Identify Within 45 Days

1031 Knowledge

Yes, the 45-Day Identification Period is Set in Stone

SECTION 1.1031(k)-1

§1.1031(k)-1: Treatment of Deferred Exchanges states that *"the identification period begins on the date the taxpayer transfers relinquished property and ends at midnight on the 45th day thereafter."* Later in this subsection, the manner of identifying replacement property is specifically stated as: *"Replacement property is identified only if it is designated as replacement property in a written document signed by the taxpayer and hand delivered, telecopied, or otherwise sent before the end of the identification period to either - (i) The person obligated to transfer the replacement property to the taxpayer (regardless of whether that person is a disqualified person as defined in paragraph (k) of this section); or (ii) Any other person involved in the exchange other than the taxpayer or a disqualified person (as defined in paragraph (k) of this section). Examples of persons involved in the exchange include any of the parties to the exchange, an intermediary, an escrow agent, and a title company."*

IRS FORM 8824: LIKE-KIND EXCHANGES

IRS Form 8824, Part I, Item #5, the IRS asks for the following information: *"Date like-kind property you received was identified by written notice to another party (see instructions for 45-day written notice requirement) (month, day, and year)."* As both IRC §1031 and IRS Form 8824 indicate, there is no leeway whatsoever in properly identifying replacement property in a 1031 exchange. Identification must be made in writing and by midnight of the 45th calendar day from the relinquished property closing. Any attempt to try to circumvent these rules is considered tax fraud and could result in significant negative consequences.

In the Tax Court case, Dobrich vs. Commissioner (October 20, 1997), the taxpayers committed tax fraud by falsifying the date property was identified. The taxpayers misrepresented to the IRS that they had properly identified replacement property by back-dating documents in an attempt to reflect that an oral identification had been made. They tried to fabricate their identification and created false documents to attempt to substantiate their claim. The Court found evidence of the Dobrich's intent to defraud and ruled that they were liable for a Section 6663 fraud penalty. In addition, the taxpayers plead guilty to a criminal charge of causing the delivery of false documents to the IRS.

Ultimately, the taxpayers were liable for the $2.2 million in capital gain taxes they were attempting to defer - plus an additional 75% fraud penalty of an additional $1.6 million.

The Bottom Line: Every taxpayer should make sure they properly identify the replacement property within the 45-calendar day identification timeline pursuant to the §1031 rules and Treasury Regulation guidelines.

Compliments of:

<FirstName LastName>
<Title>
<Company>
<XXX.XXX.XXXX> | <XXX.XXX.XXXX>
<Email> | <Website>

ASSET PRESERVATION®
INCORPORATED

HQ 800.282.1031 | NY 866.394.1031
apiexchange.com | info@apiexchange.com