

Disaster Extensions and Like-Kind Exchanges

The deadlines imposed by IRC Section 1031 and the corresponding Regulations are static, with no ability for Exchangers to apply for extensions as with their tax returns. However, periodically the IRS will grant automatic extensions in response to natural disasters. Nevertheless, there are potential areas of confusion related to extensions of 1031 Exchange deadlines.

Section 1031 Background

We know that successful Section 1031 Exchanges require the Exchanger to identify potential Replacement Properties on or before Day 45, and to acquire one or more of those identified properties on or before Day 180 (or the due date for the Exchanger return for the tax year in which the transfer of the Relinquished Property occurs, including extensions).

For example, in a forward exchange, if the Exchanger transferred the Relinquished Property on November 1, 2024, the 45-day identification deadline would be December 16, 2024, and the 180-day exchange deadline would be April 30, 2025. However, the Exchanger's tax return deadline is April 15, 2025, which effectively shortens their exchange period unless they file Form 4868. (These deadlines and Form 4868 apply to individuals and married couples. Other deadlines and forms are to be used for other Taxpayers including Farmers and Ranchers, Corporations, and Partnerships.)

In a parking exchange (or "reverse" exchange) the same calculations would apply. If, through a properly structured parking exchange, the Exchange Accommodation Titleholder acquired Exchanger's Replacement Property on November 1, 2024, the Exchanger would have until December 16, 2024 to identify which property (or properties) in their existing portfolio would be the target for disposition, and until April 15, 2025 to complete that disposition (unless they file Form 4868 for an extension on their tax return).

IRS Disaster Extensions

Under The Robert T. Stafford Disaster Relief and Emergency Assistance Act ("Stafford Act") of 1988 and Revenue Procedure 2018-58, the IRS can grant extensions to certain time sensitive acts in the event the President declare that a 'major disaster' exists. Major Disaster is defined as

any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven [sic] 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 under this Act 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.

The extensions granted by the IRS only apply for “Qualified Taxpayers,” defined as:

- A. Any individual whose principal residence (for purposes of section 1033(h)(4)) is located in a disaster area,
- B. Any taxpayer if the taxpayer’s principal place of business (other than the business of performing services as an employee) is located in a disaster area,
- C. Any individual who is a relief worker affiliated with a recognized government or philanthropic organization and who is assisting in a disaster area,
- D. Any taxpayer whose records necessary to meet a deadline for an act described in section 7508(a)(1) are maintained in a disaster area,
- E. Any individual visiting a disaster area who was killed or injured as a result of the disaster, and
- F. Solely with respect to a joint return, any spouse of an individual described in any preceding subparagraph of this paragraph.

Taxpayers may determine if an event was designated by the president as a federally declared disaster area by searching on www.fema.gov/disaster/declarations. Many, but not all, of these disasters will also be posted to www.irs.gov/newsroom/tax-relief-in-disaster-situations.

When the President declares a federal disaster, FEMA will designate what counties (in Louisiana, parishes) are entitled to relief and what types of relief. After FEMA designates the affected counties, the IRS will issue a Disaster Relief Notice.

Revenue Procedures also includes special rules for Section 1031 Like-Kind Exchanges. The last day of the 45-day identification period, the last day of the 180-day exchange period, and the last day of any deadlines set forth under Rev. Proc. 2000-37 for parking exchanges “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.”

For Taxpayers located in the disaster area, the IRS maintains a list of the ZIP codes located within the disaster area and administratively tags the accounts of those Taxpayers. The IRS automatically provides filing relief to these Taxpayers, and they do not need to do anything further.

As discussed above, there are additional categories of “Affected Taxpayer” who are not physically located within the disaster area. Taxpayers who qualify for relief but who are not physically located within the disaster area must inform the IRS that they have been impacted by the disaster.

These Taxpayers must contact the IRS by calling 866-562-5227. It is important to remember that Affected Taxpayers also includes workers affiliated with recognized government or philanthropic agencies assisting the relief activities.

To qualify for an extension on 1031 Exchange deadlines, the Exchanger must qualify for relief under both the specific Disaster Relief Notice and the terms of Rev. Proc. 2018-58. Exchangers who believe that they may qualify for disaster related extensions on the 1031 Exchanges must consult with their tax and legal advisors. Upon determining that they qualify for such extensions, they must then promptly notify their Exchange Facilitator so that the Intermediary may properly notate the exchange files.

Remember that it is the Exchanger's burden to determine whether they qualify for disaster relief, and not the province of the Exchange Facilitator or Qualified Intermediary to do so.