



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

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OFFICE OF
CHIEF COUNSEL

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The Honorable Connie Mack IV
Member, U.S. House of Representatives
2000 Main Street, Suite 303
Ft. Myers, FL 33901

Attention:

Dear Congressman Mack:

This letter responds to your inquiry, dated March 30, 2005, on behalf of your constituents, . They wrote about obtaining a private letter ruling granting them additional time to complete a like-kind exchange of properties that has been delayed because of the severe hurricanes and tropical storms that struck Florida in 2004. Their letter also states that they have never received the proceeds of the property they sold and that such proceeds have always been held in escrow.

Unfortunately, the transaction does not qualify as a like-kind exchange under section 1031 of the Internal Revenue Code. We contacted them to discuss their situation. In this discussion, the related that they directed the qualified intermediary who was holding the cash proceeds to turn the proceeds over to their realtor. The realtor is now holding the proceeds to fund the construction of the new property.

Under current law, receipt of cash proceeds by a taxpayer or the taxpayer's agent disqualifies the taxpayer from deferring tax on the gain of the property that they sold. If a qualified intermediary turns over exchange funds to the seller or his realtor, the "exchange" ends, the transaction becomes a "sale," and the seller must recognize any realized gain. We do not have authority to change this result.

I hope this information is helpful. If we can assist you further, please contact me or at (202) 622-4920.

Sincerely,

Michael J. Montemurro
Acting Branch Chief
Office of Associate Chief Counsel
(Income Tax & Accounting)