

IRS Extends Section 1031 Deadlines Due to Hurricane Ida

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On Sept. 1, 2021, the remnants of Hurricane Ida hit the northeastern United States, causing extensive flood damage in certain areas. In order to provide relief to taxpayers who may have been affected by this storm, the IRS has extended certain tax deadlines for taxpayers in affected areas, including deadlines that apply to like-kind exchanges described in Section 1031 of the Internal Revenue Code. In many cases, these extensions apply regardless of whether the taxpayer was personally impacted by Hurricane Ida.

In general, a taxpayer may defer gain from the sale of real property by acquiring real property of comparable value in a Section 1031 exchange. To qualify, a taxpayer engaging in a forward exchange (that is, an exchange in which the relinquished property is sold before the acquisition of replacement property) must identify replacement property within 45 days of selling the relinquished property, and must close on the acquisition of the replacement property within 180 days of the sale.

Likewise, a taxpayer engaging in a reverse exchange (that is, an exchange in which replacement property is purchased prior to the sale of the relinquished property) must identify the relinquished property within 45 days of the purchase and must close on the sale of the relinquished property within 180 days of the purchase.

These deadlines are usually strict, such that a failure to make the 45-day or 180-day deadlines, even by just one day, would generally cause the exchange not to qualify under Section 1031. However, the IRS has statutory authority to extend certain tax deadlines for taxpayers who may be affected by federally declared disasters. With respect to Hurricane Ida, the IRS recently exercised that authority and has extended many tax deadlines, including those relating to Section 1031, for affected taxpayers in the disaster area.

The disaster area in this case includes almost all counties that are part of the greater New York City area (separate relief issued by the IRS, with slightly different deadlines than those described here, applies to most of the greater Philadelphia area and the entire states of Louisiana and Mississippi). “Affected taxpayers” are defined broadly, and include any individual whose principal residence is in the disaster area, any business entity whose principal place of business is in the disaster area, any taxpayer whose tax records are kept in the disaster area, and certain other categories.

Under the IRS relief notice, if an affected taxpayer had a 45-day identification deadline or 180-day closing deadline that would have otherwise fallen anytime from Sept. 1, 2021, through Jan. 2, 2022, that deadline is automatically extended until Jan. 3, 2022.

In addition to this relief, the IRS provided an additional benefit to taxpayers who began their exchanges on or before Sept. 1, 2021, and either (1) are affected taxpayers or (2) are not affected taxpayers but are having difficulty completing their exchanges due to certain specified reasons relating to Hurricane Ida (for example, 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, or a title company's refusal to insure due to Hurricane Ida).

If a taxpayer qualifies for this additional relief, then any 45-day identification deadline or 180-day closing deadline that would have fallen on or after Sept. 1, 2021, but prior to Jan. 3, 2022, is extended to the later of Jan. 3, 2022 or the 120th day after the prior deadline. However, these deadlines cannot be extended past the due date (including extensions) of the taxpayer's tax return for the year of the exchange.

Finally, any taxpayer that qualifies for this additional relief whose identification period expired prior to Sept. 1, 2021, may also take advantage of the extended deadline if the previously identified property was substantially damaged by Hurricane Ida.

In sum, the Hurricane Ida relief issued by the IRS may provide a significant benefit to certain taxpayers in the New York City area that are engaging in Section 1031 exchanges. However, the consequences of failing to meet a Section 1031 deadline are severe, and thus taxpayers seeking to take advantage of these extensions should be careful in determining their eligibility.

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