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IRS notice extends 1031 Exchange deadlines - by Lynne Bagby

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Many New England real estate investors seeking tax deferral in a 1031 exchange or contemplating a sale of an investment property in the near future and intending to perform a 1031 exchange have been anxiously awaiting guidance from the IRS on the impact of the COVID-19 pandemic on the time deadlines in an exchange. On April 9th, the IRS issued Notice 2020-23. This notice extended many deadlines for real estate investors affected by the COVID-19 outbreak including Section 1031 exchange time deadlines.

This notice provides that any person performing a time-sensitive action listed in either § 301.7508A-1(c)(1)(iv) of the Procedure and Administrative Regulations or Revenue Procedure 2018-58, 2018-50 IRB 990 (December 10, 2018), which is due to be performed on or after April 1st, and before July 15th, 2020 (Specified Time-Sensitive Action), is an Affected Taxpayer. This includes the 45-day identification and 180-day exchange period deadlines in both deferred and safe-harbor reverse 1031 exchanges.

Therefore, pursuant to Notice 2020-23, if the end of an investor's 45-day identification period or 180-day exchange period in a deferred exchange or the parallel periods in reverse exchanges under Revenue Procedure 2000-37 falls between April 1st and July 15th, the applicable period is automatically extended to July 15th, unless the investor chooses to opt-out of the extensions. Real estate investors who choose to opt-out of these extensions should notify their qualified intermediary (QI) in writing as soon as possible.

In the absence of further IRS guidance, only deadlines currently scheduled to occur between the dates of April 1st and July 15th are extended. Notice 2020-23 does not address deadlines that fall before or after this specific time period or, most importantly, identification or exchange completion periods that ended before April 1st or pending exchange periods that end after July 15th. In addition, this notice is different from many previous IRS Disaster Relief Notices and does not provide clear answers to other deadline related issues.

This notice does not reference Section 17 of Revenue Procedure 2018-58, which provides an extension of 120 days or until the date specified in the notice, whichever is later. It is uncertain and not clear in Notice 2020-23 if the 120-day deadline extension provided in previous IRS Disaster Relief Notices applies.

Finally, some real estate investors were seeking IRS extensions of dates falling after the date of the FEMA and Stafford Act declaration on March 13th. Other investors were hoping for a deadline extension to apply from the date of the FEMA disaster declaration on January 20th. At this point in time, taxpayers should make decisions based only upon known IRS guidance.

It is unknown whether additional guidance will be released by the IRS addressing these and other uncertain issues. Every investor in New England should consult with their own legal and/or tax advisors regarding the tax consequences of any specific 1031 exchange transaction.

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