



1031 NEWSLETTER

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1031 CHALLENGES IN A CHANGING ECONOMY!

BY: MARY LOU SCHWAB CPA, CES

Decisions — Decisions! It is more challenging in this economy to understand all the tax, lending and insurance issues which affect a successful 1031 Exchange transaction. Tax changes are forth coming. Lenders are requiring more equity & also limiting the number of investor loans. Insurance is a challenge as well. An exchanger needs to review many factors to determine if they can successfully complete a 1031 exchange.

TAX REGULATORY PROPOSALS:

Capital gains tax rates have a high probability of increasing in 2011. Currently, the 2010 long term capital gains tax rate is 15% for married tax payers that have income exceeding \$66,800. Publicly, the Obama administration has recommended an increase in long term capital gain tax rate to 20% and some members of Congress support a higher rate.

Watch for changes in State Tax regulations for 1031 exchange recognition and tax rates. As State legislators try to increase tax revenues for their enormous budget deficits, both 1031 Exchange recognition & capital gains tax rates are in jeopardy. Currently, a proposed California Assembly Bill 2640 would eliminate a company's ability to use 1031 exchange deferred tax treatment. In Rhode Island, favorable capital gain treatment is no longer recognized for 1031 exchanges. In Minnesota, the majority of 1031 exchanges are audited by state auditors. Many exchanges are being excluded from tax deferral treatment due to their ultra conservative interpretation of 1031 exchange regulations.

Depreciation recapture has a current rate cap of 25% which Congress could change to match the current maximum individual tax rate of 35%. Changing the cap rate on depreciation recapture would be a simple maneuver. Then the Legislators could claim they have not raised taxes for individual taxpayers.

LENDING ISSUES:

Commercial banks & mortgage lenders are creating incredible challenges for investors who need loans. Lower appraised values of property, higher equity requirements by banks & the FDIC requirements for limiting the amount of bank lending that is available for real estate has created a shortage of lending options. Additionally, FNMA regulations limit lending for investors if they have 3 or more investment property loans & their own principle residence loan. Double check the availability of lending prior to initiating your 1031 exchange transaction. Lastly, begin your lending request early in the 1031 exchange process as the loan processors, underwriters, SBA & bank officers are requesting more information & are not timely in responding to contract closing dates.

INSURANCE ISSUES:

For any new insurance coverage a credit check is generally requested & will be utilized to calculate your premium rate. Utilize your insurance broker to compare coverage & premiums to determine the most economic alternative.

Prior to any contemplated 1031 exchange transaction check with your direct tax advisor regarding your own tax situation. If you have a passive loss carry forward or a long term capital loss it could be beneficial for you to do an outright sale; a partial 1031 exchange or an installment sale for tax purposes. Additionally, if you have converted a rental property into your primary residence in the last 5 years you may receive only a prorated exclusion based upon how long the property was used as a primary res. Planning is key to your successful 1031 exchange. Utilize Bankers Escrow Corp. for your next 1031. Bankers Escrow has the Colorado state mandated fidelity bonding and errors & omission insurance. We safely hold 1031 funds in segregated money market accounts for the benefit of each exchanger.



The author, Mary Lou Schwab CPA, CES is Vice President at Bankers Escrow and oversees the 1031 Exchange Division. She obtained her Certified Exchange Specialist (CES) designation in 2004. She has over 28 years of real estate taxation experience and is also a real estate investor. Mary Lou's expertise is with the structuring of complex exchanges including reverse exchanges and construction improvement exchanges. Mary Lou can be reached at 303-986-4848 or toll free at 800-571-6595

Bankers Escrow Corp.

44 Union Blvd. Suite 115
Lakewood, CO 80228
Phone: 303-986-4848 or
toll free 800-571-6595

www.bankersescrow.com



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