



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

OFFICE OF
CHIEF COUNSEL

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The Honorable Bill Nelson
United States Senator
225 East Robinson Street, Suite 410
Orlando, FL 32801

Attention: Dolly Kobernat

Dear Senator Nelson:

This letter responds to your inquiry, dated May 18, 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. They need additional time because the severe hurricanes and tropical storms that struck Florida in 2004 delayed construction of the replacement property beyond the prior extension periods. They also wrote that they never actually received the proceeds of the property they sold because the proceeds remained 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. The told us 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 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)