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Disaster relief 1031 deadline extensions - by Patricia Flowers

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With IRS News Release IR-2020-58, the Treasury Department and Internal Revenue Service announced that the federal income tax filing due date is automatically extended from April 15, 2020 to July 15, 2020. This will allow taxpayers some breathing room during this period of uncertainty with the spread of the Coronavirus disease (COVID-19).

Since the federal tax deadline has been extended to July 15th, many have been asking if extensions have been granted to the Section 1031 Like-Kind Exchange deadlines? With an exchange timeline starting on the settlement date of the first investment property transaction (relinquished for a Forward Exchange and replacement for a Reverse Exchange), the taxpayer has only 45 calendar days to identify and a full 180 calendar days to complete an exchange. That is a short window, especially in these tentative times.

As of the date this article was written, the answer is there have not been any extensions to the 1031 Exchange time deadlines.

However, on March 17, the National Association of Realtors wrote a formal letter urging the Treasury Department and IRS "...to include deadline relief for 1031 like-kind exchanges with any forthcoming package of taxpayer relief measures."

Know that the entire commercial real estate industry is lobbying for extensions of the 1031 time periods. We are all very involved with these efforts and the Investment Property Exchange Services General Counsel is part of that team. We are monitoring for any announcements and will notify all of our customers along with the tax and real estate community as soon any updates are available.

Revenue Procedure 2018-58 permits extension of IRC §1031 tax deferred exchange deadlines upon issuance of an IRS Notice or other guidance permitting relief to taxpayers due to Federally declared disasters. Note that an IRS Notice of a Federally declared disaster is different from a FEMA disaster declaration, and the extensions are not available until the IRS publishes its Notice

granting relief.

For “affected taxpayers,” the deadlines for the 45-day Identification Period and the 180-day Exchange Period will be extended by the later of 120 days or the due date listed in the IRS Notice.

However, in no event may a postponement period extend beyond:

- (a) the due date (including extensions) of the taxpayer’s tax return for the year of the transfer; or
- (b) one year.

Affected taxpayers will be defined in the IRS Notice, but generally they include exchangers:

- 1) Whose primary residence or principal place of business is located within the disaster zone, or
- 2) Who will have difficulty meeting the 45-day and / or 180-day deadlines because of any of the following reasons:

- The Relinquished Property or the Replacement Property is located in the disaster zone
- The principal place of business of any party to the transaction is located in the disaster zone
- A party to the transaction is killed, injured or missing due to the disaster
- A necessary document relevant to the exchange or relevant land record is destroyed, damaged or lost due to the disaster
- A lender won’t fund because of the disaster
- A title insurance policy cannot be issued due to the disaster.

To be eligible for relief, the Exchanger must have sold the Relinquished Property on or before the date of the Federally declared disaster, or in the case of a reverse exchange, the Exchange Accommodation Titleholder (EAT) must have taken title to either the Relinquished or Replacement Property on or before the date of the Federally declared disaster. Only the deadlines that fall on or after the date of the Federally declared disaster will be extended.

The IRS publishes Disaster Relief Notices on its website at www.irs.gov/uac/Tax-Relief-in-Disaster-Situations. It frequently updates these notices in the weeks following the disaster to add counties to the disaster zone.

**Exchangers who wish to take advantage of these deadline extensions should check the IRS website frequently to determine if disaster relief is available.

NOTE: This disaster relief is optional. Exchangers that are “affected taxpayers” must advise their Qualified Intermediary that they are eligible for disaster relief, and that their exchange deadline(s) are extended, otherwise the original 45-day and 180-day deadlines will control.

As the Coronavirus related issues continue to evolve, real estate professionals, tax and legal advisors, and investors should know we remain committed to answering any 1031 Exchange questions you may have and keeping you informed. Since our operations have been “paperless” for many years, our employees are able to work remotely. As a result, we do not anticipate any adverse impact to normal customer service operations or the security we provide.

IPX1031 Exchange is fully operational. We are here to help, and encourage you to contact us by phone, email or through our website www.ipx1031.com if we can be of assistance. Stay well!

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