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Exchange News

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FEA Takes Lead in QI Regulation

The Federation of Exchange Accommodators (FEA) has submitted a petition to the Federal Trade Commission (FTC) asking them to adopt uniform nationwide rules that would apply accepted industry standards and conduct to protect property owners who use the services of a Qualified Intermediary (QI). The petition calls for the FTC to adopt rules to ensure QIs register with the FTC and pass background checks, safeguard exchange funds, and demonstrate competency to act as a QI. It is highly unusual for an industry to take the lead with a request for federal regulations and standards. The FEA is taking this action to ensure the continuing trust and confidence of investors in the QI industry.

Misappropriation of Escrow Funds

Recently there were reports of misappropriation of exchange escrow funds by two qualified intermediary holding companies. These two companies had recently become the new owners of a number of established qualified intermediaries. Such reports raise questions as to the security and safety of escrow funds within the entire exchange industry and motivated the FEA to take the action to propose federal regulation.

Assuring the security and safety of exchange escrow funds is the primary mission of Realty Exchange Corporation. We have in place the AlwaysSafe exchange escrow funds security system. This system includes separate bank accounts for each exchange, 24/7 on-line viewing of account status, and a $5 million fidelity bond, as well as additional security features. Our web site, www.1031.us/SSEF, provides a full explanation of the security procedures we follow to ensure the security and safety of the exchange escrow funds entrusted to us. It is apparent from the two current cases that the stable long-term ownership of a QI firm contributes in a positive manner to the security of the exchange escrow funds. Realty Exchange Corporation was established by Ed Horan in 1990, and is one of the oldest family-owned QIs in the country.

IRS Approves Related Party Transfer Within Two Years

The circumstances in Private Letter Ruling (PLR) 200712013 are that the related party wished to acquire the relinquished property from the taxpayer but did not plan to hold it for two years. The taxpayer had a contract on a more expensive replacement property that needed to go to settlement before the transfer of the relinquished property to the related party. The taxpayer entered into a reverse exchange agreement with an Exchange Accommodation Titleholder (EAT) in accordance with Revenue Procedure 2000-37. The EAT purchased the replacement property with funds loaned by the taxpayer. Subsequently, the taxpayer wrote a contract to transfer the relinquished property to the related party. The contract was assigned to the qualified intermediary (QI). At settlement the taxpayer transferred the relinquished property to the related party, who paid the purchase price to the QI. The EAT then transferred the replacement property interest to the taxpayer, and the QI paid down the loan from the taxpayer to the EAT.

Normally IRC Section 1031(f)(1) requires in a related party exchange that the relinquished property be held by the related party buyer for two years. However, in this PLR the IRS concluded that IRC Section 1031(f)(1) did not apply because the taxpayer and the related party did not engage in a like-kind exchange. The IRS stated that the related partys' disposal of the relinquished property within two years does not result in cashing out of an investment or shifting of basis between the taxpayer and the related party. Note that this PLR applies only to this taxpayer and may not be cited as a precedent.

Mississippi Law Now Conforms to Federal 1031 Exchange Rules

In March 2007 Mississippi law was changed so that its 1031 rules conform to IRC Section 1031. Prior to the change, the state only allowed deferral of the state capital gains tax if the replacement property was in Mississippi.

Presidentially Declared Disasters

If a taxpayer is doing an exchange and is impacted by a Presidentially declared disaster the taxpayer is granted relief to perform certain exchange time-sensitive acts. When there is a Presidentially declared disaster the IRS issues a News Release to advise the counties covered and the start and end of the extension period. To check a News Release go to www.irs.gov/newsroom/index.html. On the Newsroom page, click on the Tax Relief in Disaster

Situations heading and then scroll down to the appropriate News Release. For exchanges that qualify, any reverse exchange, 45-day or 180-day deadlines falling within the extension period are extended for 120 days. An exchange may qualify if (1) the taxpayer is located in the disaster area, and (2) the relinquished property was transferred, or the EAT acquired title in a reverse exchange, before the start of the extension period. Other liberal 1031 exchange qualifying conditions, including the relinquished or replacement property being located in the disaster area, are listed in Section 17 of IRS Revenue Procedure 2005-27 (I.R.B. 2005-20, May 16, 2005).

A new development is that for reporting purposes the IRS computer systems now automatically identify taxpayers located in a covered disaster area. But other affected taxpayers who reside, or have a business or exchange property located outside the covered disaster area are required to call the IRS disaster hotline 1-866-562-5227 to self-identify for disaster relief.

In Memory

Jerry Long, a long-time friend and colleague, passed away on March 6, 2007. Prior to his passing Jerry was honored by the FEA with a lifetime achievement award. Jerry was the co-author of the text Tax-Free Exchanges Under 1031, which is considered the bible of the 1031 exchange industry. Jerry will be missed by all his friends in the exchange world to whom he so freely gave his valuable time and advice.

-Bill Horan is President of Realty Exchange Corporation and a Certified Exchange Specialist®, Ed Horan is the founder of Realty Exchange Corporation.