



# CCM COVID-19 ALERT

April 23, 2020

## 1031 Like-Kind Exchanges and COVID-19 Deadline Impact

Generally, a gain or loss on the sale of real property is recognized and taxed in the year of realization. There is an exception in the Internal Revenue Code (“Code”) under Section 1031 to this requirement. The assumption controlling this exception is that when an investor exchanges a piece of property for another of the same type or “like-kind”, they are merely continuing an ongoing investment. Such property must be used in a trade or business or held for investment purposes. Section 1031 applies only to exchanges of real property under the 2017 Tax Cuts and Jobs Act, and not exchanges of personal or intangible property as it previously had covered. The taxation of the investor’s gain is deferred until the new investment property is sold and the gain is then actually realized, or another 1031 Exchange is entered into at that time.

IRS Notice 2020-23, Released on April 9, 2020 in response to COVID-19

The emergency declaration by the President of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act instructed the Secretary of the Treasury to provide relief from tax deadlines to Americans adversely affected by the COVID-19 outbreak. Section 7508A of the Code gives the Secretary of the Treasury the authority to postpone the time for taxpayers who are affected by federally declared disasters to perform under the internal revenue laws. In previous notices issued by

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the Internal Revenue Service ("IRS"), dates were postponed for such acts as filing federal income tax returns and making federal income tax payments.

Affected Taxpayers mean any person with a federal tax payment obligation or federal tax return or other filing obligation, as described below, which is due to be performed on or after April 1, 2020 and before July 15, 2020. These people are affected by the COVID-19 emergency for purposes of deadline relief.

Specified Filing and Payment Obligations include time-sensitive actions listed in either Section 301.7508A-1(c)(1)(iv)–(vi) of the Procedure and Administration Regulations or Revenue Procedure 2018-58, 2018-50 IRB 990. Section 17 of Revenue Procedure 2018-58 specifically addresses rules for Section 1031 like-kind exchange transactions and federally declared disasters.

Affected Taxpayers may have difficulty complying with the 45-day identification period for replacement property and the 180-day exchange period for closing on the like-kind exchange transaction. If the last day of the 45-day identification period or the 180-day exchange period falls on or after April 1, 2020 and before July 15, 2020, the deadline is postponed until July 15, 2020.

An example of how this works would be as follows: an Affected Taxpayer sold investment real estate on March 1, 2020. The 45-day identification period is set to lapse on April 15, 2020. Due to IRS Notice 2020-23, the identification period is extended to July 15, 2020; however, the closing date would remain on the 180th day, so as of August 28,

2020. Likewise, if the closing date were set to occur between the period of April 1, 2020 and July 15, 2020, the closing date would be extended to July 15, 2020, and this extension would not violate the 180-day requirement.

The relief under Notice 2020-23 is automatic and does not require the Affected Taxpayer to call the IRS or file any extension forms. The period beginning on April 1, 2020 and ending on July 15, 2020 is disregarded for the calculation of any interest, penalty, or addition to tax for failure to file.

It is hoped that more relief from the IRS for COVID-19 related issues will be coming soon.

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