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Twenty Things Real Estate Attorneys Can Do to Not Mess up a Section 1031 Exchange (Part I: Items 1-10)

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TWENTY THINGS REAL ESTATE ATTORNEYS CAN DO TO NOT MESS UP A SECTION 1031 EXCHANGE (PART I: ITEMS 1–10)

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All too often I get calls from attorneys involved in litigation related to blown section 1031 exchanges. Section 1031 exchanges are ubiquitous in real estate transactions, but they still catch some real estate attorneys unaware. The nuances of section 1031 and its focus on formalism, provide myriad ways to mess up a section 1031 exchange. This article (published in two parts) discusses 20 things that real estate attorneys can do to reduce their risk of messing up a section 1031 exchange. The list is long, but it is not meant to be exhaustive. Added care with respect to these 20 items should help reduce the risk of error and eliminate some common errors.

Readers who are familiar with section 1031 basics, should skip ahead to the list; readers who might be new to section 1031 may benefit from this brief description of it.[1] Section 1031 allows the seller of real property (typically referred to as the "exchanger" in section 1031 discussions) to reinvest the sale proceeds without owing tax on the sale. To avoid tax on the transaction, the exchanger must avoid actual or constructive receipt of the sale proceeds (often referred to as "exchange proceeds"). The most common way exchangers avoid receipt of proceeds is by hiring a qualified intermediary (QI) to facilitate the exchange. The QI's role is to receive and hold exchange proceeds from the sale of one property while the exchanger locates replacement property. When the exchanger is ready to close on replacement property, the QI distributes exchange proceeds to the seller as directed by the QI. To avoid tax on the transaction, the exchanger must identify replacement property within 45 days after the sale of the relinquished property and acquire the replacement property within 180 days after the sale (the 180-day period can be cut short by the tax return due date).

Section 1031 does not actually eliminate gain; it defers it. Section 1031 defers gain by requiring the replacement property to take the basis the relinquished property had. Thus, if an exchanger immediately sells the replacement property in a taxable transaction after doing an exchange, the exchanger would recognize the deferred gain. If an individual holds replacement property until death, the property should get a stepped-up basis and the gain should be eliminated. Otherwise, the gain is deferred. Deferral is a good thing for many people because it provides the opportunity to hold a wanted replacement property or to plan for another section 1031 exchange of the replacement property in the future.

The first 10 items on the list (those in this first installment of the article) focus on things real estate attorneys can do prior to a section 1031 exchange and during the first part of an exchange to help their clients qualify for the tax benefits of section 1031. The next installment of the article will focus on completing an exchange and various structuring techniques that frequently arise.

ITEM 1
Notify your client if property being sold could qualify for section 1031 treatment.

Section 1031 applies to real property held for use in a trade or business or for investment. If the real estate deal that you are working on involves business-use or investment real property, the property may qualify for section 1031 treatment, so let your client know about section 1031. It is not uncommon for a seller to show up at closing, learn that the buyer is acquiring the property to complete a section 1031 exchange, and realize that section 1031 may help the seller defer gain. Although the seller may be able to alter course that late in the transaction and still structure the sale as part of a section 1031 exchange, that last-minute rush makes it difficult for parties to review exchange documents and make sure everything is in order for the close.

Real estate attorneys should let their clients know about section 1031 well before they get to the closing table. Property held primarily for sale and property held exclusively for personal use does not qualify for section 1031 treatment. Real estate attorneys should let their clients know that any other type of real property might qualify for a section 1031 exchange. To be safe, real estate attorneys may suggest that their clients consult tax experts to assess the viability of doing a section 1031 exchange of any property if there is a chance that their clients will reinvest the proceeds in other real property. It would be a shame for a property owner to sell property, pay tax, and reinvest the remaining exchange proceeds in property that would have satisfied section 1031. Such lost opportunities can be costly, and clients should have a say in the decision to do or not do a section 1031 exchange.

ITEM 2
Remember that reverse exchanges may be an option.

