Deferred exchanges boom into the new century:The advent of the treasury regulations

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We can now breath a sign of relief with the advent of the treasury regulations concerning real estate exchanges. Today we have the flexibility and certainty that was arguably lacking in the past. We have watched over the past decade the evolution of the "delayed exchange" to the point where today, it is being called the last legitimate tax shelter available to the real estate investor. These regulations are also being called by most tax advisors the most favorable regs. to the real estate investor in many years. In the past, individuals, as well as their tax, legal, and real estate advisors had shied away from the concept of delayed exchanges largely due to the uncertainty of the law and their unfamiliarity with the needed concepts to perform a proper exchange. This uneasiness was probably a legacy from the early days of "starker exchanges" where the "delayed exchange" was viewed as an aggressive tax concept.

Today, due to the treasury regulations there has never been a better time for a properly structured real estate exchange. Under the final regulations, what were once called "delayed exchanges" are now called "deferred exchanges." Because of the immense benefits of a deferred exchange this form of disposing of income-producing or investment held properties must be seriously considered by all tax, legal, real estate advisors and investors. One of the requirements to take advantage of the benefits of a deferred exchange is that the taxpayer must want to stay invested in real estate. A deferred exchange allows your tax dollars to remain invested in real estate rather than being paid out as taxes in favor of our government. In effect Uncle Sam becomes your partner. Funds that otherwise would be dedicated to paying taxes can now be directed via a deferred exchange toward the purchase of replacement property deemed of a like-kind. This tax-deferment can mean as much as 32% of ones gain to a taxpayer filing a New York state tax return. That allows the Taxpayer to control a much larger replacement property with funds that would normally be payable to Uncle Sam in the form of state and federal income tax based on the gain when disposing of business or investment held property.

A deferred exchange makes sense when there is a sizable gain due to high appreciation, a long holding period, or when substantial depreciation has been taken on the subject property.

In addition it my be recommended that older taxpayers thinking about estate planning take advantage of the exchange concept which will allow their heirs to receive a stepped-up basis when the taxpayer bids this world good-bye. Obviously, there are numerous benefits when using a deferred exchange other than what was already mentioned.

Our Internal Revenue Service has been very accommodating in providing a reasonable structure to follow when structuring deferred exchanges through the new regulations. But the IRS has served notice on the tax and real estate community that they will be watching the deferred exchange area and are requiring that the guidelines of the new regulations be followed in all respects. It is

imperative that taxpayers observe the established guidelines to insure the integrity of their proposed deferred exchange and to make use of real professionals who have an understanding of deferred exchanges and are experienced in structuring these types of exchanges based on the regulations.

The essence of the deferred exchange, under the regulations, is the ability to close the transaction in stages, which makes the deferred exchange a much simpler and more efficient vehicle than the so-called simultaneous exchange, which for many became nightmares when incorporating multiple properties in different locations.

Today with the guidelines of the treasury regulations and the use of properly trained and experienced professional qualified intermediary (QI), the taxpayer can sleep nights when using the "best kept secret in real estate-real estate exchanges."

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