FEDERATION of EXCHANGE ACCOMMODATORS

The Voice of the 1031 Industry

The Voice

Monthly Newsletter

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A Message From Our President

Amanda Schmunk,
Homestead Escrow and Exchange Company

Hello again! We find ourselves at the end of Q1, spring in the air, and we are approaching the 2024 Midyear Meeting in just a few weeks. This conference is a great opportunity to get involved in our government affairs aspect of the FEA, which is vital to defending our industry.

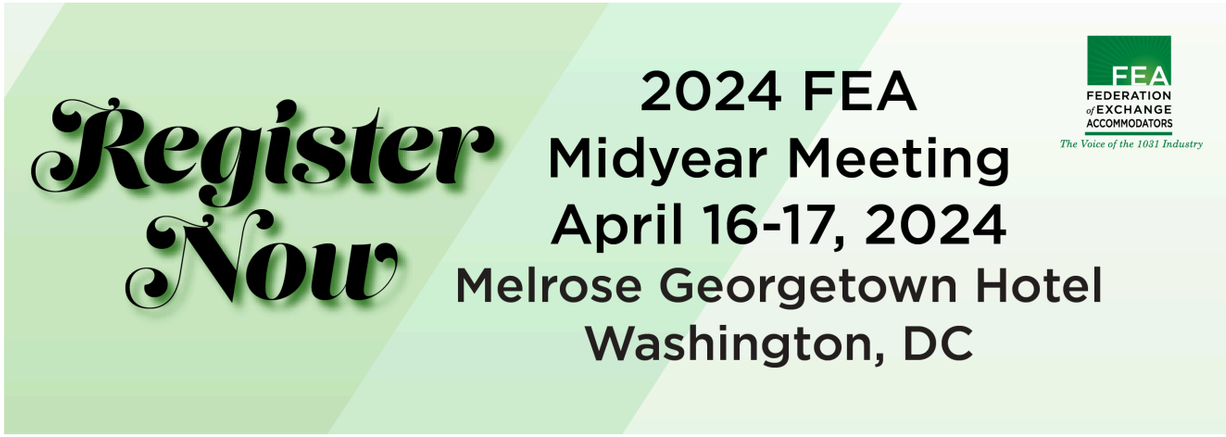
As you may be aware, President Biden once again proposed capping 1031 exchanges in his new budget. Although we continue to have “a target on our back” and must remain alert, because of the FEA and GAC’s continued work, we are strong and have great connections throughout Washington D.C. Our protection efforts are accomplished through work with David Franasiak at Williams & Jensen and the Government Affairs Committee. Together, we will continue to respond to threats to our industry both in the defense and strengthening of support for 1031 exchanges.

The main way that Williams & Jensen, along with the Government Affairs Committee, work on this is via our meetings with members of Congress. During our Midyear Meeting last year, we were able to meet with members and staff in more than 70 different offices. We have also hosted 71 virtual meetings directly with members of Congress since the implementation of virtual meetings in 2020. We can use these meetings as uninterrupted time to present valuable information about the economic benefits of and dispelling myths about 1031 exchanges.

Much like last month, I will use this column to encourage you to join me in these government affairs efforts in Washington D.C. in a couple of weeks. You can have your own hand in defending your

profession and meet with members of Congress from your district or region. We do great work, and the only way we will be able to keep doing it is through strong advocation and representation.

Hopefully I will see you joining me in those efforts soon!



There's Still Time To Register for the 2024 Midyear Meeting!

Are you registered for 2024 Midyear Meeting?! If you would like to join FEA in Washington D.C. on April 16-17, there is still time to register!

Sessions will begin Tuesday at 12:30 p.m. at the Melrose Georgetown Hotel*. Scheduled presenters include House Ways, Means Chairman Jason Smith (R-MO), and a representative from the IRS. Attendees will also receive an update on the Corporate Transparency Act and prep for Thursday's Capitol Hill visits. Visit our website for additional speakers and topics.

Interested in sponsoring the 2024 Midyear Meeting? Check out these sponsorship opportunities!

**Please note* that the Melrose Georgetown Hotel is currently sold out due to many scheduled meetings in Washington D.C. the week of April 16. If you have questions about hotel rooms in the area, please contact Kerigan Hunziker at meetings@1031.org.

Register for 2024 Midyear Meeting

GAC Updates

Biden Budget Again Caps Like-Kind Exchanges

On March 11, the Biden Administration released their 2025 Budget. Similar to the 2022, 2023, and 2024 budgets, the document

FinCen Statement and Corporate Transparency Act Update

includes language re: “repeal deferral of gain from like-kind exchanges."