If your client is buying property and may be selling property soon, let your client know that a reverse exchange may be worth considering.[2] Reverse exchanges generally are structured as title-parking exchanges. With such transactions, an accommodator takes title to one of the exchange properties—typically the replacement property, but can be the relinquished property—and holds that title until the exchanger sells the relinquished property. The exchanger uses proceeds from the sale of the relinquished property to acquire the replacement property form the accommodator. The IRS has created a safe harbor for reverse exchanges that can be completed within 180 days. That safe harbor provides significant latitude in structuring the management, financing, and use of the parked property allowing the exchanger to take control the parked property without becoming the tax owner of it. In *Estate of* Bartell v. Commissioner,[3] the U.S. Tax Court granted section 1031 nonrecognition to an exchange of property that was parked with the accommodator for more than a year, so these transactions can be structured outside the confines of a safe harbor. Reverse exchanges are form-driven, so adhere closely to the safe harbor or case law.

ITEM 3
Leasehold improvements are great for the right circumstances.

Exchange proceeds can also be used to construct improvements on property the exchanger does not own but will acquire.[4] If an exchanger wants to use exchange proceeds to acquire property and construct improvements on it, the exchanger may consider setting up a title-parking arrangement and have an accommodator acquire the target property and construct the improvements. If the exchanger can complete the improvements within 180 days after the accommodator takes title to the property, then the transaction can be completed within the title-parking safe harbor. Otherwise, the Tax Court's decision in *Bartell* will provides guidance for structuring the transaction.

If an exchanger wants to use exchange proceeds to construct improvements on property owned by a party related to the exchanger, consider recommending a leasehold improvements exchange. With such exchanges, the related party enters into a long-term ground lease with the accommodator. While the accommodator holds the leasehold, the exchanger directs construction of the improvements. The exchanger then uses the exchange proceeds to acquire the leasehold interest from the accommodator. If the leasehold has at least 30 years to run, then it and the improvements should be valid replacement property. The related-party rules should not be a problem with this type of transaction because the ground lease calls for fair market rent of the land, which the accommodator and then the exchanger will pay. The related party will recognize ordinary income on the receipt of those rental payments. The value of the leasehold to the exchanger will be in the improvements. These types of transactions allow exchangers to reinvest large amounts of exchange proceeds into the replacement property improvements. Because exchangers control the parked property on which the improvements will be built and can control the readiness of the property, they can control the amount that is invested in the 180-day parking period. Thus, the property can be under construction or shovel-ready when the accommodator enters into the lease with the related party, and construction can commence apace, consuming large quantities of exchange proceeds in a relatively short period of time.

ITEM 4
Understand the (g)(6) restrictions and explain them to your client.

QIs exist to ensure that exchangers are not in actual or constructive receipt of exchange proceeds. To provide that benefit, a QI's exchange documents must include the (g)(6) restrictions. The (g)(6) restrictions provide that the exchanger shall not "receive, pledge, borrow, or otherwise obtain the benefit of" the exchange proceeds before the end of the 45-day identification period or exchange period, as appropriate. If the exchanger does not identify any property during the identification period, then the (g)(6) restrictions lapse at the end of the identification period. If the exchanger does not identify any replacement property, the exchanger can receive the exchange proceeds after the 45th day and the sale will be taxable.

If the exchanger has property identified at the end of the identification period, then the (g)(6) restrictions lapse at the end of the exchange period. The exchange period ends at the earlier of (1) the time the exchanger acquires all identified replacement property, (2) 180 days after the transfer of the relinquished property, or (3) the tax return due date (including extensions) for the taxable year during which the sale of the relinquished property occurred if earlier than the date the replacement property is acquired the end of the 180-day period. The period during which the (g)(6) restrictions apply is the "(g)(6) Period." During the (g)(6) Period, the QI may distribute the exchange proceeds for only a very few reasons. During the (g)(6) Period, the QI can distribute the proceeds to acquire valid replacement property and pay transaction costs. Otherwise, the QI must decline any requests to distribute the exchange proceeds during the (g)(6) Period.

