

Corporate Title Exchange Services *Est. 1995*



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As we are in the 4th quarter of the year and this will be the last newsletter of 2008, Corporate Title Exchange Services would like to thank you for your business during the 2008 year and to say that we hope to continue facilitating your 1031 business in 2009. Wishing you Happy Holidays and a safe and prosperous 2009!

We would also like to take this opportunity to assure you as to the stability and security of Corporate Title Exchange Services ("CTES"). CTES has always invested its customer's exchange proceeds in separate money market accounts for the benefit of each individual taxpayer. Accounts are always set up at sound financial institutions, which accounts are not at risk of losing their value and always remain liquid for quick disposition for replacement property acquisitions. Corporate Title Exchange Services has been in business since 1994, is an affiliate of Corporate Title Agency (which is 18 offices strong) and will be here for many years to come. We believe our customers are the reason we are here and we will continue to provide our customers with the highest degree of service, integrity, knowledge and professionalism which continues to set us apart from our competition.

Maura A. Snabes

Did you know?

- ◆ Our annual FEA (Federation of Exchange Accommodators) was held in October. Although the number of members attending was down, the quality of the seminar was not! There was much discussion of the economy and the political situation and what QIs can expect for 2009 and beyond. The overall consensus was that 2009 was going to be in line with 2008 for the real estate market and the economy.
- ◆ 2008 was the 5-year anniversary for the FEA's CES® (Certification of Exchange Specialist) program. Currently there are 253 designees at 104 companies. 36 states have one or more Certified Exchange Specialists. Michigan currently has 6 intermediaries who hold their CES certification. Corporate Title Exchange Specialist has one CES® on staff, Maura A. Snabes, Esq., and it is the only exchange facilitator in Northern Michigan which does. The CES® certification program is intended to ensure high quality Section 1031 Exchanges by promoting professional development and a set of nationally recognized standards for exchange accommodation professionals.
- ◆ 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.

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Audits. Although the fact that one effectuates a §1031 Exchange does not typically put him/her more at risk for having a tax return audited, there is always the possibility for an audit. Where a LKE is involved (exchanges of 100 or more properties which have certain identical characteristics) and is a significant return item, it is almost always audited. Recent IRS issues on LKEs include: Drop and Swaps, proper identification of property, exchange groups in multi-asset exchanges, related party exchanges and equipment dealers. There has been an incremental shift in IRS policy as to the assertion of penalties upon audit. There have been new penalties added by the American Job Creations Acts of 2004 and Circular 230 (signed into law by President Bush on 5/25/07) changes have limited to the (continued on page 2)

ability of taxpayers to rely on the advice of professionals. Courts have even sustained penalties when the taxpayer has relied on the advice of professionals. If you are ever involved in an audit, it is good to know the players:

Revenue Agent: person that conducts the audit;

Group/Case Manager: person that manages 8-12 revenue agents;

Territory Manager: person that manages 4-8 groups & geographic audit program;

Director of Field Operations: person that manages the Territory Managers.

Industry Director: person that manages the Directors of Field Operations and industry program;

Division Commissioner: person that manages function (i.e. LMSB).

In our next newsletter we will examine the audit process.

[Reminder on Vacation Homes:](#)

As mentioned in a previous newsletter, a Tax Court case in 2007 and an IRS Revenue Procedure issued in 2008 has been a warning to those taxpayers that were exchanging vacation or second homes which they had never rented and/or had used the property for personal use. Following these rulings, the IRS has provided a clearer understanding of its view on the need for arms' length rental activity and minimal personal use by the taxpayer when attempting to effectuate a 1031 exchange on a second or vacation home.

As you may recall, Moore v Commissioner, T.C. Memo 2007-134, involved taxpayers that never rented out the home, purchased it for personal use and took mortgage interest deductions on their tax returns. The Court noted that it is the taxpayer's primary purpose for owning the home, which is important and that exclusive use of the property by the taxpayer as a residence contradicts any claim that the property is held for investment. The "mere hope or expectation that property may be sold at a gain cannot establish an investment intent if the taxpayer uses the property as a residence." The Court further took note of the taxpayer's failure to claim deductions for maintenance or depreciation, that the taxpayer had taken home interest rather than the investment deduction and that they listed the property for sale soon after personal use ceased.

Rev. Proc. 2008-16, also focused on the importance of engaging in fair rental activity of a vacation home prior to the disposition of the relinquished property and after the acquisition of the replacement property in order to achieve §1031 status. In order to be within the safe harbor for a vacation home exchange ("dwelling unit"), a taxpayer must own the dwelling unit for 24 months immediately preceding the exchange and for 24 months immediately following an exchange AND during each of the 12 month periods prior to the exchange (for relinquished property) and following the exchange (for replacement property), the taxpayer must: rent the dwelling unit at fair rental value for at least 14 days; and not have personal use of the dwelling unit for the greater of 14 days or 10% of the days during the 12 month period that the dwelling unit is rented at fair market value.

In 2007, according to NAR and Second Home Market Data, the average price for a vacation home purchase was \$195,000. 28% were cash and purchased within 287 miles of a buyer's residence. 87% of the homes were used for personal use, 75% of vacation homeowners did not rent their homes, and 55% of International buyers purchased such homes as vacation homes, which was 8% more than last year.

[Other Recent Letter Rulings, Regulations, Announcements, etc](#)

As you know, in October, 2008 the Governor of California signed legislation into law which mandated that certain insurance and investments standards be met by exchange facilitators in order to handle a 1031 exchange for relinquished property located in California. This goes into effect for all exchanges occurring after January 1, 2009. Many states are following on the coattails of California in mandating either licensing or strict requirements for QIs doing business in their state. Nevada has licensing requirements and Colorado is working on re-introducing a bill in 2009 which will be similar to the California legislation.

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.

Please e-mail us at Msnabes@corporatetitle.com or Jjelinek@corporatetitle.com or visit our website at www.CTExchange.com