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Newsletter
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Corporate Title Exchange Services *Est. 1995*



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Corporate Title Exchange Services has now updated its website to include the 45/180 day calculator to ensure that a taxpayer does not miss the deadline on his/her 1031 exchange. Additionally we have included a capital gains calculator on the website. Please be sure to visit www.CTExchange.com to view the latest changes.

Did you know?

Corporate Title Exchange Services, “*Your 1031 Exchange Specialist*”, has effectuated exchanges since 1995 and has handled over 600 simultaneous and deferred forward, reverse, improvement, reverse improvement, real estate and personal property exchanges. We handle everything in-house to provide you with the personal service and competitive pricing which you and your clients deserve.

Recent Letter Rulings, Regulations, Announcements, etc...

In Private Letter Ruling, PLR 200649028, a ruling was issued to a taxpayer regarding whether the granting of an easement for land use credits using a Qualified Intermediary would qualify for purposes of §1031 if the proceeds of such were used to acquire replacement property by the Qualified Intermediary. In this case, the taxpayer was granting a perpetual stewardship easement arising out of the taxpayer’s interest in the underlying land, and exchanging that for a fee simple interest in other qualifying property using a Qualified Intermediary. The IRS ruled that this case scenario would not disqualify the transaction from tax deferred exchange treatment under §1031.

The Role of the Real Estate Agent

As a real estate broker or agent, often you are not quite sure what your role entails or permits when it comes to a §1031 tax-deferred exchange. It is **not** necessarily your responsibility to know every aspect there is to know relative to a §1031 Exchange—that is why we are here! However, you should be aware that there are certain things which real estate agents may do and things which they are prohibited from doing under the Code, since they are disqualified persons under the Internal Revenue Code.

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The Role of the Real Estate Agent continued . . .

For example, things which are allowed, include:

1. Inform clients that the sale (or purchase) of their property may qualify for a 1031 exchange.
2. Refer their clients to speak with a Qualified Intermediary and recommend they additionally speak with their tax advisor.
3. Handle drafting the purchase agreements and brokering the Relinquished and Replacement Properties.
4. Assist their clients in finding Replacement Properties.
5. Include a statement on the purchase agreement for the Relinquished and Replacement Properties that the taxpayer intends to effectuate a §1031 exchange, that the purchase agreement may be assigned to a

Qualified Intermediary and that the other party will cooperate in executing any documents necessary to accomplish this end.

Acts which are not allowed under §1031, include:

1. Acceptance of the identification notice from their clients—this notice **must** be given to the Qualified Intermediary or other party as allowed under §1031.
2. Draft exchange documentation.
3. Hold any exchange funds.
4. Act as a Qualified Intermediary.
5. They should also, as a matter of practice, not give tax or legal advice (unless they are a tax advisor or attorney).

Exchange Expenses

The use of exchange proceeds to pay some of the closing costs associated with relinquished and replacement properties may result in “boot” to the taxpayer. Boot is any property received by the taxpayer which is not “like kind” to the property disposed of in an exchange. Such property may include items like cash, mortgage note, stock, a car, etc... The taxpayer would pay taxes on the boot to the extent of the realized capital gain.

Some of the transactional costs paid by the taxpayer in an exchange also reduce the realized and recognized gain of the taxpayer and additionally serve to increase the basis of the replacement property.

There is no specific authority that exists for the deduction of any transactional costs from either realized or recognized gain other than commissions (pursuant to Revenue Ruling 72-456). It is most likely that other transactional costs should also be deductible if such costs are paid out “in connection with the exchange”

(Rev Rul 72-456). Often, these costs are characterized as “exchange expenses” on Form 8824. Such costs include: commissions, finder’s fees, title insurance premiums, legal fees, qualified intermediary fees, escrow fees, recording fees and transfer tax.

Other transactional costs which may be found on a closing statement, but which are non-transactional expenses and therefore, which would not reduce the amount realized or recognized by the taxpayer and are not added to the basis of the replacement property, include items such as: mortgage interest, property taxes, utilities charges, prepayment penalties, insurance premiums and associations fees. Even though these items may be taxable boot, they may be deductible under the Internal Revenue Code. Also, items credited to the taxpayer, such as prepaid taxes or dues, should be treated as cash paid by the taxpayer, which can offset the taxable boot from non-exchange expenses debited to the taxpayer, within certain parameters.

Further, to avoid taxable boot with regard to security deposits and prepaid rent, the taxpayer should transfer the security deposit or prepaid rent to the buyer at the closing on the relinquished property rather than having the buyer receive a credit against the purchase price of the relinquished property.

Finally, items associated with any loan on the replacement property should not be paid for with exchange funds. So, items such as loan fees, appraisal fees, points, appraisal fees and a lender’s title insurance policy should be paid for by the taxpayer with taxpayer’s own funds so that they do not constitute taxable boot.

The above is merely an overview and is not to be construed as tax advice. A taxpayer should always consult his/her tax advisor to determine the treatment of all of your costs associated with the relinquished and replacement property closings and to determine the exact amount the taxpayer needs to reinvest to fully defer his/her gain.



Certified Exchange Specialist on Staff



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