

March 23, 2020

The Honorable Steven T. Mnuchin  
Secretary of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, DC 20220

Dear Secretary Mnuchin:

The undersigned real estate associations would like to take this opportunity to thank the Treasury Department and Administration for working to ensure American households and businesses have the resources necessary to respond to the COVID-19 crisis. We sincerely appreciate your efforts.

We write today to ask that the Treasury Department and Internal Revenue Service take administrative action to help ensure liquidity in real estate markets by delaying deadlines applicable to like-kind exchanges that are currently underway (e.g., a taxpayer who has entered into an Exchange Agreement with a Qualified Intermediary or an Exchange Accommodation Titleholding Agreement with an Exchange Accommodation Titleholder). We believe that the deadlines to identify replacement property and / or complete like-kind exchanges should be extended to the later of 120 days or to the last day of the general disaster extension period authorized by an IRS News Release or other guidance, similar to the relief described in section 17 of Rev. Proc. 2018-58 and authorized under Internal Revenue Code Section 7508A.

Like-kind exchanges support the real estate sector by encouraging investors of all sizes, including small businesses and individuals, to remain invested in real estate while still allowing them to balance their investments to shift resources to more productive properties, change geographic location, or diversify or consolidate holdings. Like-kind exchange rules encourage investors to remain invested in real estate by allowing property owners to defer capital gains tax if, instead of selling their property, they exchange it for another comparable property. As long as the taxpayer remains invested in real estate, tax on any gain is deferred. When the taxpayer ultimately sells the asset, the capital gains tax is paid.

The COVID-19 crisis is threatening the ability of real estate investors to complete like-kind exchanges. Under the most common type of like-kind exchange, a taxpayer sells a relinquished property and deposits the proceeds with a Qualified Intermediary. The taxpayer subsequently has 45 days to identify replacement property and 180 days to complete a transaction. Failure to meet the strict deadlines for identifying trade properties and then actually closing on a replacement property result in immediate recognition of capital gain income that could otherwise be deferred.

Unfortunately, current circumstances make compliance with like-kind exchange reinvestment rules impossible. Identifying properties for trade purposes requires travel and a confidence in both the expected cash-flow stream and the value of potentially acquired property. Closing on an identified property requires these same conditions plus extensive due diligence by the buyer, lender, and other third-party contractors. All of these necessary steps are currently unfeasible due to travel restrictions, quarantine, properties being locked down, and office closures of title / escrow companies and governmental recording offices.

In sum, we are extremely concerned that taxpayers who may have commenced an exchange will be unable to identify a replacement like-kind exchange property and / or close on a transaction even if such a property can be identified. Taxpayers, many of whom are small and medium-sized businesses and middle-class investors, should not have to be concerned about the possibility of having to pay significant capital gains taxes because like-kind exchange transactions cannot be completed due to the disruption caused by the coronavirus pandemic. The funds they would have to utilize to meet such tax obligations would only further reduce liquidity in real estate markets. Accordingly, we request that the deadlines to identify replacement property and / or complete like-kind exchanges be extended similar to the relief described in section 17 of Rev. Proc. 2018-58 and authorized under Internal Revenue Code Section 7508A. Additional relief may be warranted depending on how long the crisis lasts.

We thank you for considering our views and again appreciate all you are doing to assist American families and businesses to respond to the COVID-19 crisis. Please do not hesitate to contact Cindy Chetti, the National Multifamily Housing Council's Senior Vice President of Government Relations, at 202-974-2300 should any questions arise.

Sincerely,

National Multifamily Housing Council  
National Apartment Association  
Alternative & Direct Investment Securities Association (ADISA)  
American Land Title Association  
American Resort Development Association (ARDA)  
American Seniors Housing Association  
Asian American Hotel Owners Association (AAHOA)  
Associated General Contractors of America  
Building Owners and Managers Association (BOMA) International  
CRE Finance Council  
Federation of Exchange Accommodators (FEA)  
Institute for Portfolio Alternatives  
International Council of Shopping Centers  
Mortgage Bankers Association  
NAIOP, the Commercial Real Estate Development Association

Nareit  
National Association of Home Builders  
National Association of REALTORS®  
CCIM Institute  
Institute of Real Estate Management  
REALTORS® Land Institute  
The Real Estate Roundtable

cc:

The Honorable David Kautter  
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Commissioner Internal Revenue Service  
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The Honorable Michael J. Desmond  
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