

Revenue Procedure 2018-58 (the “Rev. Proc.”) provides for extensions of Internal Revenue Code Section 1031 Exchange deadlines when the federal government declares a location to be a “federally-declared” disaster area; formerly referred to as a “Presidentially-declared” disaster. The 1031 exchange extensions provided in this Rev. Proc. are not automatically available to taxpayers upon the declaration of the disaster, and do not apply to some state or local states of emergency or all federal disasters. Instead, the IRS must first release an official Tax Relief Notice or News Release (“IRS Notice”) which makes the tax relief (i.e., the extensions) provided by the Rev. Proc. available (see Rev.Proc. §§1.02; 4.01; 17.01). The IRS Notice typically describes: (1) the areas affected by the disaster, (2) the date(s) of the disaster, (3) who may take advantage of the extensions, and (4) the extended deadline date(s). The IRS Notice itself, and additional information about tax relief in disaster situations, can be found on the “Tax Relief in Disaster Situation” page on [the IRS website](#), which is periodically updated with information regarding the disaster, including any modifications to the IRS Notice after it is initially released.

If an IRS Notice is issued that makes the tax relief described in the Rev. Proc. available, the 45- and 180-day exchange deadlines (in a delayed exchange or reverse exchange) are extended if the applicable requirements are satisfied. The length of the extension depends on which section of the Rev. Proc. applies: Section 6 or Section 17 (Rev. Proc. § 4.02). Relevant portions of the Rev. Proc., including those referenced in this article, can be found at the end of this article. The Rev. Proc., in its entirety, can be found here: <https://www.irs.gov/pub/irs-drop/rp-18-58.pdf>.

Section 6: General Extension: An extension under Section 6 of the Rev. Proc.:

- Will extend those 45-day and 180-day deadlines falling after the date of the disaster (and before the extended deadline date set forth in the IRS Notice) to the date set forth in the IRS Notice.
- Is available only to an “Affected Taxpayer.” An “Affected Taxpayer” will be described in the IRS Notice, but is typically someone described in Section 301.7508A-1(d)(1) of the Procedure and Administration Regulations, and usually includes individuals who live in, and businesses whose principal place of business is located in, the covered disaster area (Rev. Proc. § 4.01).
- Applies regardless whether the exchange began before or after the disaster date.

Section 17: Alternative Extension: An extension under Section 17 of the Rev. Proc.:

- Will extend those 45- and 180-day deadlines falling after the date of the disaster to the extended deadline date set forth in the IRS Notice, OR 120-days, whichever is longer. However, an extension cannot extend beyond: one year; or the due date for filing the tax return for the year of the transfer (Rev. Proc. § 17.02).
- Under Section 17 of the Rev. Proc., a 45-day identification period that falls before the date of the disaster may be retroactively extended if an identified replacement property (or an identified relinquished property in the case of a

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reverse exchange) is substantially damaged by the disaster (Rev. Proc. § 17.03)

- Is available only if the relinquished property was transferred (or parked property acquired by the exchange accommodation titleholder) on or before the disaster date (Rev. Proc. § 17.02(2)(a)).
- Is available to an “Affected Taxpayer” and a “non-Affected Taxpayer” who has difficulty meeting the exchange deadlines due to the disaster (Rev. Proc. § 17.02(2)(b)(i) & (ii)). A “non-Affected Taxpayer” may have difficulty for the following, or similar, reasons:
 1. The relinquished property or the replacement property is located in a covered disaster area;
 2. The principal place of business of any party to the transaction (for example, the qualified intermediary, exchange accommodation titleholder, transferee, settlement attorney, lender, financial institution, or a title insurance company) is located in the covered disaster area;
 3. Any party to the transaction (or an employee of such a party who is involved in the 1031 exchange transaction) is killed, injured, or missing as a result of the disaster;
 4. A document prepared in connection with the exchange (for example, the agreement between the transferor and the qualified intermediary or the deed to the relinquished property or replacement property) or a relevant land record is destroyed, damaged, or lost as a result of the disaster;
 5. A lender decides not to fund either permanently or temporarily a real estate closing due to the disaster or refuses to fund a loan to the taxpayer because flood, disaster, or other hazard insurance is not available due to the federally-declared disaster; or
 6. A title insurance company is not able to provide the required title insurance policy necessary to settle or close a real estate transaction due to the disaster.

