

Corporate Title Exchange Services *Est. 1995*



Newsletter January—March -2009

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Happy New Year and welcome to 2009!

Last year was fraught with instability in the economy, the market and the 1031 industry. 2009 will undoubtedly be another challenging year, but we are up for the challenge! We have been in business since 1995 and plan on continuing long into the future to service all of your tax-deferred exchange needs.

Did you know?

The FEA (Federation of Exchange Accommodators) is celebrating its 20 year anniversary in 2009 and the association is still going strong.

Corporate Title Exchange Services has handled all types of exchanges---forward, reverse, build-to-suit, reverse build-to-suit, and real estate and personal property exchanges. We have handled exchanges on "less than fee" interests, such as easements, billboards, leasehold and oil and gas interests. These types of exchanges are becoming far more common, particularly in light of the stagnant real estate market.

State regulation updates:

Arizona: The sub-committee is working with the banking industry task force and legislators to ensure that if any legislation or regulation is promoted to regulate Qualified Intermediaries, that it follows the form of the FEA Model Act.

Colorado: The sub-committee is working with the FEA lobbyist, other members of the QI industry, legislators and regulators to draft a bill which is patterned after the FEA Model Act. The bill will be submitted to the legislature shortly.

Nevada: The sub-committee made suggested corrections to the proposed regulations and the FEA is working with regulators to make the necessary revisions.

Oregon: a sub-committee of the FEA has been formed to contact state legislators and regulators to gauge the FEA's ability to introduce a bill modeled after the FEA's Model Act.

Washington: A hearing on the FEA's Model Act was held with the Washington State House of Representatives Committee on Financial Institutions and Insurance on January 22, 2009. It is expected that the Act will be approved by the House Committee shortly, and the FEA is working with the chair of the Senate Committee to address some concerns raised by it.

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PLR 200901020--Exchange of Development Rights. The Internal Revenue Service issued a Private Letter Ruling on October 1, 2008 relative to whether residential density developments rights under recorded restrictive covenants are of like-kind to other real estate interests. In this particular case, under State law, development rights were considered to constitute an interest in real estate. The IRS noted that there are several revenue rulings which provide a basis for holding that development rights in land are like-kind to real estate (e.g. Rev. Rul. 55-749, 1955-2 C.B. 295; Rev. Rul. 59-121, 1959-1 C.B. 212; Rev. Rul. 72-549, 1972-2 C.B. 472; Rev. Ruling 68-331, 1968-1 C.B. 352). In the case at hand, the Taxpayer proposed to exchange Development Rights for a fee interest in real estate, a leasehold interest in real estate of more than 30 years remaining, and land use rights for hotel units, which would be applied to property that the Taxpayer already owned. Based upon the facts of this case, the IRS ruled that the development rights transferred by the Taxpayer as relinquished property are of like-kind under §1031 of the IRC, to a fee interest in real estate, a leasehold interest in real estate with 30 years or more remaining at the time of the exchange and land use rights for hotel units.

The ruling also reiterated that not all interests defined as a real property interest for state law purposes are construed as like-kind for purposes of §1031. Although the Service does typically look to state law in determining what property rights constitute real property interests, state law is not determinative of what real property interests are of like-kind under federal income tax law. The ruling states, for example, that while a short-term lease (having a term of less than 30 years, including extensions) may be an interest in real property under state law, it is not of like kind to a fee interest in real estate.

This ruling, along with prior rulings, indicates the Service's willingness to consider development rights as real estate for Section 1031 purposes.

Reverse Improvement Exchange PLR. The IRS has issued a Private Letter Ruling (PLR 200901004) approving a reverse improvement exchange under §1031 that did not comply with Revenue Procedure 2000-37 (a so called "non-safe harbor" improvement exchange) in which the taxpayer constructed improvements on property already owned by the taxpayer. Unlike in prior court cases dealing with non-safe harbor exchanges such as the DeCleene case (115 TC 457 (2000)), the IRS did not analyze whether the exchange accommodation titleholder (EAT) had the burdens and benefits of ownership or whether it was acting as the taxpayer's agent when constructing a new facility. The ruling implies that an exchange can be structured in this fashion using an accommodator for property in which the taxpayer has a substantial ownership interest, or otherwise exercises control over.

Extensions to the Identification and Exchange Deadlines. As you know, there are typically no extensions to the 45-day identification and 180-day exchange deadlines set forth in §1031 of the IRC. However, throughout any given year, the IRS disseminates many Notices of extensions to these deadlines, due to Presidential Disaster Extensions. An extension would apply if: 1) the Taxpayer was located in the county set forth in the Notice, regardless of where the relinquished property or replacement property is located, or the Taxpayer otherwise has difficulty meeting the exchange deadlines under the conditions set forth in Rev. Proc. 2007-56, Section 17; AND 2) the relinquished property was transferred (or parked property was acquired by an EAT) on or before the effective date of the disaster. Any 45-day or 180-day deadline that falls on or after the disaster date would be extended for 120 days from the deadline.

Further, with regarding to a Taxpayer having difficulty meeting deadlines, the IRS will look at the following: Whether the relinquished or replacement property is located in a Covered Disaster Area; the principal place of business of any party to the transaction is located in a Covered Disaster Area; any party to the transaction is killed, missing or injured due to the disaster; the documentation prepared in connection with the exchange or a relevant document is destroyed, lost or damaged due to the disaster; the lender will not fund either temporarily or permanently due to the disaster or refuses to fund; or the title insurance company is not able to provide the required title insurance policy due to the disaster.

Also under the Rev. Proc. 2007-56, is an extension for Taxpayers who are serving in a Combat Zone, which extension starts when service in the Combat Zone begins and ends 180 days after service in the Combat Zone ends, PLUS any remaining identification or acquisition period days, if applicable.

If the Taxpayer is entitled to relief for service in a Combat Zone or due to a Presidentially Declared Disaster, the identification and exchange period are automatically extended as set forth in 2007-56 and the relevant IRS notices. The Taxpayer has the sole responsibility to inform the QI in writing that the Taxpayer is entitled to the relief.

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.

"Your 1031 Exchange Specialist"



Certified Exchange Specialist on Staff

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Should you have any items which you would like to see addressed, we welcome your feedback.

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