Exchange News
Winter 2016/17

1031 and Tax Reform

With the Republicans in control of the House, Senate and the Presidency, tax reform discussions are at full throttle. Currently the House Ways and Means Committee Chairman, Mike Brady (R-Texas), is promoting their tax reform blueprint, "A Better Way", which is very light on details. It lowers corporate tax rates but must sacrifice current provisions to pay for these lower rates. The message the 1031 industry has received is that if a specific tax provision is not mentioned in the current plan, it may be eliminated. This would put the 1031 tax provision (which has been in the tax code since 1921 and has survived multiple tax reform efforts in the past) on the chopping block!

We believe 1031 exchanges are great tax policy and should be kept as part of the overall tax reform plan. Loss of 1031 exchanges will **IMPACT** the entire real estate industry, your investments and businesses.

Action Request: Please send a message to your elected representatives to keep 1031 exchanges as a vital tool for investors. This web site has complete information and a very easy way for you to send a prepared message: http://www.1031taxreform.com/take-action.

Can You Get an Extension of Time for a 1031 Exchange?

Often exchangers ask if they can get an extension of the 1031 exchange time rules. The simple answer is NO -- unless there is a **Federally** declared disaster area and an **IRS news release**. Governors and FEMA can declare disasters, but to extend the deadline dates in a 1031 exchange, there must be a specific IRS news release granting Revenue Procedure 2007-56 relief. While the qualifying provisions are generous, such Federal declarations are few and often delayed. If the normal deadline dates cannot be followed, an extension can be claimed. But the following revenue procedure criteria must be met -- the taxpayer is located in the Covered Disaster Area **or** is otherwise an affected taxpayer, regardless of where the relinquished property or replacement property is located **AND** the relinquished property was transferred (or the date the parked property was acquired by an EAT in a reverse exchange under Revenue Procedure 2000-37) **on or before the disaster date listed in the IRS Notice**. If the taxpayer meets the criteria, THEN any 45-day or 180-day deadline that falls on or after the disaster date is extended **to 120 days from such deadline**. Note the date may not be extended beyond one year or the due date (including on-time extensions) of the tax return for the year of the disposition of the relinquished property.

To learn if the area /county of interest is a Federally declared disaster area, please see http://www.irs.gov/newsroom/article/0,,id=108362,00.html. Select the specific disaster of interest and click **news release.** In the **news release** selected under the Grant of Relief section, if appropriate, it will specifically provide relief for like-kind exchanges of property. For example, a recent News Release, dated December 20, 2016, identified Sevier County in Tennessee that was struck by wildfires. The extension period is November 28, 2016, to March 31, 2017. The disaster designation is 'ATL-2016-11'.

Another Related Party 1031 Exchange Case: Malulani Group v. IRS, Nov. 16, 2016

After selling the relinquished property to a unrelated party, the exchanger indentified property owned by a related party. The exchanger had not originally planned to identify property held by a related party. While the replacement property owner had a gain larger than the one deferred by the exchanger, the replacment property owner was able to offset those gains with net operating losses. The court held the exchanger was not entitled to non-recognition because the parties ultimately ended up in a better tax position by the exchanger purchasing property from a related party.

After multiple cases it seems fairly well established that when looking at related-party exchanges performed by a QI, courts will compare the taxpayer's tax liability had they *not done an exchange* to that *of the overall gain recognized by completing the exchange with a related-party.* Looking at all the related parties as **one economic unit**, if the exchange allows them to end up in a more favorable tax position, then the taxpayer better be prepared to pay Uncle Sam.

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