The Treasury Department Green Book was also released this month. It fleshes out the details of the policy proposals in the budget. The Green Book includes language regarding a cap on the amount of gain that can be deferred using a like-kind exchange to $500,000 for each taxpayer (or $1,000,000 for a married couple filing jointly) each year.

FEA leaders expected this language would be included in the budget, and have continued their focus on advocacy efforts to retain 1031. In the first three months of 2024, the FEA 1031 PAC has hosted six virtual events for members of Congress to discuss the economic importance of Section 1031, and more events are being scheduled. In addition, FEA members will make in-person visits to Capitol Hill during FEA’s Midyear Meeting April 17.

If you have any questions about either the virtual events or the in-person Hill visits, please contact Kimberly Steenhoek at director@1031.org.

Members of FEA’s government affairs committee met March 8 to discuss FinCEN’s recent Anti-Money Laundering proposal for Residential Real Estate Transfers, which is open for comment until April 16.

The plan is to draft a proposed comment letter from FEA, under the leadership of GAC co-chairs Jim Miller and Mary Cunningham, requesting a clarification of the proposed regulation to include similar exemptions (with a few changes) to other previous GTOs. FinCEN, in a prior final rule, has exempted QIs, including in a reverse exchange, from becoming a reporting person in some circumstances.

The comment will be narrowly tailored and would cite the prior rule exemption. Once a comment is developed, it will be reviewed further by the FEA executive committee and board for approval.

The group acknowledged that trying to address exemptions for the industry under the Corporate Transparency Act is not feasible. The new rule is now finalized and there is an impending compliance deadline for covered entities except for the narrow group of plaintiffs from the Alabama litigation (NSBA v. Yellen case).

FEA’s conference planning committee has scheduled a presentation on the Corporate Transparency Act for FEA members attending the Midyear Meeting on Tuesday, April 16.

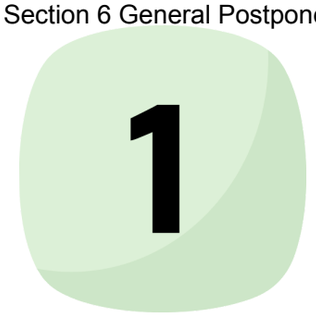
45-Day and 180-Day Postponements for Disaster Areas in Washington

The IRS has issued postponements of the 45-day and 180-day deadlines as follows:

Washington Postponement for disaster that began on August 18, 2023 (WA-2024-01 2/28/2024). Spokane County. General postponement date is June 17, 2024.

The Covered Disaster Area is the counties or parishes listed above. *Please check the IRS disaster website periodically at the address listed below for updates because the FEA does not send out notices for each disaster or for counties added to ongoing disaster extensions.*

An “Affected Taxpayer” includes individuals who live, and businesses whose principal place of business is located in, the Covered Disaster Area. Affected Taxpayers are entitled to relief regardless of where the relinquished property or replacement property is located. Affected Taxpayers may choose either the General Postponement relief under Section 6 *or* the Alternative relief under Section 17 of Rev. Proc. 2018-58. Taxpayers who do not meet the definition of Affected Taxpayers do not qualify for Section 6 General Postponement relief.



Option One

General Postponement under Section 6 of Rev. Proc. 2018-58 (Affected Taxpayers only).

Any 45-day deadline or 180-day deadline (for either a forward or reverse exchange) that falls on or after the Disaster Date above is postponed to the General Postponement Date.

The General Postponement applies regardless of the date the Relinquished Property was transferred (or the parked property acquired by the EAT) and is available to Affected Taxpayers regardless of whether their exchange began before or after the Disaster Date.

Option Two

Section 17 Alternative (Available to (1) Affected Taxpayers and (2) other taxpayers who have difficulty meeting the exchange deadlines. See Rev. Proc. 2018-58, Section 17 for conditions constituting “difficulty”).

Option Two is only available if the relinquished property was transferred (or the parked property was acquired by the EAT) on or before the Disaster Date. Any 45-day or 180-day deadline that falls on or after the Disaster Date is extended to THE LONGER OF: (1) 120 days from such deadline; OR (2) the General Postponement Date.

Please see Revenue Procedure 2018-58, Section 17, and the Notices shown on https://www.irs.gov/newsroom/tax-relief-in-disaster-situations.

