

From: director@1031.org <director@1031.org>
Sent: Wednesday, March 25, 2020 1:05 PM
To: FEA Members
Subject: FEA Member Alert: Extending Deadlines Due to Crisis

FEA Member Alert from the Government Affairs Committee
FEA AND REAL ESTATE COALITION ASK TREASURY AND IRS TO EXTEND 1031 DEADLINES DUE TO COVID-19 CRISIS

On March 23, FEA joined members of the real estate coalition in sending the attached letter to Treasury Secretary Steven Mnuchin and other policy makers at the Treasury Department and Internal Revenue Service, requesting guidance to delay the deadlines applicable to like-kind exchanges that are currently underway due to the COVID-19 crisis. The letter specifically requests that deadlines to identify replacement property and/or complete like-kind exchanges should be extended to the later of 120 days or to the last day of the general disaster extension period authorized by an IRS News Release or other guidance, similar to the relief described in section 17 of Rev. Proc. 2018-58 and authorized under Internal Revenue Code Section 7508A. The signatories include 21 associations representing a broad spectrum of the real estate industry, representing qualified intermediaries, owners, operators, investors, lenders, title insurers and closers, brokers and others touching all asset classes. We thank the GAC leadership for working on this coalition effort.

Also attached is IRS Notice 2020-18, which automatically extends the time for filing of Federal tax returns and payment of Federal income tax payments to July 15, 2020. This notice expands the extension to any taxpayer (including individuals and entities) that have a Federal tax payment or a Federal income tax return due April 15, 2020. Affected Taxpayers do not have to file Forms 4868 or 7004 to receive the extension. There is no limitation on the amount of the payment that may be postponed.

Relief for our 1031 exchange clients is paramount to all of us. The FEA & GAC continue to monitor the situation very closely and will share any information on extensions as soon as it is released.

###

GAC Co-Chairs
Suzanne Goldstein Baker
Suzanne.Baker@ipx1031.com

Dave Brown
dbrown@ipe1031.com

Mary Cunningham
mary.cunningham@cdec1031.com

GAC Administrative Manager
Kimberly Steenhoek
Kimberly@1031.org

Lynn M. Harkin, CAE
Federation of Exchange Accommodators (FEA)
director@1031.org

March 23, 2020

The Honorable Steven T. Mnuchin
Secretary of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Dear Secretary Mnuchin:

The undersigned real estate associations would like to take this opportunity to thank the Treasury Department and Administration for working to ensure American households and businesses have the resources necessary to respond to the COVID-19 crisis. We sincerely appreciate your efforts.

We write today to ask that the Treasury Department and Internal Revenue Service take administrative action to help ensure liquidity in real estate markets by delaying deadlines applicable to like-kind exchanges that are currently underway (e.g., a taxpayer who has entered into an Exchange Agreement with a Qualified Intermediary or an Exchange Accommodation Titleholding Agreement with an Exchange Accommodation Titleholder). We believe that the deadlines to identify replacement property and / or complete like-kind exchanges should be extended to the later of 120 days or to the last day of the general disaster extension period authorized by an IRS News Release or other guidance, similar to the relief described in section 17 of Rev. Proc. 2018-58 and authorized under Internal Revenue Code Section 7508A.

Like-kind exchanges support the real estate sector by encouraging investors of all sizes, including small businesses and individuals, to remain invested in real estate while still allowing them to balance their investments to shift resources to more productive properties, change geographic location, or diversify or consolidate holdings. Like-kind exchange rules encourage investors to remain invested in real estate by allowing property owners to defer capital gains tax if, instead of selling their property, they exchange it for another comparable property. As long as the taxpayer remains invested in real estate, tax on any gain is deferred. When the taxpayer ultimately sells the asset, the capital gains tax is paid.

The COVID-19 crisis is threatening the ability of real estate investors to complete like-kind exchanges. Under the most common type of like-kind exchange, a taxpayer sells a relinquished property and deposits the proceeds with a Qualified Intermediary. The taxpayer subsequently has 45 days to identify replacement property and 180 days to complete a transaction. Failure to meet the strict deadlines for identifying trade properties and then actually closing on a replacement property result in immediate recognition of capital gain income that could otherwise be deferred.

Unfortunately, current circumstances make compliance with like-kind exchange reinvestment rules impossible. Identifying properties for trade purposes requires travel and a confidence in both the expected cash-flow stream and the value of potentially acquired property. Closing on an identified property requires these same conditions plus extensive due diligence by the buyer, lender, and other third-party contractors. All of these necessary steps are currently unfeasible due to travel restrictions, quarantine, properties being locked down, and office closures of title / escrow companies and governmental recording offices.

In sum, we are extremely concerned that taxpayers who may have commenced an exchange will be unable to identify a replacement like-kind exchange property and / or close on a transaction even if such a property can be identified. Taxpayers, many of whom are small and medium-sized businesses and middle-class investors, should not have to be concerned about the possibility of having to pay significant capital gains taxes because like-kind exchange transactions cannot be completed due to the disruption caused by the coronavirus pandemic. The funds they would have to utilize to meet such tax obligations would only further reduce liquidity in real estate markets. Accordingly, we request that the deadlines to identify replacement property and / or complete like-kind exchanges be extended similar to the relief described in section 17 of Rev. Proc. 2018-58 and authorized under Internal Revenue Code Section 7508A. Additional relief may be warranted depending on how long the crisis lasts.