Real estate attorneys should help their clients avoid working with QIs that disregard the (g)(6) restrictions. The QI safe harbor only works if the exchange agreement includes the (g)(6) restrictions. If a purported QI is willing to make distributions that violate the (g)(6) restrictions as provided for in the exchange agreement, the distributions will negate the safe harbor as it applies to the exchanger. If the safe harbor is negated, the exchanger will most likely be deemed to be in constructive receipt of the proceeds held by the purported QI. The exchanger would therefore owe tax on all the gain realized on the sale of the relinquished property. What's worse, is the IRS could consider the (g)(6) language in all of the purported QI's documents to be illusory. If so, all of the agreements the purported QI has entered into would be deemed not to have the (g)(6) restrictions and the intermediary would not satisfy the QI safe harbor. In such a situation, all of the exchangers who have worked with that intermediary would likely be deemed to be in constructive receipt of the proceeds held by the purported QI. Real estate attorneys should be aware of this possibility and steer their clients away from QIs that do not enforce the (g)(6) restrictions. They should also help their clients understand that the benefit of using a QI comes with the cost of tying their exchange proceeds up throughout the duration of the (g)(6) Period. Clients who understand this trade off typically concede that the QI should not distribute the proceeds before the end of the (g)(6) Period.

ITEM 5
Know the QI industry.

Qualified intermediaries facilitate almost every section 1031 exchange. The QI industry has several hundred QIs, but not all QIs are equal, and the QI industry is unregulated. Consider three general types of QIs. A handful of national QIs are affiliated with title companies or banks. Such QIs typically have a corporate office with highly talented exchange specialists and people in regional offices with expert knowledge of section 1031 and the exchange process. Some QIs are privately owned stand-alone operations, but they can also be very sophisticated. Some real estate attorneys and exchangers have developed relationships with practicing attorneys who have side QI businesses. These three types of QIs (bank- or title company-affiliated, stand-alone, attorney side business) represent the vast majority of QIs.

The QI industry is not regulated, but, for the most part, QIs behave well and carefully manage the significant amount of cash they hold for exchangers. There are, of course, exceptions to the general practice. For instance, the Financial Crisis of 2008 exposed some QIs that had either stolen or mismanaged exchange proceeds. In one instance, Ed Okun purchased many privately-owned Stand-alone regional QIs and used the exchange funds as his personal piggy bank. In another instance, LandAmerica Exchange Services Inc invested exchange proceeds in auction-rate securities that became illiquid during the Financial Crisis.[5] At that time, QIs' "float" got quite a bit of attention. Float is the amount of exchange proceeds that a QI holds on average. For instance, a QI that does several hundred exchanges a year could have a float of $150,000,000. If the owner is comfortable that the float will never go below $100,000,000, the owner might become more aggressive in investing that amount in something like auction-rate securities that provide a return that beats typical deposits. Or, in Ed Okun's case, the owner might decide to "borrow" from the float to temporarily improve his lifestyle. Such strategies work if the float maintains its typical level. For the float to remain at its target level, however, deal-flow must remain constant to ensure that sufficient funds are flowing in to meet the demand to distribute funds. Unfortunately, the real estate market dipped during the Financial Crisis, slowing deal-flow, and causing the QIs' float to dip below its customary levels. LandAmerica Exchange Services got caught because the Financial Crisis froze auction-rate securities, causing them to become illiquid, and it could not convert those securities to cash fast enough to meet the demands to distribute exchange proceeds. Ed Okun had spent the money he took from the QIs he controlled, so he was in no position to return those proceeds and fund the demands for exchange proceeds.

When a QI fails, exchange proceeds get tied up in bankruptcy proceedings, at least temporarily. If funds are unavailable, exchangers cannot complete their exchanges. If exchangers needed the funds to close on replacement property they had under contract, they could be liable for breach of contract if they could not otherwise deliver proceeds to acquire that property. Of course, the loss of funds also creates financial hardship for exchangers when a QI collapses. It may surprise some observers to learn that over time the bankruptcy trustees of the failed QIs were able to return amounts to exchangers that were often within a few percentage points of the total amounts they had deposited with the QIs. Some of the funds came from the QI or assets under investment as they became liquid, but banks and other third parties who were close to the failed QIs also ended up paying into the bankruptcy estate in settlement of claims against them. Of course, recovery of the funds took months or years, so the exchangers lost the benefit of tax deferral on the sale of their property, and they could have recognized gain as the payments were received.

