



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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Dear _____ :

I am responding to your inquiry dated July 15, 2020. You explained that you sold investment property in _____ and have identified other investment property that you want to buy to replace the property you sold in _____. You asked if you are still able to meet the requirements of Internal Revenue Code (IRC) Section 1031 to defer gain on the sale of real property if you received the proceeds from the sale of the property prior to acquiring replacement property.

Under IRC Section 1031(a), no gain or loss is recognized on the exchange of real property held for productive use in a trade or business or for investment (relinquished real property) if the relinquished real property is exchanged solely for real property of a like kind that is to be held either for productive use in a trade or business or for investment (replacement real property).

Under the law, if a taxpayer actually or constructively receives proceeds from a transfer of the taxpayer's relinquished real property before receiving like-kind replacement real property, the transaction is a sale and not an exchange as required by IRC Section 1031. This sale treatment applies even though the taxpayer may ultimately acquire like-kind replacement real property.

There are different options taxpayers may use to ensure that they don't actually or constructively receive the proceeds from the transfer of relinquished real property before acquiring replacement real property. One option involves the use of a qualified intermediary (QI) to hold the proceeds from the sale of the relinquished real property until the taxpayer is ready to use those funds to acquire replacement real property.

To comply with the requirements of IRC Section 1031, a taxpayer using a QI must arrange for the proceeds from the sale of relinquished real property to go directly from the buyer to the QI. In addition, the taxpayer must enter into an agreement with the QI that expressly limits the taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of the proceeds held by the QI until, generally, the exchange is completed. Finally, someone who has a particular relationship with the taxpayer cannot be the taxpayer's QI. For example, an individual who acted as the taxpayer's investment banker or broker within 2 years of the transfer of the relinquished real property cannot be the taxpayer's QI.

Lastly, as you mentioned in your letter, on April 10, 2020, the Department of the Treasury and the IRS issued Notice 2020-23. The notice extended until July 15, 2020, the deadlines imposed by IRC Section 1031, including the requirement that a taxpayer identify replacement real property within 45 days of the taxpayer's transfer of relinquished real property. However, meeting the 45-day identification requirement is just one of the requirements taxpayers must meet to defer gain on the transfer of real property under IRC Section 1031, including complying with the restrictions on receiving proceeds from the transfer of the property, as discussed above.

I hope this information is helpful. If you have additional questions, please feel free to contact me or _____ at _____.

Sincerely,

Angella L. Warren
Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax and Accounting)