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1031 Exchanges amid coronavirus: Will taxpayers be able to extend their deadlines for identifying and purchasing replacement property? - by Brendan Greene

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Internal Revenue Code (IRC) Section 1031 allows a property owner, who holds property for “the productive use in a trade or business or for investment,” to defer paying any capital gains taxes if the property owner sells such property, identifies “like kind” property within 45 days of the sale, and acquires other “like kind” property within 180 days of the sale.

Typically, these deadlines of identifying like kind property within 45 days and closing on such property within 180 days are not flexible. If a taxpayer does not meet those deadlines, the exchange will “fail” and it will not be eligible for the tax-deferral treatment. However, when there is a catastrophic event that affects large numbers of U.S. citizens, such as terrorist attacks, hurricanes, wildfires or the like, and the federal government declares a location to be a federal disaster area, then there may be allowed extensions to the 45 and 180-day deadlines.

An extension to these deadlines occurs when the IRS issues an official “Tax Relief Notice” regarding such disaster. The Tax Relief Notice, which will be promulgated on the IRS website, must specifically state that the notice provides relief under Section 17 of Revenue Procedure 2007-56 in order to apply to the 1031 exchange time period deadlines. Section 17 extends the 45 and 180-day periods in both forward and reverse exchanges that fall on or after the date of a federally declared disaster by the later of 120 days or the date specified in the relevant Tax Relief Notice, but not beyond the due date for filing the tax return for the year of the transfer. Note however, that U.S. government recently extended the deadline for 2019 tax filings for most individuals from April 15 to July 15.

In order to qualify for an extension of the §1031 deadlines, the relinquished property must have been transferred on or before the date of the federally declared disaster, and the exchanger must be an “affected taxpayer” as defined in IRC section 301.7508A-1(d)(1) of the Procedure and

Administration Regulations; or must have difficulty meeting the exchange deadlines due to one of the following disaster-related reasons:

1. The relinquished property or the replacement property is located in a covered disaster area;

2. The principal place of business of any party to the transaction (for example, the qualified intermediary, exchange accommodation titleholder, transferee, settlement attorney, lender, financial institution, or a title insurance company) is located in the covered disaster area;

3. Any party to the transaction (or an employee of such a party who is involved in the 1031 exchange transaction) is killed, injured, or missing as a result of the disaster;

4. A document prepared in connection with the exchange (for example, the agreement between the transferor and the qualified intermediary or the deed to the relinquished property or replacement property) or a relevant land record is destroyed, damaged, or lost as a result of the disaster;

5. A lender decides not to fund, either permanently or temporarily, a real estate closing due to the declared disaster or refuses to fund a loan to the taxpayer because flood, disaster, or other hazard insurance is not available due to the Presidentially-declared disaster; or

6. A title insurance company is not able to provide the required title insurance policy necessary to settle or close a real estate transaction due to the Presidentially-declared disaster.

At the time of submission of this article, the federal government has not yet declared any specific location in the United States to be a federal disaster area in connection with the Coronavirus. As such, taxpayers have not been granted any relief from the 45 or 180-day deadlines. Let’s hope that the virus is contained enough that the federal government does not have to declare any specific area a federal disaster area.

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