Inevitably, real estate attorneys get drawn into malpractice claims when some of their clients lose money in QI failure. Some such claims are without merit. For instance, claims that the attorney should have known about the financial health of a company like LandAmerica Exchange Services is unreasonable. Even though it was part of a publicly traded company, relevant facts about its financial stability and use of exchange proceeds were not published until the bankruptcy was announced. From an outsider's perspective, LandAmerica Exchange Services appeared to be a financially sound QI until it was too late for exchangers to do anything to protect themselves. Rumblings about Ed Okun were nothing more than rumblings until the very end. People who had suspicions about his activities did not have sufficient proof to expose his nefarious work until the end.

A few exchangers who had hired LandAmerica Exchange Services as QI had placed exchange proceeds in qualified escrow accounts, and they were able to obtain their proceeds much earlier than exchangers who simply had proceeds on deposit with LandAmerica Exchange Services. The distributions were probably too late to afford the exchangers the opportunity to complete exchanges, so they lost the tax benefit of section 1031. Some exchangers who saw that happen claimed that their real estate attorneys should have told them about the availability of qualified escrow accounts and qualified trusts. Those claims should put all real estate attorneys on notice, and they should consider advising their clients of the possibility of using a qualified escrow account or qualified trust in addition to hiring a trusted QI. Qualified intermediaries often have documents and systems in place to incorporate qualified escrow accounts and qualified trusts into exchanges, but they generally only implement such tools upon request from the exchanger. Real estate attorneys can apprise clients of those tools and request that the QI provide information about them.

ITEM 6
Avoid accommodating accommodators.

Because the QI industry is not regulated, real estate attorneys should ensure that their clients avoid purported QIs who cut corners and flout the rules. In addition to minimizing the importance of formal QI requirements and absconding with funds, QIs can do other things that jeopardize exchanges they are hired to help facilitate. As stated above, exchange agreements must include the (g)(6) restrictions, and exchangers must adhere to particular rules in identifying replacement properties within the 45-day identification period. Qualified intermediaries should help ensure that exchanges they facilitate comply with these rules. Some QIs get the reputation of being "accommodating accommodators" because they are willing to distribute proceeds prior to the end of the (g)(6) Period. As discussed above, serious doubts exist as to whether such accommodators come within the definition of QI if they do not comply with the (g)(6) restrictions. Real estate attorneys should help their clients steer clear of such accommodators.

Some accommodators also are known to be willing to fudge on the identification rules. A talked-about trick such accommodators use is accepting a signed identification form within the 45-day identification period with reference to an attachment that lists the identified property. The trick being that the exchanger will later send the attachment, presumably after the end of the identification period, with the identified property. Not only would that be an invalid identification, it sounds like an effort to deceive the IRS, which could be fraud. Another talked about trick is that exchangers will submit two sealed envelopes each with identified properties and, after the 45-day identification period, let the QI know which letter to open and which one to dispose of. This too would violate the identification rules and would be a fraudulent identification. Real estate attorneys should avoid assisting with such shenanigans and should help their clients steer clear of accommodators who would entertain such tricks. The real estate bar should expect QIs to abide by the highest standards of professionalism and ethics and should refuse to work with QIs who do not abide by such standards.

ITEM 7
Know the identification rules.

Section 1031 allows exchangers to identify up to 3 properties without regard to the value of the properties (the three-Property Rule) or any number of properties if the total value of the identified properties does not exceed 200 percent of the value of the relinquished property (the 200 percent Rule). Exchangers can identify properties at any time during the 45-day identification period and can revoke an identification at any time during that period and identify another property or let the period lapse with no identified property. As reiterated below, recognize that if you are assisting with a property that ceases to be a viable replacement property before the end of the identification period, let your client know that there is still time to identify something else or end the exchange and receive the proceeds after the end of the identification period.

ITEM 8
Know the identification deadline.

