

SUMMARY OF DEADLINE EXTENSION RULES

Revenue Procedure 2018-58 permits extensions of the IRC §1031 45-day Identification Period and 180-day Exchange Period deadlines to certain taxpayers affected by Federally (formerly called “Presidentially”) declared disasters and terroristic and military actions.

1. The IRS will issue a Notice (“Disaster Relief Notice”) or other guidance when this relief is available, and will post it on the IRS website under “Disaster Relief”: <https://www.irs.gov/newsroom/tax-relief-in-disaster-situations>. FEMA notices and Presidential Declarations do not extend 1031 deadlines. The notice must be issued by the IRS. (Rev. Proc. 2018-58 §17.01)
2. You must meet the terms of the specific Disaster Relief Notice AND the terms of Rev. Proc. 2018-58 to qualify for an extension. It is important to check the IRS’ website (above link) for modifications to the Notices after the initial publication, for updates adding additional counties.
3. “Affected Taxpayers” that meet the definition in the Disaster Relief Notice may choose the relief provided in either Section 6 **OR** Section 17 of Rev. Proc. 2018-58.
4. **Section 6** applies only to Affected Taxpayers as defined in the Disaster Relief Notice. Section 6 permits Affected Taxpayers that have a deadline falling between the Disaster Date in the Disaster Relief Notice and the last day of the Postponement Period to extend that deadline to the last day of the Postponement Period.
 - Example 1: Disaster Date is June 14. Last day of the Postponement Period is October 15. Exchanger meets the definition of an “Affected Taxpayer” in the Disaster Relief Notice. Affected Taxpayer sells Relinquished Property on June 15 (**AFTER** the Disaster Date), and the 45th day is July 30. Under Section 6, the Affected Taxpayer may extend the Identification Period deadline to October 15, the last day of the Postponement Period. The 180th day is not extended.
5. **Section 17** of the Rev. Proc. applies to “Affected Taxpayers” as defined in the Disaster Relief Notice and “Non-Affected Taxpayers” who meet certain criteria. However, for Section 17 to apply, the Relinquished Property must have been transferred, or the parked property parked **ON OR BEFORE** the Disaster

Date. Section 17 permits the taxpayer to extend both 1031 deadlines for 120 days or until the last day of the Postponement Period (whichever is later).

NOTE: The extension may not go beyond: (a) the due date (including extensions) of the taxpayer's tax return for the year of the transfer; or (b) one year (§17.02).

- Example 2: Same facts as Example 1. Affected Taxpayer cannot benefit from Section 17 extensions because the exchange began **AFTER** the Disaster Date. Affected Taxpayer does not receive a 120-day extension.
 - Example 3: Same facts as Example 1 except that Affected Taxpayer sells Relinquished Property on June 1 (**BEFORE** the June 14 Disaster Date). The 45th day is July 16 and the 180th day is November 28. If Affected Taxpayer chooses Section 17 relief, then both the 45 and 180 day deadlines qualify to be extended for 120 days or until the last day of the Disaster Period (whichever is later).
6. **“Non-Affected Taxpayers”** meeting the criteria set forth in Section 17 and whose exchange commenced **ON OR BEFORE** the Disaster Date, may qualify for 120 day extensions of either or both of the 45 and 180 day deadlines, but cannot qualify for any relief under Section 6. Additionally, to qualify for the extension under Section 17, Non-Affected Taxpayers must have difficulty meeting the 45-day and 180-day deadlines because of the disaster, for the any of the following or similar reasons:
- The Relinquished Property or the Replacement Property is located in the disaster zone (§17.02(2)(b)(ii)(A))
 - The principal place of business of any party to the transaction is located in the disaster zone (§17.02(2)(b)(ii)(B))
 - A party to the transaction is killed, injured or missing due to the disaster (§17.02(2)(b)(ii)(C))
 - A necessary document relevant to the exchange or relevant land record is destroyed, damaged or lost due to the disaster (§17.02(2)(b)(ii)(D))
 - A lender won't fund because of the disaster (§17.02(2)(b)(ii)(E))
 - Title insurance policy cannot be issued due to the disaster (§17.02(2)(b)(ii)(F))