Consult Tax Advisor: A taxpayer should not assume they are automatically granted an extension. A detailed review of the IRS Notice for the specific disaster should be conducted with the taxpayer’s tax advisor. Every IRS Notice provides an understanding of the impacted areas and extensions that may be allowed. It is the taxpayer’s sole responsibility and obligation to consult with their tax advisor and to determine whether the taxpayer qualifies for an extension under the applicable IRS Notice and Revenue Procedure 2018-58, and to determine the extended exchange deadlines. API customers are advised to inform API promptly if an extension applies to their exchange, and what the extended deadlines are.

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For more information on all disaster areas, visit the [IRS: Tax Relief in Disaster Situations](https://www.irs.gov/pub/irs-drop/rp-18-58.pdf). The Rev. Proc., in its entirety, can be found here: <https://www.irs.gov/pub/irs-drop/rp-18-58.pdf>.

Relevant Excerpts from Rev. Proc. 2018-58

Section 1.02: This revenue procedure does not, by itself, provide any postponements under section 7508A. In order for taxpayers to be entitled to a postponement of any act listed in this revenue procedure, the Internal Revenue Service (IRS) generally will publish a notice or issue other guidance (including an IRS News Release) providing relief with respect to a federally declared disaster, or a terroristic or military action. See section 4.01 of this revenue procedure.

Section 4.01: As provided by § 301.7508A-1(e), in the event of a federally declared disaster or terroristic or military action, the IRS will issue a news release, or other guidance, authorizing the postponement of acts described in this revenue procedure, that defines which taxpayers are considered “affected taxpayers,” and describes the acts postponed, the duration of the postponement, and the location of the covered disaster area. See, for example, IR-2018-199 (summarizing the relief provided for Hurricane Michael). The guidance may provide for postponement of only certain acts listed in this revenue procedure based on the time when the disaster occurred, its severity, and other factors. Unless the notice or other guidance for a particular disaster provides that the relief is limited, the guidance will generally postpone all of the acts listed in the regulations and this revenue procedure.

Section 4.02: Provisions of the internal revenue laws requiring the timely performance of specified acts postponed under sections 7508 and 7508A are listed in the tables below. In addition, section 17 of this revenue procedure expands the categories of taxpayers qualifying for relief to include transferors of certain property and provides additional postponements of deadlines solely with respect to section 1031 like-kind exchange transactions that are affected by a federally declared disaster. If an IRS News Release or other guidance is issued with respect to a specific federally declared disaster and authorizes postponement of acts in this revenue procedure, affected taxpayers may use the postponement rules provided in section 17 of this revenue procedure in lieu of section 6 of this revenue procedure. Transferors who are covered by the like-kind exchange rules of section 17 of this revenue procedure, but who are not “affected taxpayers” as defined by the IRS News Release, other guidance, or § 301.7508A-1(d)(1) are not eligible for relief under section 7508A or other sections of this revenue procedure.

Section 6. BUSINESS AND INDIVIDUAL TAX ISSUES

26. Sec. 1031(a)(3) In a deferred exchange, property otherwise qualified as like-kind property under section 1031 is treated as like-kind property if the 45-day identification period and the 180-day exchange period requirements under section 1031(a)(3) and § 1.1031(k)-1(b)(2) are met. See also section 17 of this revenue procedure.

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27. Sec. 1031. Property held in a qualified exchange accommodation arrangement may qualify as “replacement property” or “relinquished property” under section 1031 if the requirements of section 4 of Rev. Proc. 2000-37, 2000-2 C.B. 308, modified by Rev. Proc. 2004-51, 2004-2 C.B. 294, are met, including the 5-business day period to enter into a qualified exchange accommodation agreement (QEAA), the 45-day identification period, the 180-day exchange period, and the 180-day combined time period. See also section 17 of this revenue procedure.

