How to receive an extra 180 days when performing a section 1031 exchange

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Under the following circumstances a taxpayer (seller) of a business (income-producing property) or investment held property has the ability to pay no tax when disposing of their property. This is possible through what's called a real estate exchange, through section "1031" of the Internal Revenue Code. One of the requirements in order to receive this favorable tax savings is that you dispose of a relinquished property and acquire a replacement property all within a 180-day period known as the "exchange period."

With the recent "Reverse Revenue Procedure #2000-37," our government has created the opportunity for a taxpayer looking to take advantage of the "best kept secret in real estate" and receive an additional 180 days to complete their transaction under certain conditions.

Example: The taxpayer wants to achieve a "reverse exchange" which means that the replacement property is acquired before the taxpayer disposes of the relinquished property. An exchange accommodation titleholder (EAT) is brought into the transaction to acquire legal title of the replacement property in order for the transaction to be structured properly as a "reverse exchange."

In this type of an exchange there is the need for an EAT to acquire legal title of the replacement property and as with a normal deferred exchange there is also a need for a qualified intermediary (QI.) The services of both of these professionals are needed to accomplish a reverse exchange.

Once the EAT goes into legal title for the replacement property, the taxpayer (seller) now has 180 days to dispose of the relinquished property. Keep in mind that the taxpayer can never have legal title to both the relinquished property and replacement property at the same time. The taxpayer must identify the relinquished property being disposed of, within 45 days for the reverse exchange to qualify for I.R.S. purposes.

Let's assume, in our example, that the replacement property acquired had a value of $100,000 (mortgage-free) and that the relinquished property that was disposed of within the required 180 days was disposed for $250,000 (mortgage-free.) The taxpayer has an additional 180 more days from that point when legal title was conveyed on the relinquished property which completed the reverse exchange to acquire another replacement property or properties to achieve a plain vanilla "deferred exchange." Also, the taxpayer needs to acquire other replacement property of at least $150,000 in order not to have any tax liability.

The wake-up item here is that the taxpayer acquired a replacement property before disposing of a relinquished property through the use of an EAT as well as the use of a QI. Within that 180-day period disposed of the relinquished property and in our example used the balance of proceeds from the relinquished property to acquire other replacement property or properties and was given a new 180-day clock from that point to achieve what's called a deferred exchange. It is important to understand that the taxpayer must be in a financial position to fund the purchase of the replacement property, because they don't have the proceeds from the disposition of the relinquished property yet. To recap, a safe harbor reverse exchange can be combined with a deferred exchange and an additional 180-day period can be utilized to accomplish this type of exchange transaction. As in any type of an exchange transaction always consult with a professional QI before proceeding.

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