IPX 1031® Investment Property Exchange Services, Inc.

A Subsidiary of Fidelity National Financial, a Fortune 500 Company

1031*Insider*

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TAX DEFERRAL IN THE FACE OF

THE 2010 HEALTH CARE BILL & THE EXPIRATION OF THE BUSH TAX CUTS

Although George W. Bush has been out of office for four years, the implications of his tax cuts are still in place….but perhaps not for long. In 2001, Congress passed The Economic Growth and Tax Relief Reconciliation Act of 2001 (a.k.a. "The Bush Tax Cuts") which effectively lowered the Federal capital gains tax to 15% on long term investments. This means that an investor can expect to pay 15% of the gain to the Federal government if they decide to sell and "cash out" of their investment property instead of completing an IRC §1031 exchange.

For example, if an investor bought a commercial building in 1995 for $1 Million and sells it in 2012 for $2 Million, they can expect to pay approximately $150,000 (15%) in Federal capital gains tax. (Note: For simplicity, this example does not address depreciation recapture taxes, state taxes or improvements to the property.)

As it stands right now, "The Bush Tax Cuts" are set to expire at the end of this year. With 2013 fast upon us, it is possible that "The Bush Tax Cuts" will fade into the annals of history, thus causing the long term capital gains tax on investments to rise from 15% to 20%. Although this 5% increase seems minimal, the investor with the $1million gain would expect to pay an additional $50,000 in capital gains tax if they sold and "cashed out", rather than exchanged into like-kind property.

Additionally, beginning January 1, 2013 certain taxpayers will be subject to a 3.8% tax on investment income as provided in the 2010 Health Care Bill. The tax will be imposed on passive investment income including, but not limited to, capital gains, rental income, interest and dividend income for individuals whose annual income exceeds $200,000 or married couples who file jointly and whose annual income exceeds $250,000. This new tax on investment income results if the taxpayer is a passive investor in relation to the investment creating the income. There are many nuances to this tax, but its applicability and impact should be contemplated in any decision to sell.

Using the example above, a single person with a $2 Million Adjusted Gross Income (AGI) with $1 million of recognized gain from the sale of a passive real estate investment would pay 3.8% on the **lesser** of AGI above $200 thousand or the recognized gain. In this example, the amount of gain ($1 million) is less than $2 million of AGI minus $200,000 ($1.8 million). Applying the 3.8% tax to the $1 million of recognized gain generates **$38,000 of additional tax.**

Assuming the expiration of the Bush Tax Cuts and the facts of our example above, the investor choosing to complete a §1031 exchange rather than an outright sale would defer all gain recognition and therefore defer at least $238,000 in federal taxes. Note that since none of the gain is recognized in a §1031 exchange, both capital gains and the 3.8% healthcare tax are deferred.

Be certain to consult with your tax and legal advisors before entering into any plan relating to taxes and estate planning. For more information about §1031 exchanges, please contact me.

We, at IPX1031®, pride ourselves on not only being the industry leader in service and security, but we also strive to help our clients and their advisors keep current on tax issues pertaining to §1031 exchanges and applications for them. We aim to be your complete information resource. For more information about us or our complimentary monthly webinars about 1031 exchanges, visit our website at www.ipx1031.com.

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