Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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12-10-01

LEGEND

Taxpayers	=
Broadway Property	=
California Property	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Intermediary	=
State Agency	=

Dear

This letter ruling is in response to your letter, dated February 22, 2001, and submitted pursuant to Rev. Proc. 2001-1, 2001 I.R.B. 4, requesting a ruling under section 1031 of the Internal Revenue Code.

FACTS

You sold Broadway Property on Date 1. You simultaneously executed a real estate exchange agreement with Intermediary to act as your intermediary in a section 1031 exchange. In accordance with the agreement, you directed the closing agent to pay over your sale proceeds to Intermediary.

On Date 2, State Agency took possession and control of Intermediary, appointed a receiver of Intermediary, and filed a lawsuit against Intermediary. A judge later confirmed the appointment of the receiver and froze all assets of Intermediary, including your sale proceeds.

On Date 3 (a date within 45 days of Date 1 on which you sold Broadway Property), you submitted a designation form to the receiver of Intermediary, that designated California Property as your replacement property and entered into a contract to purchase this property. However, you were prevented from purchasing this replacement property within 180 days from Date 1 because the sale proceeds continued to be frozen as part of the receivership proceeding against Intermediary.

RULINGS REQUESTED

You request a ruling concluding that the 180-day period is suspended for the duration of the receivership based on the fact that the situation is analogous to the events that trigger the suspension provided under section 6503(b) of the Code.

LAW AND ANALYSIS

Section 1001 of the Code generally requires recognition of the entire amount of gain or loss on the sale or exchange of property. An exception to this rule is section 1031(a)(1) that provides no gain or loss will be recognized on the exchange of property held for productive use in a trade or business or for investment if the property is exchanged solely for property of a kind which is to be held either for productive use in a trade or business or for investment.

Section 1031(a)(3) of the Code provides certain requirements for treating property received in a non-simultaneous exchange as like-kind property. Section 1031(a)(3)(A) requires deferred replacement property to be identified within 45 days after the date that the taxpayer transfers the property relinquished in the exchange (the relinquished property).

Section 1031(a)(3)(B) provides that the property received by the taxpayer (the exchanged property) will not qualify for nonrecognition treatment if the exchanged property is received after the earlier of 180 days from the date the taxpayer transfers the relinquished property or the due date (determined with regard to extensions) of the taxpayer's return for the taxable year in which the transfer of the relinquished property occurs. See also section 1.1031(k)-1(b) of the Income Tax Regulations.

Christensen v. Commissioner, 98-1 U.S.T.C. (CCH) P50,352 (9th Cir. 1997), involved taxpayers who did not acquire the exchanged property by the deadline set under section 1031(a)(3)(B). The court disallowed nonrecognition treatment, holding that nothing less than literal compliance with section 1031 satisfies the Congressionally-mandated deadline. Cf. United States v. Locke, 471 U.S. 84 (1985)(holding "filing deadlines, like statutes of limitations, necessarily operate harshly and arbitrarily with respect to individuals who fall just on the other side of them, but if the concept of a filing deadline is to have any content, the deadline must be enforced").

Section 6503(b) of the Code provides that where the assets of the taxpayer are in the control or custody of the court in any proceeding before any court of the United States or of any state or of the District of Columbia, the running of the period of limitations for collection is suspended for the duration of such control or custody and for six months thereafter.

Section 301.6503(b)-1 of the Procedure and Administration Regulations provides that where all or substantially all of the assets of a taxpayer are in the control or custody of a court, the period of limitations on collection after assessment prescribed in section 6502 is suspended with respect to the outstanding amount due on the assessment for the period such assets are in the control or custody of the court, and for 6 months thereafter.

Nothing in either the language of section 6503(b) or the case law interpreting this provision supports the notion that the suspension afforded by section 6503(b) is properly relied on to suspend the 180-day period under section 1031(a)(3)(B) where a taxpayer’s assets are within court custody or control.

Based on the foregoing analysis and your representations, we rule that section 6503(b) of the Code does not authorize the IRS to suspend the 180-day replacement period under section 1031(A)(3)(B).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,
George Baker
Assistant to the Chief, Branch 5
Office of Income Tax and Accounting

Enclosure (1)

cc: