

Corporate Title Exchange Services *Est. 1995*



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Happy Holidays! As we approach 2010, we reflect upon the tumultuous year that those involved with real estate and 1031 exchanges have faced and look forward to the future. It has been an interesting year for 1031 exchanges, with many new state laws/regulations being passed which serve to regulate Qualified Intermediaries that do business or handle an exchange on relinquished property within certain states. All evidence indicates the regulation will continue to spread among the states in an attempt to prevent the degree of defalcations there have been in the recent past. As always, we will keep you updated on the states that pass such regulations.

Did you know?

As a member of the FEA and a Certified Exchange Specialist, we have to abide by a Code of Ethics and conduct in handling our 1031 exchanges. We must ensure vigilance, fair competition, ethical service and outstanding service. Although we would follow these rules regardless of whether we were a member of the FEA or a Certified Exchange Specialist, you can be assured that we go the extra mile to ensure that we are doing everything we can to stay educated, informed, vigilant and ethical in our service to you.

Related party exchanges.

We have addressed different rulings in the past regarding related party exchanges. What exactly is a related party as defined under the Internal Revenue Code (IRC)? A definition of "Related Persons" is described in IRC 267(b) and IRC 707(b) as follows:

- 1) Family members (siblings, spouse, ancestors, and lineal descendants).
- 2) Individual and corporation, where more than 50 percent in value of the stock is owned directly or indirectly by or for such individual.
- 3) Two corporations that are part of the same control group.
- 4) A grantor and a fiduciary of the same trust.
- 5) A fiduciary and beneficiary of the same trust.
- 6) A fiduciary of a trust and the fiduciary or beneficiary of another trust where the same person is the grantor of both trusts.
- 7) A fiduciary of a trust and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for the grantor of the trust.

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- 8) A person and an IRC Section 501 organization if the organization is controlled by that person or that person's family.
- 9) A corporation and a partnership if the same persons own more than 50 percent in value of the outstanding stock of the corporation and more than 50 percent of capital interest or profits interest in the partnership.
- 10) An S Corporation and another S Corporation or a C Corporation if the same person own more than 50 percent of the value of the outstanding stock of each corporation.
- 11) A partnership and a person owning, directly or indirectly, more than 50 percent of the capital interest, or profits interest, in such partnership.
- 12) Two partnerships in which the same persons own, directly or indirectly, more than 50 percent capital interests or profits interests.
- 13) An executor of an estate and the beneficiaries of the estate, except in the case of a sale or exchange in satisfaction of a pecuniary bequest.

Other Recent Letter Rulings, Regulations, Announcements, etc

HR 4173: The House version of the Wall Street Reform and Consumer Protection Act (HR 4173) includes a provision that charges the newly appointed Director with reviewing the QI industry and making any recommendations for regulatory oversight.

Oregon Dept of Revenue v Marks. In 2007, the Oregon Department of Revenue disallowed an exchange in which the taxpayer had acquired a tenancy in common interest in the replacement property and immediately following the acquisition in the exchange, contributed that property to a partnership. The Tax Magistrate later ruled that the taxpayers had met the requirements of a Section 1031 exchange and it was permissible to exchange and then contribute the property to a partnership in a prearranged plan. The ruling was appealed and it was upheld by the Tax Court, which relied upon a 1985 9th Circuit case (Magneson v. Commissioner) finding continuity of interest and the lack of cashing out overrode the concerns about the short holding period of the replacement property. This ruling applies only to the Oregon state tax and not to the Federal tax, but it is nice to see this type of decision even if it is only on a state level.

State Regulation Update:

Washington: The State of Washington has now released the survey that must be completed for QIs and EATs that facilitate exchanges in Washington. This includes a QI that facilitates the exchange of a relinquished property in Washington, or holds title to a Washington property as an EAT. It also includes a facilitator that has an office in Washington. The Washington Department of Financial Institution (DFI) has prepared a checklist that people can read before actually taking the survey. The survey page can be found by looking at the DFI homepage (dfi.wa.gov), and clicking on the first link underneath "Industry News".

Virginia: There is a proposal to regulate QIs which would eliminate independent QIs that are not already licensed by some regulatory authority and provide for licensure by multiple regulatory agencies, resulting in probable confusion and inconsistencies.

New Hampshire: It has determined that it is necessary to audit 1031 exchanges as far back as 2005. Among the primary targets of the audits are taxpayers that acquired replacement property in a TIC (tenancy in common) and those who acquired their replacement properties in bankruptcy-remote entities, such as special purpose LLCs. A bill is currently being drafted that would prohibit the Department of Revenue from continuing these audits.

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"

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

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