nerej
CELEBRATING 55 YEARS

1031: Can I get an extension on the deadline on an exchange? I need more time to shop

March 26, 2015 - Front Section

In this market many tax deferred exchangers are frustrated by the time limitations imposed by the regulations to section 1031. They find that the 45 day identification and the 180 day exchange period are just too short to find and close on property that makes sense. I am often asked "is any way to extend the deadline in an exchange." Surprisingly the answer is maybe. There are two ways that a taxpayer's deadlines can be extended. One involves careful planning and the other requires a little good luck.

Careful Planning

The means to extend 1031 deadlines using careful planning is reflected in Private Letter Ruling (PLR) 200440002. In this PLR, the taxpayer identified three properties within the 45 day ID period. The first two properties were properties owned by unrelated parties. The third property was owned by a related party controlled by the taxpayer. When the "unrelated" properties fell through, the taxpayer continued to search for replacement property to buy.

Ultimately before the end of the 180 exchange period, the taxpayer purchased the third identified property from the related party. This closed out the exchange for the taxpayer and opened an exchange for the related party who had a new 45 and 180 deadline. The PLR points out that the related eventually has to buy replacement property from an unrelated party, otherwise both the taxpayer's sale and the related party's sale will be taxable. It should also be noted that while PLRs are helpful insight into the way the IRS thinks, they cannot be relied upon by anyone other than the recipient of the PLR.

A Little Good Luck

The other circumstance in which the 1031 deadlines can be extended comes to us through Revenue Procedure 2007-56. This revenue procedure allows for a 120 day extension to both the identification period and the exchange period, potentially increasing the ID period to 165 days and the Exchange period to 300 days.

The catch is that this revenue procedure applies to situations in which a federal disaster has been declared and other circumstances of the revenue procedure have been met. However, there is a good chance the extension will apply if you, the relinquished property, the replacement property of the qualified intermediary are in an effected county listed in the declared disaster.

Thomas St. Jean is vice president and manager of Brookline Bancorp 1031 Exchange Services LLC, Boston, Mass.