An exchanger must identify replacement property within 45 days after the transfer of the relinquished property. Real estate attorneys should know when the 45-day identification period ends for each transaction that they work on, especially if they are assisting with the acquisition of replacement property. Except in uncommon situations, such as the exchanger being affected by a federally declared disaster or serving in the U.S. armed forces in a combat zone,[6] the 45-day period is not negotiable. Identifications can be revoked, so typically it is better to identify favorite properties a few days before the end of the identification period and change the identification at the last minute if needed than to miss the deadline altogether and fail to identify property. Be sure to revoke any prior identifications as needed to ensure that the total number or value of identified properties comes within the relevant prescribed limit.

COVID-19 has disrupted normal practices, affecting many exchangers' ability to complete section 1031 exchanges. The IRS issued Notice 2020-23 on April 9 extending the deadline for time-sensitive actions (including section 1031 identification and replacement-property acquisition) otherwise required to be completed between April 1 and July 15.[7] Typically, such relief extends deadlines for 120 days or to the date in the IRS notice, whichever is later (whichever-is-later rule).[8] Some observers are concerned that Notice 2020-23 may not apply the whichever-is-later rule and limit the extension to July 15. Nonetheless, a strong argument favors applying the whichever-is-later rule, which would extend affected section 1031 periods 120 days.[9] Because commentators disagree about the length of the extensions, exchangers and their advisors must carefully study existing and future guidance when making decisions affected by the extension guidance.

Once the IRS issues guidance extending the section 1031 periods, the extensions appear to be elective, and they apply to the identification and exchange periods. The (g)(6) restrictions should also apply to those extended periods. Consequently, if an exchanger chooses to apply the extensions, the exchanger should plan for the exchange proceeds to be subject to the (g)(6) restrictions for the extended periods. Many exchangers will accept the prolonged restrictions to take advantage of the extra time and capitalize on any opportunities in real estate markets that may arise during the extended period, but they need to understand the risks of drawing money from a QI and leaving it on deposit.

Concerned for exchangers that were unable to complete exchanges due to COVID-19 and measures taken to protect against it, industry groups have requested that the IRS make the disaster date earlier than April 1, perhaps as early as January 20.[10] Those groups argue that the extensions should apply to any exchange that begins between the earlier disaster date and July 15. The IRS has indicated that it will issue FAQs to address some of the uncertainty related COVID-19 and the extension dates,[11] but the IRS had yet to issue that additional guidance as of the date this article went to press.

If you are assisting with the acquisition of a potential replacement property and realize before the end of the identification period that the exchanger will not acquire it, let the exchanger know. The exchanger can then remove it from the list of identified property and add a different replacement property to the identification form. If the property you are working on is the exchanger's only choice for replacement property and its acquisition becomes unrealistic, let the exchanger know to revoke the identification and receive the exchange proceeds after the end of the identification period. Remember that if the exchanger has property identified at the end of the 45-day identification period, the exchange proceeds will be tied up until the end of the exchange period. The exchanger should not be in that situation, if the exchanger has decided not to acquire any replacement properties. Do not let the identification period lapse with properties identified that the exchanger has no interest in acquiring or will otherwise be unable to acquire.

ITEM 9
Use caution when deferring gain by straddling taxable years.

Real estate attorneys should know that if an exchange straddles taxable years, gain typically is recognized in the year the funds become available. For instance, if an exchanger sells property in December 2020 and has a bona fide intent to do an exchange, as evidenced by hiring a QI to facilitate the exchange, the exchanger would not be able to access the exchange proceeds until sometime in 2021. If the exchanger does not identify replacement property and receives the exchange proceeds at the end of the 45-day identification period, the exchanger would recognize gain in 2021 when it receives the exchange proceeds under the installment method.[12] This rule allows exchangers to defer paying tax for a year by deferring receipt of sale proceeds for 45 days. Some property owners may believe that they should take advantage of this one-year deferral by setting any sale up as a potential exchange. They can set a sale up as a potential exchange that defers gain for one year by timing it to come within the last month or so of the year (or last six months, if they are will to defer payment until the end of the exchange period) and hiring a QI to hold the proceeds.

