



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

OFFICE OF
CHIEF COUNSEL

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The Honorable Judd Gregg
United States Senator
41 Hooksett Road
Manchester, NH 03104

Attention:

Dear Senator Gregg:

I am responding to your letter dated December 29, 2008, on behalf of your constituent, . asked about possible relief from the mandatory replacement period prescribed in section 1031(a)(3) of the Internal Revenue Code (the Code).

may not be able to complete her like-kind exchange within the statutorily mandated period, because the business she used to facilitate her like-kind exchange is in bankruptcy.

A taxpayer does not have to recognize gain or loss on the like-kind exchange of property satisfying the requirements of section 1031(a). Section 1031(a)(3) requires a taxpayer to obtain the replacement property by the earlier of (1) 180 days after the date the taxpayer transfers the relinquished property or (2) the due date (determined by extension) of the taxpayer's federal income tax return for the year in which the transfer of the relinquished property occurs.

Section 1.1031(k)-1(g)(4) of the Regulations allows a taxpayer to use a qualified intermediary (QI) to facilitate a like-kind exchange. When using a QI, generally a taxpayer will transfer the relinquished property to the QI, who will sell the property to a buyer, use the proceeds of the sale to purchase the replacement property, and transfer the replacement property to the taxpayer. If the taxpayer receives the replacement property within the period prescribed in section 1031(a)(3) of the Code and meets the other requirements of section 1031, the taxpayer will not recognize gain or loss on the like-kind exchange.

We are sympathetic to _____ situation but lack the authority to extend the statutorily mandated replacement period. Section 7508A provides the only authority for extending a statutory deadline (generally in the case of certain natural disasters, terrorist acts, or military actions). Unfortunately, section 7508A does not authorize an extension of the section 1031(a)(3) replacement period due to bankruptcy or other economic factors. Amending section 7508A to provide the relief _____ requests would require Congressional action.

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

Sincerely,

/s/ George J. Blaine

George J. Blaine
Associate Chief Counsel
(Income Tax & Accounting)