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Hurricane Ida Relief for Sec. 1031 Exchanges

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Earlier this month, in connection with Hurricane Ida, the IRS granted tax relief to affected taxpayers in certain counties. In addition to granting relief related to the filing of returns and payment of taxes, the IRS also extended certain deadlines relating to like-kind exchanges under I.R.C. section 1031. In particular, the IRS extended until January 3, 2022 (and in some cases until later) the 45-day identification deadline and the 180-day acquisition deadline for affected taxpayers' section 1031 exchanges, if those deadlines fall between September 1, 2021, and January 2, 2022 (inclusive) (the "extension period"). Due to an apparent quirk in the rules, described in more detail below, affected taxpayers who began their exchanges on or prior to September 1, 2021, may be entitled to greater relief than those who began their exchanges after that date.

Affected Taxpayers

The IRS invoked sections 4 and 17 of Revenue Procedure 2018-58 to provide this section 1031 relief. Except as described below with respect to section 17, relief is available only to "affected taxpayers." For these purposes, generally, an affected taxpayer is in an individual whose principal residence, or a business entity whose principal place of business, is located in one of the following counties ("covered disaster areas"):

New York: Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester; and

New Jersey: Bergen, Essex, Gloucester, Hudson, Hunterdon, Mercer, Middlesex, Morris, Passaic, Somerset, Union, and Warren.¹

Section 4 Relief

Under section 4 of the Revenue Procedure, the following deadlines of an affected taxpayer undertaking a section 1031 exchange are extended until January 3, 2022, if such a deadline would otherwise fall during the extension period:

- (1) the 45-day deadline to identify replacement property with respect to a deferred (forward) exchange;

¹ The IRS also granted similar relief, but with different extension periods, to certain taxpayers in Pennsylvania and Mississippi. This memorandum does not cover those extensions.

- (2) the 180-day deadline to acquire replacement property with respect to a deferred (forward) exchange;
- (3) the 5-day deadline to enter into a qualified exchange accommodation agreement (“QEAA”) with an exchange accommodation titleholder (“EAT”) with respect to a “reverse” exchange;
- (4) the 45-day deadline to identify relinquished property with respect to a reverse exchange; and
- (5) the 180-day deadline to sell relinquished property with respect to a reverse exchange.²

Section 17 Relief

In addition to the relief under section 4, certain taxpayers are eligible for additional relief under section 17 of the Revenue Procedure, regardless of whether they are “affected taxpayers.”³

In order for a taxpayer to qualify for this additional relief: (a) the taxpayer must have transferred relinquished property, in the case of a deferred (forward) exchange, or the EAT must have acquired replacement property, in the case of a reverse exchange, *on or before* September 1, 2021; **and** (b) the taxpayer must **either** (i) be an affected taxpayer, **or** (ii) “ha[ve] difficulty meeting” one of the exchange deadlines listed above due to the location of the relinquished property or the replacement property in a covered disaster area, a lender’s refusal to fund due to Hurricane Ida, a title company’s refusal to insure due to Hurricane Ida, or certain other reasons. For example, if a corporation with a principal place of business in Maine had difficulty acquiring replacement property located in Brooklyn and otherwise met the requirements of section 17, it would be eligible for section 17 relief, even though it is not an affected taxpayer.

If a taxpayer meets these eligibility requirements under section 17, it is entitled to two forms of relief. First, each exchange deadline listed in section 4 is extended to the *later of* (x) January 3, 2022, or (y) the 120th day after that deadline would otherwise occur. In no event, however, can such a deadline be extended for more than one year or beyond the due date (including extensions) of the taxpayer’s return for the year of the exchange. Second, in certain circumstances, an eligible taxpayer may be permitted to modify its identification (in either a forward or reverse exchange) if an identified property was damaged by Hurricane Ida.

² The Revenue Procedure also provides relief with respect to “exchange first” reverse exchanges, under which a taxpayer transfers relinquished property (rather than replacement property) to an EAT. Few exchanges are structured in this manner, and they are not discussed in this memorandum.

³ Taxpayers that qualify for section 17 relief, but are not otherwise affected taxpayers, do not qualify for section 4 relief or for any other relief under the Revenue Procedure.

Examples

All examples assume that the affected taxpayer is an individual whose principal residence, or a calendar-year business entity whose principal place of business, is located in a covered disaster area, and that the affected taxpayer will obtain an extension of the due date for filing its 2021 tax return.

Example 1: On June 15, 2021, an affected taxpayer disposed of relinquished property pursuant to a section 1031 exchange.

The taxpayer's 45-day identification deadline was July 30, 2021. As that 45-day deadline fell prior to the extension period, it is not extended under the Revenue Procedure.

The taxpayer's 180-day acquisition deadline would be December 12, 2021. That deadline falls within the extension period, and, under section 4, it is extended to January 3, 2022. However, as the taxpayer disposed of its relinquished property on or before September 1, 2021, the taxpayer is also eligible for relief under section 17 and may extend its 180-day deadline to the *later of* January 3, 2022, or April 11, 2022, the 120th day after the 180-day deadline would otherwise occur. The taxpayer therefore has until April 11, 2022, to acquire replacement property.

Example 2: On August 31, 2021, an affected taxpayer disposed of relinquished property pursuant to a section 1031 exchange.

The taxpayer's 45-day identification deadline would be October 15, 2021. That deadline falls within the extension period and it is extended to January 3, 2022. However, as the taxpayer disposed of relinquished property on or before September 1, 2021, it is also eligible for relief under section 17 and may extend its 45-day deadline to the *later of* January 3, 2022, or February 12, 2022, the 120th day after the 45-day deadline would otherwise occur. The taxpayer therefore has until February 12, 2022, to identify replacement property.

The taxpayer's 180-day acquisition deadline would be February 27, 2022. That 180-day deadline **not** fall within the extension period, and no relief is available under section 4. However, as the taxpayer disposed of relinquished property on or before September 1, 2021, it is eligible for relief under section 17, so that it may extend its 180-day deadline to the *later of* January 3, 2022, or June 27, 2022, the 120th day after the 180-day deadline would otherwise occur. The taxpayer therefore has until June 27, 2022, to acquire replacement property.

Example 3: On September 15, 2021, an affected taxpayer disposed of relinquished property pursuant to a section 1031 exchange.

The taxpayer's 45-day identification deadline would be October 30, 2021. That 45-day deadline falls within the extension period, and it is extended to January 3, 2022. The taxpayer did not dispose of relinquished property on or before September 1, 2021, and is not eligible for relief under section 17. The taxpayer therefore has until January 3, 2022, to identify replacement property.

The taxpayer's 180-day deadline would be March 14, 2022. As that 180-day deadline does not fall within the extension period, no relief is available under section 4. Additionally, as the taxpayer did not dispose of relinquished property on or before September 1, 2021, it is not eligible for relief under section 17. The taxpayer therefore has until March 14, 2022, to acquire replacement property. (That is, no extension of time applies to the acquisition of replacement property.)

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If you have any questions about how this relief may affect your individual situation, or section 1031 exchanges generally, please contact:

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