7. Generally, **under Section 17**, if the identification period has not expired by the date of the disaster, then the extensions may apply to both the 45-day identification period AND the 180-day exchange period. (§17.02(1)).
- If the identification period has expired by the date of the disaster, then only the exchange period deadline will be extended. (§17.02(1)).
 - **UNLESS** the disaster occurred after the 45th day **AND** the identified property was substantially damaged, **THEN** the taxpayer may be able to retroactively extend the identification period and also extend the exchange period. (§17.03).
- **Benefits come with responsibilities. Since there are so many variables to qualifying for Disaster Relief, you must tell us in writing if you are entitled to Disaster Relief, and you must tell us what your extended deadlines are, based upon the relevant IRS Notice and Rev. Proc. 2018-58. Otherwise, we will presume that your Identification and Exchange Periods will expire on the 45th and 180th calendar days, respectively, following the start of your exchange.**
- **EXTENDED DEADLINES WILL DELAY YOUR ACCESS TO EXCHANGE FUNDS UNTIL AFTER THESE NEW DEADLINES HAVE PASSED, unless your exchange terminates earlier pursuant to Article IV of the Exchange Agreement and Treasury Regulation Section 1.1031(k)-1(g)(6). Your representations of the new dates will not change the Exchange Agreement except as to the time periods for identifying replacement property and the exchange period. You should review Article IV of the Exchange Agreement and Treasury Regulations Section 1.1031(k)-1(g)(6) for the timing conditions under which exchange funds can be returned to you.**

Please review the following excerpts from Revenue Procedure 2018-58, setting forth the requirements for postponement of the deadlines for the Identification Period and the Exchange Period:

SECTION 3. SCOPE

This revenue procedure applies to individuals serving in the Armed Forces of the United States in a combat zone, or serving in support of such Armed Forces, individuals serving with respect to contingency operations, affected taxpayers by reason of federally declared disasters within the meaning of §301.7508A-1(d)(1), or taxpayers whom the IRS determines are affected by a terroristic or military action. Section 17 of this revenue procedure also applies to transferors who are not affected taxpayers but who are involved in a section 1031 like-kind exchange transaction and are entitled to relief under section 17.02(2) of this revenue procedure.

SECTION 4. APPLICATION

.02 Provisions of the internal revenue laws requiring the timely performance of specified acts postponed under sections 7508 and 7508A are listed in the tables below. In addition, section 17 of this revenue procedure expands the categories of taxpayers qualifying for relief to include transferors of certain property and provides additional postponements of deadlines solely with respect to section 1031 like-kind exchange transactions that are affected by a federally declared disaster. If an IRS News Release or other guidance is issued with respect to a specific federally declared disaster and authorizes postponement of acts in this revenue procedure, affected taxpayers may use the postponement rules provided in section 17 of this revenue procedure in lieu of section 6 of this revenue procedure. Transferors who are covered by the like-kind exchange rules of section 17 of this revenue procedure, but who are not “affected taxpayers” as defined by the IRS News Release, other guidance, or § 301.7508A-1(d)(1) are not eligible for relief under section 7508A or other sections of this revenue procedure.

SECTION 6. BUSINESS AND INDIVIDUAL TAX ISSUES

26. Sec. 1031(a)(3) In a deferred exchange, property otherwise qualified as like-kind property under section 1031 is treated as like-kind property if the 45-day identification period and the 180-day exchange period requirements under section 1031(a)(3) and § 1.1031(k)-1(b)(2) are met. See also section 17 of this revenue procedure.

26. Sec. 1031(a)(3) In a deferred exchange, property otherwise qualified as like-kind property under section 1031 is treated as like-kind property if the 45-day identification period and the 180-day exchange period requirements under section 1031(a)(3) and § 1.1031(k)-1(b)(2) are met. See also section 17 of this revenue procedure.