SECTION 17. SPECIAL RULES FOR SECTION 1031 LIKE-KIND EXCHANGE TRANSACTIONS

Section 17.01 Taxpayers are provided the relief described in this section if an IRS News Release or other guidance provides relief for acts listed in this revenue procedure (unless the news release or other guidance specifies otherwise).

Section 17.02

(1) The last day of a 45-day identification period set forth in § 1.1031(k)-1(b)(2)(i) of the Income Tax Regulations, the last day of a 180-day exchange period set forth in § 1.1031(k)-1(b)(2)(ii), and the last day of a period set forth in section 4.02(3) through (6) of Rev. Proc. 2000-37, 2000-2 C.B. 308, modified by Rev. Proc. 2004-51, 2004-2 C.B. 294, that fall on or after the date of a federally declared disaster, are postponed by 120 days or to the last day of the general disaster extension period authorized by an IRS News Release or other guidance announcing tax relief for victims of the specific federally declared disaster, whichever is later. However, in no event may a postponement period extend beyond: (a) the due date (including extensions) of the taxpayer’s tax return for the year of the transfer (See § 1.1031(k)-1(b)(2)(ii)); or (b) one year (See section 7508A(a)).

(2) A taxpayer who is a transferor qualifies for a postponement under this section only if--

(a) The relinquished property was transferred on or before the date of the federally declared disaster, or in a transaction governed by Rev. Proc. 2000-37, modified by Rev. Proc. 2004-51, qualified indicia of ownership were transferred to the exchange accommodation titleholder on or before that date; and

(b) The taxpayer (transferor)--

(i) Is an “affected taxpayer” as defined in the IRS News Release or other guidance announcing tax relief for the victims of the specific federally declared disaster; or

(ii) Has difficulty meeting the 45-day identification period or 180-day exchange period deadline set forth in § 1.1031(k)-1(b)(2), or a deadline set forth in section 4.02(3) through (6) of Rev. Proc. 2000-37, modified by Rev. Proc. 2004-51, due to the federally declared disaster for the following or similar reasons:

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(A) The relinquished property or the replacement property is located in a covered disaster area (as defined in § 301.7508A-1(d)(2)) as provided in the IRS News Release or other guidance (the covered disaster area);

(B) The principal place of business of any party to the transaction (for example, a qualified intermediary, exchange accommodation titleholder, transferee, settlement attorney, lender, financial institution, or a title insurance company) is located in the covered disaster area;

(C) Any party to the transaction (or an employee of such a party who is involved in the section 1031 transaction) is killed, injured, or missing as a result of the federally declared disaster;

(D) A document prepared in connection with the exchange (for example, the agreement between the transferor and the qualified intermediary or the deed to the relinquished property or replacement property) or a relevant land record is destroyed, damaged, or lost as a result of the federally declared disaster;

(E) A lender decides not to fund either permanently or temporarily a real estate closing due to the federally declared disaster or refuses to fund a loan to the taxpayer because flood, disaster, or other hazard insurance is not available due to the federally declared disaster; or

(F) A title insurance company is not able to provide the required title insurance policy necessary to settle or close a real estate transaction due to the federally declared disaster.

Section 17.03 The postponement described in this section also applies to the last day of a 45-day identification period described in § 1.1031(k)-1(b)(2)(i) and the last day of a 45-day identification period described in section 4.05(4) of Rev. Proc. 2000-37, modified by Rev. Proc. 2004-51, that fall prior to the date of a federally declared disaster if an identified replacement property (in the case of an exchange described in § 1.1031(k)-1), or an identified relinquished property (in the case of an exchange described in Rev. Proc. 2000-37, modified by Rev. Proc. 2004-51) is substantially damaged by the federally declared disaster.

Section 17.04 If the taxpayer (transferor) qualifies for relief under this section for any reason other than section 17.02 (2)(b)(i) of this revenue procedure, then such taxpayer is not considered an affected taxpayer for purposes of any other act listed in this revenue procedure or for any acts listed in an IRS News Release or other published guidance related to the specific federally declared disaster.

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