Two New Rulings from the California Office of Tax Appeals

In the Matter of the Consolidated Appeals of TROUBLEFREE, LLC; D. SUTTON, OTA Case Nos. 19095264, 19095262, (2024-OTA-078P) [https://ota.ca.gov/wp-content/uploads/sites/54/2024/02/078-19095264-Troublefree-Sutton.pdf] the Office of Tax Appeals (“OTA”) considered the following facts:

Sutton was the sole member of Troublefree, LLC, a disregarded entity. In 2011, Troublefree sold relinquished property in a 1031 exchange through a QI. The gross sale price was $8,500,000. From this amount, Sutton (as the taxpayer/owner of Troublefree) paid off a total of $4,994,760 in relinquished property debt and netted $3,505,240 before payment of transactional expenses. The net cash proceeds (the amount of which was not expressly stated in the opinion) were appropriately transferred to and held by a QI.

Replacement property was purchased for $4,551,991 using $3,022,077 in mortgage debt together with cash exchange funds that I have calculated to be $1,529,914 paid toward the gross purchase price plus an aggregate of $286,521 in transactional expenses from the sale of the relinquished property and purchase of the replacement property. This resulted in $1,688,795 of excess exchange funds, which (after some adjustment for other transactional expenses) the opinion states were paid by the QI to the taxpayer as cash boot at the end of the exchange in the net amount of $1,628,333.

The taxpayer acknowledged that she owed taxes on this cash boot, and she paid taxes attributable to it. However, the debt on the relinquished property was $4,994,760, and the debt on the replacement property was $3,022,077. Therefore, there was a net reduction in debt of $1,972,682. Ms. Sutton's position was that this debt reduction should reduce her basis in the replacement property but should not result in the immediate recognition of gain. The California Franchise Tax Board ("FTB") took the position that relief from debt triggered recognition of gain in the year that the relinquished property debt was paid, i.e., 2011.

It should come as no surprise that the OTA sided with the FTB on this question, expressly finding that unreplaced real property debt triggers gain in the year that the debt was paid, and gain triggered by debt reduction is not postponed through application of the installment sale rules of IRC § 453 (let alone being merely applied to reduce the taxpayer's basis in replacement property as Ms. Sutton had argued).

Something that distinguishes this case is the patient and scholarly way that the OTA analyzes and documents the reasons why its holding is correct. QIs may find from time to time that this case, found at the URL above is a valuable resource to prove how debt needs to be replaced in a 1031 exchange.

In the Matter of the Appeal of: M. Saxon, OTA Case No. 20036049 (2004-OTA-95 Nonprecidential) [https://ota.ca.gov/wp-content/uploads/sites/54/2024/02/095-20036049-Saxon.pdf] the California Office of Tax Appeals considered the following facts:

The taxpayer sold four residential real properties (the "RQs") through a single QI. One RQ is referred to in the opinion as the "Sepulveda property"; one RQ is referred to in the opinion as the "Gardner property"; and the remaining two RQs are referred to as the "Cohasset properties." All four properties were processed by taxpayer's QI through a single exchange agreement with a single file number. The exchange agreement initially designated only the Sepulveda property as relinquished property, but the agreement was subsequently amended to include the other relinquished properties.

Different escrow companies (but only one QI) facilitated the sale of each of the three groups of relinquished properties, which were sold on different dates. The Cohasset properties were sold on July 19, 2013 for $5,650,000. The Gardner property was sold on July 30, 2013 for $1,850,000. The Sepulveda property was sold on August 1, 2013 for $2,800,000. In each case, the seller referred to on the closing statement was the QI as intermediary for taxpayer, with a reference to QI's single file number.

The QI sent a notice to the taxpayer that her ID notice was due by September 2, 2013, 45 days after the sale of the first relinquished property. Taxpayer sent her ID notice on September 2, 2013. I suspect that this notice was sent after regular business hours of the QI. However, the OTA's opinion does not discuss that issue. The ID notice listed five properties and indicated that taxpayer intended to actually acquire two of those properties. This notice obviously did not comply with the 3-property rule (Treas. Reg. 1.1031(k)-1(c)(4)(i)(A)); it apparently did not comply with the 95-percent rule (Treas. Reg. 1.1031(k)-1(c)(4)(ii)(B)) because of the stated intention to acquire only two of the five named properties; and it obviously did not comply with the 45-day rule (Treas. Reg. 1.1031(k)-1(c)(4)(ii)(A)) because none of the named properties had been acquired through the exchange by the end of the

identification period. Therefore, this identification could only qualify through the 200-percent rule (Treas. Reg. 1.1031(k)-1(c)(4)(i)(B)). However, on appeal before the OTA, taxpayer admitted that the limitations imposed by the 200-percent rule were not met.