SECTION 17. SPECIAL RULES FOR SECTION 1031 LIKE-KIND EXCHANGE TRANSACTIONS

.01 Taxpayers are provided the relief described in this section if an IRS News Release or other guidance provides relief for acts listed in this revenue procedure (unless the news release or other guidance specifies otherwise).

.02 (1) The last day of a 45-day identification period set forth in § 1.1031(k)-1(b)(2)(i) of the Income Tax Regulations, the last day of a 180-day exchange period set forth in § 1.1031(k)-1(b)(2)(ii), and the last day of a period set forth in section 4.02(3) through (6) of Rev. Proc. 2000-37, 2000-2 C.B. 308, modified by Rev. Proc. 2004-51, 2004-2 C.B. 294, 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. However, in no event may a postponement period extend beyond:

(a) the due date (including extensions) of the taxpayer's tax return for the year of the transfer (See § 1.1031(k)-1(b)(2) (ii)); or (b) one year (See section 7508A(a)).

(2) A taxpayer who is a transferor qualifies for a postponement under this section only if-

a) The relinquished property was transferred on or before the date of the federally declared disaster, or in a transaction governed by Rev. Proc. 2000-37, modified by Rev. Proc. 2004-51, qualified indicia of ownership were transferred to the exchange accommodation title-holder on or before that date; and

(b) The taxpayer (transferor)—

(i) Is an "affected taxpayer" as defined in the IRS News Release or other guidance announcing tax relief for the victims of the specific federally declared disaster; or

(ii) Has difficulty meeting the 45-day identification period or 180-day exchange period deadline set forth in §1.1031(k)-1(b)(2), or a deadline set forth in section 4.02(3) through (6) of Rev. Proc. 2000-37, modified by Rev. Proc. 2004-51, due to the federally declared disaster for the following or similar reasons:

(A) The relinquished property or the replacement property is located in a covered disaster area (as defined in §301.7508A-1(d)(2)) as provided in the IRS News Release or other guidance (the covered disaster area);

(B) The principal place of business of any party to the transaction (for example, a qualified intermediary, exchange accommodation titleholder, transferee, settlement attorney, lender, financial institution, or a title insurance company) is located in the covered disaster area;

(C) Any party to the transaction (or an employee of such a party who is involved in the section 1031 transaction) is killed, injured, or missing as a result of the federally declared disaster;

(D) A document prepared in connection with the exchange (for example, the agreement between the transferor and the qualified intermediary or the deed to the relinquished property or replacement property) or a relevant land record is destroyed, damaged, or lost as a result of the federally declared disaster;

(E) A lender decides not to fund either permanently or temporarily a real estate closing due to the federally declared disaster or refuses to fund a loan to the taxpayer because flood, disaster, or other hazard insurance is not available due to the federally declared disaster; or

(F) A title insurance company is not able to provide the required title insurance policy necessary to settle or close a real estate transaction due to the federally declared disaster.

.03 The postponement described in this section also applies to the last day of a 45-day identification period described in §1.1031(k)-1(b)(2)(i) and the last day of a 45-day identification period described in section 4.05(4) of Rev. Proc. 2000-37, modified by Rev. Proc. 2004-51, that fall prior to the date of a federally declared disaster if an identified replacement property (in the case of an exchange described in § 1.1031(k)-1), or an identified relinquished property (in the case of an exchange described in Rev. Proc. 2000-37, modified by Rev. Proc. 2004-51) is substantially damaged by the federally declared disaster.

.04 If the taxpayer (transferor) qualifies for relief under this section for any reason other than section 17.02(2)(b)(i) of this revenue procedure, then such taxpayer is not considered an affected taxpayer for purposes of any other act listed in this revenue procedure or for any acts listed in an IRS News Release or other published guidance related to the specific federally declared disaster.