



NEW ENGLAND REAL ESTATE JOURNAL

Friday, December 10, 1999

THE LARGEST BUSINESS PUBLICATION OF ITS KIND IN THE NATION

By Robert Buckner, Asset Preservation **1031 exchanges: End of year warning to remember!**

Most real estate professionals who are familiar with Internal Revenue Code Section 1031 are aware that an investor has a maximum of 180 days to complete an exchange. However, come the end of the year, investors may unknowingly restrict their exchange to a shorter time period. Why the restriction? The Code states that the replacement property must be acquired within 180 days after the earlier of (a) the date on which the taxpayer transfers the relinquished (sale) property or (b) the due date of the Exchanger's federal income tax return for the year in which the taxpayer transferred the relinquished property, whichever is earlier. Essentially the IRS requires an exchange to be reported on the income tax returns of the year that the exchange was initiated.



However, the "due date" of the tax returns can be lengthened to allow for the 180 day period, by filing for an extension. Such extension is granted automatically.

What happens if the Exchanger forgets to file for the extension? Here's a recent case in point:

**Christensens vs.
Commissioner
(April 10, 1998)**

The Christensens filed

their tax return on April 15 and acquired replacement property within 180 days, however this purchase closed after they had already filed their tax return. The Tax Court rejected the couple's argument that the tax court misinterpreted the time limits of section 1031(a) and that the due date should include the extension that is available under section 6081 (a) even if they did not actually apply for and receive the extension. The tax court held that the language of section 1031 is unambiguous: the deadline to complete the exchange is the due date for the Exchanger's tax return, including any granted extensions. The decision denied like-kind exchange treatment for the transfer.

What they should have done to qualify for the tax deferral, was to (a) file and receive an extension on

their tax return due date; (b) acquire their replacement property, and (c) then file their tax returns.

REVERSE EXCHANGE TIMING ISSUES

In one version of the "reverse" exchange procedure where the Qualified Intermediary acquires and owns the replacement property prior to the sale of the relinquished property, many tax and legal advisors feel the 180 day time restriction does not apply. The 1031 tax code states that the 180 day time begins when the relinquished property closes. For some investors this procedure is a preferred option avoiding the stress and restrictions of completing the exchange within 180 days.

**Robert Buckner is the
N.E. division manager
for Asset Preservation,
Inc., a subsidiary of
Stewart Title Co.**