Taxpayer's position before the Office of Tax Appeals was that she had complied with the 3-property rule because there were five replacement properties designated for four separate relinquished properties that she reported on four separate 8824 forms. The OTA noted that the documents in the file contemporaneous with the exchange consistently reflected a single exchange and only a single identification notice. Furthermore, the claimed identification dates stated in taxpayer's 8824 forms did not match the dates in her identification notice. In short, there was nothing to support taxpayer's claim that these transactions were separate exchanges, and the burden of proof clearly rested on her. Therefore, the finding of the FTB that no exchange occurred was sustained by the OTA.

Initially, taxpayer had been assessed a penalty for filing improper tax forms. That penalty was abated based on taxpayer's production of evidence that she lacked the cognitive capacity and legal knowledge to understand how to complete her tax forms for this transaction.

Upcoming Webinar: 1031 Exchanges in the Oil & Gas Sector

Wednesday, April 3, 2024 – 12:00 PM Eastern
Presented by: Todd Keator, Holland & Knight

This session will discuss section 1031 exchange issues unique to oil & gas assets, including qualifying assets, replacement property identifications, sale vs. leasing transactions, depletion and IDC recapture, tax partnerships and elections of out subchapter K, and acquisitions of royalty trust interests.

Register for the Webinar

Federation of Exchange Accommodators
1★31PAC

FEA 1031 PAC: Upcoming Fundraisers

Sen. Mike Crapo (R-ID), Wednesday, April 10, 3:30-4pm EST *(tentative)*

The FEA 1031 PAC contributes to members of Congress of both political parties and is funded by eligible individual employees.

To become an eligible employee, individuals must be employed by FEA member companies that have filed a Permission to Solicit form. A Permission to Solicit form is required by the Federal Election Commission before FEA can solicit eligible employees of member companies. Member companies are only permitted to grant one trade association permission to solicit their employees per calendar year.

For more information, please contact Kimberly Steenhoek at director@1031.org.

Welcome to our New Member!

Superior 1031 Exchange, LLC
Durham, North Carolina

Affiliate Member Spotlight

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Established in 1970, Meltzer Lippe's founding vision was to be a commercially oriented, tax-focused practice with many lawyers who had worked at major law firms in New York City but wanted to practice at home on Long Island. All these years later, Meltzer Lippe is exactly that and so much more.

Since its founding, Meltzer Lippe has embraced a natural fusion between tax, corporate law, and real estate law. As a result, the firm has become a truly unique source of legal counsel for public and private companies, closely held family businesses, planning for high-net-worth businesses and high net worth individuals.

From these initial roots Meltzer Lippe has grown steadily and today is home to six keystone practice groups: Tax, Corporate, Real Estate, Trusts & Estates, Labor & Employment, and Commercial Litigation. Within these groups are specialty practices that have been developed to meet the evolving needs of our business, commercial, and high net worth clients. These practices include: employee

benefits, partnerships, social media & privacy law, tax exempt organizations, tax controversy, and wealth preservation.

SYNDICATED EQUITIES

Syndicated Equities
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Syndicated Equities has successfully worked with thousands of investors completing 1031 exchanges since its inception in 1986. Syndicated Equities provides 1031 exchange investors with replacement property opportunities through fractional interests in a larger, institutional-quality property (Delaware Statutory Trust, Tenancy-InCommon, or Land Trust), as well as sole ownership through its Net Lease Brokerage Division.

We seek to understand each investor's personal investment preferences and goals, including the replacement of leverage, before recommending a suitable replacement property option. Investments are structured to provide attractive current returns and preserve capital through multiple market cycles. Our 1031-compatible investments are stabilized credit-tenant, net-leased and multifamily properties, including industrial, retail, office, medical, and government assets across the country.

We also offer real estate investment opportunities outside of the 1031 context in development projects, self-storage, parking facilities, student housing, and hotels. The principals of Syndicated Equities invest alongside our clients in each property, reflecting our careful due diligence, alignment of interests, and personal commitment to the success of our investments. Syndicated Equities' investments are offered via Metropolitan Capital Investment Banc, Inc., a member of FINRA & SIPC.