

# Asset Preservation, Inc.

## §1031 Exchange - Legal and Tax Update

### Legal & Tax Update



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#### Additional Relief for Hurricanes

The IRS issued Notice 2005-3 on 13 January 2005. This provides relief, in addition to that previously provided under News Releases 2004-108, -115, -118, for persons involved in a section 1031 exchange and impacted by the hurricanes/tropical storms in the southeastern U.S. this past summer and fall. Relief granted under the News Releases was quite limited – frequently frustratingly so – and the relief granted under Notice 2005-3 is much more extensive. Significantly, this Notice provides relief if, among other things, the relinquished or replacement property is located in the disaster area, the principal place of business of any party to the exchange (i.e. exchanger, QI, closer, lender, etc.) is located in the disaster area, or the lender or title insurer backs out because of the of the disaster. Generally, to qualify for the relief, the relinquished property must have been transferred on or before the date of the declared disaster. In addition, it is significant that qualification for the relief is, in some circumstances, less mechanical than under the News Releases.

#### General Relief

Generally, in a delayed exchange if an exchanger or the exchange meets the **Qualification Criteria** [see below], the 45-day ID period and/or the 180-day Exchange Period is extended to [1] 120 days later than the original date or [2] December 30 2004, whichever is later.

#### Qualification Criteria

An exchanger qualifies for an extended 45-day identification period and 180-day exchange period under **General Relief** [above] only if:

- (1) The relinquished property was transferred on or before the date of the Presidentially declared disaster area; AND
- (2) Either (a) OR (b) applies
  - (a) The exchanger is
    - (i) An individual whose principal residence is located in the disaster area; OR
    - (ii) A business entity or sole proprietor whose principal place of business is located in the disaster area; OR
    - (iii) An individual who is a relief worker affiliated with a recognized government or philanthropic organization and who is assisting in the disaster area; OR
    - (iv) An individual whose principal residence, or a business entity or sole proprietor whose records necessary to meet a deadline for an act specified in paragraph (c) of this section are maintained in the disaster area; OR
    - (v) An estate or trust that has tax records necessary to meet a deadline for an act specified in paragraph (c) of this section and that are maintained in the disaster area; OR
    - (vi) The spouse of an affected taxpayer, solely with regard to a joint return of the husband and wife; OR
    - (vii) Any other person determined by the IRS to be affected by a Presidentially declared disaster. OR
  - (b) The exchanger has difficulty meeting the 45-day identification or 180-day exchange deadline due to the Presidentially declared disaster for any one of the following or similar reasons:
    - (i) The relinquished property or the replacement property is located in the disaster area as provided in the IRS News Release or other guidance; OR
    - (ii) The principal place of business of any party to the transaction (for example, a qualified intermediary, transferee, settlement attorney, lender, financial institution, or a title insurance company) is located in the disaster area; OR
    - (iii) Any party to the transaction (or an employee of such a party who is involved in the § 1031 transaction) is killed, injured, or missing as a result of the disaster; OR
    - (iv) A document prepared in connection with the exchange (for example, the exchange agreement between the exchanger 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; OR
    - (v) 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 disaster; OR
    - (vi) 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.

#### Additional Relief for Substantially Damaged Identified Replacement Property

The postponement described in General Relief [above] also applies to the last day of a 45-day identification period that falls prior to the date of a Presidentially declared disaster if an identified replacement property is substantially damaged by the disaster.



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