We thank you for considering our views and again appreciate all you are doing to assist American families and businesses to respond to the COVID-19 crisis. Please do not hesitate **to contact Cindy Chetti, the National Multifamily Housing Council's Senior Vice President of Government Relations**, at 202-974-2300 should any questions arise.

Sincerely,

National Multifamily Housing Council
National Apartment Association
Alternative & Direct Investment Securities Association (ADISA)
American Land Title Association
American Resort Development Association (ARDA)
American Seniors Housing Association
Asian American Hotel Owners Association (AAHOA)
Associated General Contractors of America
Building Owners and Managers Association (BOMA) International
CRE Finance Council
Federation of Exchange Accommodators (FEA)
Institute for Portfolio Alternatives
International Council of Shopping Centers
Mortgage Bankers Association
NAIOP, the Commercial Real Estate Development Association

Nareit
National Association of Home Builders
National Association of REALTORS®
CCIM Institute
Institute of Real Estate Management
REALTORS® Land Institute
The Real Estate Roundtable

cc:

The Honorable David Kautter
Assistant Secretary (Tax Policy)
Department of Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

The Honorable Charles P. Rettig
Commissioner Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

The Honorable Michael J. Desmond
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Part III - Administrative, Procedural, and Miscellaneous

Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic

Notice 2020-18

I. PURPOSE

On March 13, 2020, the President of the United States issued an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in response to the ongoing Coronavirus Disease 2019 (COVID-19) pandemic (Emergency Declaration). The Emergency Declaration instructed the Secretary of the Treasury “to provide relief from tax deadlines to Americans who have been adversely affected by the COVID-19 emergency, as appropriate, pursuant to 26 U.S.C. 7508A(a).” Pursuant to the Emergency Declaration, this notice provides relief under section 7508A(a) of the Internal Revenue Code (Code) for the persons described in section III of this notice that the Secretary of the Treasury has determined to be affected by the COVID-19 emergency. This notice supersedes Notice 2020-17.

II. BACKGROUND

Section 7508A provides the Secretary of the Treasury or his delegate (Secretary) with authority to postpone the time for performing certain acts under the internal revenue laws for a taxpayer determined by the Secretary to be affected by a Federally declared disaster as defined in section 165(i)(5)(A). Pursuant to section 7508A(a), a

period of up to one year may be disregarded in determining whether the performance of certain acts is timely under the internal revenue laws.

On March 18, 2020, the Department of the Treasury and the Internal Revenue Service issued Notice 2020-17 providing relief under section 7508A(a) of the Code, which postponed the due date for certain Federal income tax payments from April 15, 2020 until July 15, 2020. This notice restates and expands upon the relief provided in Notice 2020-17.

III. GRANT OF RELIEF

The Secretary of the Treasury has determined that any person with a Federal income tax payment or a Federal income tax return due April 15, 2020, is affected by the COVID-19 emergency for purposes of the relief described in this section III (Affected Taxpayer). The term “person” includes an individual, a trust, estate, partnership, association, company or corporation, as provided in section 7701(a)(1) of the Code.

For an Affected Taxpayer, the due date for filing Federal income tax returns and making Federal income tax payments due April 15, 2020, is automatically postponed to July 15, 2020. Affected Taxpayers do not have to file Forms 4868 or 7004. There is no limitation on the amount of the payment that may be postponed.

The relief provided in this section III is available solely with respect to Federal income tax payments (including payments of tax on self-employment income) and Federal income tax returns due on April 15, 2020, in respect of an Affected Taxpayer’s 2019 taxable year, and Federal estimated income tax payments (including payments of

tax on self-employment income) due on April 15, 2020, for an Affected Taxpayer's 2020 taxable year.

No extension is provided in this notice for the payment or deposit of any other type of Federal tax, or for the filing of any Federal information return.

As a result of the postponement of the due date for filing Federal income tax returns and making Federal income tax payments from April 15, 2020, to July 15, 2020, the period beginning on April 15, 2020, and ending on July 15, 2020, will be disregarded in the calculation of any interest, penalty, or addition to tax for failure to file the Federal income tax returns or to pay the Federal income taxes postponed by this notice. Interest, penalties, and additions to tax with respect to such postponed Federal income tax filings and payments will begin to accrue on July 16, 2020.

IV. EFFECT ON OTHER DOCUMENTS

This Notice supersedes Notice 2020-17. Because of the expansion of relief provided in this notice and the fact that Notice 2020-17 is superseded, any phone calls regarding Notice 2020-17 that have not already been returned will not be returned. As noted below, taxpayers with questions regarding the application of this notice should contact (202) 317-5436.

V. DRAFTING INFORMATION

The principal author of this notice is Jennifer Auchterlonie of the Office of Associate Chief Counsel, Procedure and Administration. For further information regarding this notice, you may call (202) 317-5436 (not a toll-free call).