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Is your qualified intermediary financially sound?

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A recent information letter issued by the Internal Revenue Service's Office of Chief Counsel serves as a reminder that you need to confirm that your qualified intermediary in a like-kind exchange is financially sound before entering into the exchange.

The letter concerned a taxpayer who had completed the first step in its contemplated like-kind exchange and had transferred the sale's proceeds to a qualified intermediary. Before the replacement property could be purchased, the qualified intermediary filed for bankruptcy. As a result, the taxpayer lost the proceeds that had been held by the qualified intermediary. The taxpayer, through its informal letter submission to the IRS, asked whether the gain on the sale could nonetheless be deferred.

The Office of Chief Counsel, following the letter of the law, advised that, since the qualified intermediary did not acquire the replacement property and transfer it to the taxpayer within 180 days of the sale of the first property, any realized gain on the sale must be recognized and reported. That said, the Office noted that, if the taxpayer sustained an uninsured loss, the taxpayer might be able to deduct the loss from gross income under Section 165(a)(1) of the Internal Revenue Code. If the facts and circumstances surrounding the transaction show that the taxpayer sustained a loss as a result of the actions of the qualified intermediary, the taxpayer may be able to deduct the loss

Not all qualified intermediaries are created equal. Make sure that yours is financially sound.

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