Be aware, however, that if the exchanger uses the unadjusted basis of the property to allow for the 20 percent passthrough deduction under section 199A, it will lose the benefit of the unadjusted basis if it does not hold property at the end of the year. The lost deduction may not offset the benefit of deferring gain for a year. Exchangers can either choose not do an exchange or elect out of the installment method to ensure that gain is recognized in the year of the disposition, not the year the payment is received. If they wish to take advantage to the exchange property's unadjusted basis for purposes of the section 199A deduction, they should arrange to hold the relinquished property until after the end of the year or to acquire the replacement property before the end of the year.[13]

ITEM 10
Consider whether proceeds from blown exchanges may be investable in qualified opportunity funds.

Consider whether the exchanger could try to invest any unused exchange proceeds in a qualified opportunity fund (QOF). Typically, a person can qualify for deferral by investing gain in a QOF within 180 days after property is sold. The QOF 180-day period can have multiple start dates for a single gain. For instance, if an individual sells property, the 180-day period generally begins on the date of the sale. If gain is recognized under the installment method, the QOF 180-day period begins, at the election of the taxpayer, when payments are received or at the end of the taxable year that the payments are received. To illustrate, if a person sells a property on July 15, 2020, for a note that qualifies for the installment method, the person would recognize gain when the note payments are received. Assume the person receives payments on March 1, 2021, and August 1, 2021. The QOF rules allow the person to start the QOF 180-day periods on March 1, 2021, and August 1, 2021, or to start a single QOF 180-day period for both 2021 payments on December 31, 2021. The person could also elect out of the installment method and start the QOF 180-day period on July 15, 2020.

Knowing the QOF 180-day period can be important for exchangers. If an exchange straddles two years and does not elect out of the installment method, the installment method defers the gain until the year of receipt. The QOF rules therefore appear to allow the 180-day period to begin on the date that the QI distributes exchange proceeds or December 31 of the year of distribution. If an exchanger sold property on July 15, 2020, and received any unused exchange proceeds on January 11, 2021, the last day of the exchange period, the first QOF 180-day period would begin on January 11, 2021, but the exchanger could elect for it to begin on December 31, 2021. The exchanger could also elect out of the installment method and have the QOF 180-day period begin on July 15, 2020. Because the exchange period and QOF reinvestment period are both 180 days, exchangers would not appear to gain an advantage by electing out of the installment method. If an exchange straddles two taxable years, the exchanger has multiple QOF 180-day periods starting on the following dates:

1. The date the property was sold. The exchanger must elect out of the installment method to use this period. This period will run concurrently with the exchange period and often prevent the exchanger from investing in an opportunity fund during that period;
2. The date the QI distributes exchange proceeds; and
3. The last day of the taxable year during which the QI distributes exchange proceeds.

If a partnership transfers property, the general QOF 180-day periods apply to the partnership. If a partnership does not reinvest sale proceeds in a QOF, partners can reinvest their share of the partnership gain in a QOF. Partners can choose from several 180-day periods beginning on any one of the following start dates: (1) the date the partnership sells the property, (2) the end of the partnership's taxable year, or (3) the partnership's tax return due date. If a partnership is doing an exchange and does not elect out of the installment method, the partnership can use the QOF 180-day period beginning at the time the QI distributes the proceeds or it can use the December 31 (assuming that is the last day of the partnership's taxable year) of the year of the distribution. If the partnership does not reinvest the proceeds distributed from a QI, the partners can also use the 180-day periods that apply to the partnership, or they can use the 180-day periods beginning on the last day of the partnership's taxable year during which it receives the payments or its return due date for that same taxable year (usually March 15 of the year following the taxable year). Thus, assuming the partnership does not reinvest the exchange proceeds in a qualified opportunity fund, a partner could choose from any of seven different QOF 180-day periods to reinvest the exchange proceeds in a qualified opportunity fund starting on the following dates:

Dates Concurrent with the Partnership

1. The date the property was sold. The partnership must elect out of the installment method and not reinvest the proceeds in a QOF for a partner to use this period. This period will run concurrently with the exchange period and often prevent the exchanger from investing in an opportunity fund during that period.
2. The date the QI distributes exchange proceeds.
3. The last day of the taxable year during which the QI distributes exchange proceeds.

