property there are two structures -- one used as a principal residence and one for business purposes. It also addresses the exchange of a single structure used partly as a personal residence and partly for business purposes (such as for a home office).

The importance of this revenue procedure is that it clearly recognizes that the sale and exchange of a single property may qualify for both the exclusion of gain under §121 and the deferral of gain under §1031. For a copy of the Revenue Procedure 2005-14, go to www.irs.gov and search for I.R.B. 2005-7, Feb 14, 2005.

New Rules for When an Exchange is Affected by a Presidentially Declared Disaster. The IRS has announced (IRS Notice 2005-3; 2005-5 I.R.B., January 31, 2005) that shortly Revenue Procedure 2004-13 (2004-4 I.R.B., January 26, 2004) will be retroactively modified to (1) add a minimum 120-day deadline extension for exchangers, (2) add for the extension of 'reverse exchange' deadlines, and (3) add to the conditions and categories which will qualify the like-kind exchanger for deadline extensions. The new provisions are retroactive to January 26, 2004.

When there is a Presidentially declared disaster, the IRS issues a *News Release*. The *News Release* will list the area affected, the extension period, and the disaster designation (see www.irs.gov). For example: a *News Release*, dated January 26, 2005, identifies as a Presidential disaster area the 62 counties in Indiana that were struck by severe winter storms and flooding. The extension period is January 1, 2005, to March 25, 2005. The disaster designation is "Winter Storms-IN".

The new favorable provisions added are: (1) In addition to the current extension of the 45-day identification date and the 180-day exchange period suspense dates, the four time-sensitive suspense dates for a ‘reverse exchange’ are now included (see Revenue Procedure 2000-37, September 15, 2000). These dates are the 5-day period to enter into a QEAA, the 45-day identification period for the relinquished property, the 180-day EAT holding period, and the 180-day combined period. (2) Regardless of the last extension date provided in the *News Release*, the exchangor will have a **120-day extension** from the **last day** of the 45-day identification period, the 180-day exchange period, and the four reverse exchange suspense dates. The new 120-day extension date or the last day of the extension period in the *News Release*, whichever is later, will apply. (3) An affected exchangor now qualifies for a postponement: (a) only if the relinquished property was transferred on or before the date of the Presidentially declared disaster, or the transfer to the EAT in a ‘reverse exchange’, and (b) the exchangor has difficulty meeting the exchange deadlines because the relinquished or the replacement property is located in the disaster area; **the principal place of business of any party to the transaction** (for example, a QI, EAT, transferee, settlement agent, lender, or title insurance company) is located in the disaster area; any party to the transaction (or an employee involved in the 1031 transaction) is killed, injured or missing as a result of the disaster; a document prepared in connection with the exchange or a relevant land record is destroyed, damaged, or lost as a result of the disaster; a lender decides not to fund the loan, or is unable to due to the lack of flood, disaster or hazard insurance; or a title insurance company cannot provide a policy due to the disaster. (4) The 120-day extension described in (2) above will also apply if an already identified replacement property or an identified ‘reverse exchange’ relinquished property is substantially damaged by the disaster.

REC Celebrates 15th Year. It is hard to believe but in June 2005 we will celebrate 15 years serving as a Qualified Intermediary. Our only business is to provide timely and professional IRC Section 1031 information to taxpayers, and to serve as the Qualified Intermediary for those wishing to do a like-kind exchange. We are also proud that Bob Bruss, nationwide real estate columnist, in his special report on “*Tax-Deferred Real Estate Exchange Rules*,” recommended www.1031.us as “an excellent website with lots of ... detailed information”.

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Now Both Exclusion & Deferral of Gain – New Declared Disaster Rules