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Protecting your 1031 Exchange during filing season

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Over the past decade, an industry unto itself has emerged built around the desire of R.E. investors to defer income taxes on the disposition of R.E. through deferred like kind exchanges. This industry includes advisors, so-called qualified intermediaries, marketing firms that bundle properties and others. To some degree, the investors' need to locate replacement property in a timely manner even shapes real estate market values.

As a result, most R.E. professionals and investors are familiar with many of the basic requirements to accomplish a deferred like kind exchange. Most notably, these include the requirement that alternative replacement properties be identified within 45 days after the date on which the relinquished property is sold and replacement property be acquired on or before the 180th day following the sale of the relinquished property.

Many, however, are unaware of an important qualifier to the so-called 180 day rule. In fact, in order to accomplish an effective like kind exchange, replacement property must be acquired prior to the earlier to occur of the 100th and 80th day and the due date of the taxpayer's return for the year of the sale. The good news is that this qualifier includes the extended due date of the return. An unsuspecting taxpayer may unknowingly forfeit the ability to complete a like kind exchange merely by making timely filings of a tax return. Sellers must take note, if a property has been disposed of in the latter half of 2007, with the intention of completing a like kind exchange, the seller must extend its tax return if the replacement property has not yet been acquired prior to the original due date for filing the return.

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