



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

January 8, 2009

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Dear

I am responding to your letter to President George W. Bush, dated October 3, 2008, which was referred to this office by the White House and the Commissioner of Internal Revenue. You asked for an extension of time to complete your like-kind exchange due to the current real estate, credit and financial crisis. You said that you cannot complete your transaction within the period prescribed in section 1031 of the Internal Revenue Code (the Code) for completion of a like-kind exchange because of the current financial crisis in the United States, and particularly in your state of residence.

Under current law, no gain or loss is recognized on the exchange of business or investment property if the owner exchanges the property for like-kind business or investment property (Section 1031(a)(1) of the Code). The law also provides that a taxpayer must receive the replacement property in the exchange by the earlier of 180 days after the date on which the taxpayer transfers the property relinquished in the exchange (the relinquished property), or the due date (determined with regard to extension) of the taxpayer's federal income tax return for the year in which the transfer of the relinquished property occurs (the statutory replacement period) (Section 1031(a)(3) of the Code).

Although I understand your situation and frustration, the IRS has no authority to extend the statutory replacement period as a result of the real estate, credit and financial crisis. We can only extend the statutory replacement period for taxpayers affected by Presidentially declared disasters as defined in section 1033(h)(3) of the Code, or terroristic or military actions (Section 7508A of the Code). The term "Presidentially declared disaster" means any disaster the President determines warrants assistance by the federal government under the Robert T. Stafford Disaster Relief and Emergency

Assistance Act (the Stafford Act). Under the Stafford Act the term “disaster” means any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts and available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby (42 United States Code section 5122(2)).

Unfortunately, your inability to complete an exchange due to the current financial crisis is not one of the events in section 7508A of the Code authorizing us to suspend or extend a statutorily mandated due date. Therefore, I regret that we cannot grant the extension you request.

If you have any questions, please contact me or
at () .

Sincerely,

Michael J. Montemurro
Branch Chief
Office of Associate Chief Counsel
(Income Tax & Accounting)