Dates Associated with the Partnership Year End and Return Due Date

1. Partnership elects out of installment method.
   a. December 31 of year of sale
   b. Partnership tax return due date for year of sale
2. Partnership does not elect out of installment method
   a. December 31 of year of receipt of proceeds
   b. Partnership tax return due date for year of receipt of proceeds

These 10 items help real estate attorneys get their clients started in a basic exchange and get them through the identification period, but that often is not the end of a real estate attorney's obligations. Part II of this article will cover another 10 items that real estate attorneys should consider, including myths and realities about drop-and-swap transactions, do's and don't's with related-party exchanges, when an S corporation division can be tax-free, how deal with cap-ex financing at closing, and several other items that arise in more complex transactions. The next edition of this esteemed journal should present those next 10 items.

Notes

1 For an in-depth coverage and analysis of section 1031 see Bradley T. Borden, Tax-Free Like-Kind Exchanges (Civic Research Institute 2nd edition 2015).

2 For in-depth analyses of reverse exchanges see Bradley T. Borden, Reverse Like-kind Exchanges: A Principled Approach, 20 Va. Tax Rev. 659 (2001); Bradley T. Borden, New Safe Harbor Promotes Reverse Exchanges, 66 Prac. Tax Strat. 68 (Feb. 2001).

3 147 T.C. 140 (2016).

4 For an in-depth discussion of improvements exchanges, see Bradley T. Borden, Alan S. Lederman, Glenn Spear, Build-to-Suit Ruling Breaks New Ground for Taxpayers Seeking Swap Treatment, 98 J. Tax'n 22 (Jan. 2003); Bradley T. Borden, Recent Developments in Build-to-Suit Exchanges, 44 Tax Mgt. Memo. 19 (Jan. 2003).

5 For a discussion of the QI meltdowns, see Bradley T. Borden, Paul L. B. McKenney, David Shechtman, Like-Kind Exchanges and Qualified Intermediaries, 124 Tax Notes 55 (July 6, 2009).

6 See I.R.C. 7508A; Notice 2020-23, 2020-18 I.R.B. 1; Rev. Proc. 2018-58, 2018-50 I.R.B. 990.

7 See Bradley T. Borden, Universal Deadlines Draw Attention to Section 1031 Periods, 167 Tax Notes Fed. 603 (Apr. 27, 2020). Section 7508A(d) may add 60 days to the extension, depending upon timing of the "incident date."

8 See Rev. Proc. 2018-58, section 17.

9 See Borden, supra note 7 at 612–13.

10 See, e.g., American Bar Association Section of Taxation, ABA Tax Section Follows Up on Preliminary COVID-19 Remarks, 2020 TNTF 85-21 (Apr. 29, 2020); Letter from Real Estate Coalition Requesting Clarification of Disaster Relief for § 1031 Exchanges (Apr. 20, 2020), available at https://v6k8u5d3.stackpathcdn.com/wp-content/uploads/2020/04/LKE-Coalition-letter-to-Treasury-IRS-re-Notice-2020-23-4.20.20.pdf?x44329.

11 See Kristen A. Parillo, FAQ Coming on Like-Kind Exchange Extensions, Tax Notes Fed., p. 527 (Apr. 20, 2020).

12 Under the installment method, the seller of property recognizes gain as payments are received on a note the seller receives as consideration for the property. To qualify for the installment method, the note must provide that at least one payment will be made in a subsequent taxable year.

13 For a discussion of the section 199A deduction and section 1031, see Bradley T. Borden, Section 1031 Exchanges and the 20 Percent Business Deduction under IRC Section 199A, 33 Prob. & Prop. 58 (Sep./Oct. 2019); Bradley T. Borden, Code Sec. 1031, the Code Sec. 199A and Bonus Depreciation Regulations, and Ozone Drop-Swap Cash-Outs, 22 J. Passthrough Ent. 13 (Jan.-Feb. 2019).