

Disaster Relief Deadline Extensions

Revenue Procedure 2018-58 permits extension of IRC §1031 exchange deadlines upon issuance of an IRS Notice or other guidance permitting relief to taxpayers due to Federally declared disasters. Note that an IRS Notice of a Federally declared disaster is different from a FEMA disaster declaration, and the extensions of 1031 deadlines are not available until the IRS publishes its Notice granting relief.

For “affected taxpayers,” the deadlines for the 45-day Identification Period and the 180-day Exchange Period will be extended by the later of 120 days or the due date listed in the IRS Notice. 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; or (b) one year. Affected taxpayers will be defined in the IRS Notice, but generally they include Exchangers whose primary residence or principal place of business is located within the disaster zone. Other taxpayers may be eligible for an extension if they will have difficulty meeting the 45-day and / or 180-day deadlines because of any of the following reasons:

- The Relinquished Property or the Replacement Property is located in the disaster zone
- The principal place of business of any party to the transaction is located in the disaster zone
- A party to the transaction is killed, injured or missing due to the disaster
- A necessary document relevant to the exchange or relevant land record is destroyed, damaged or lost due to the disaster
- A lender won’t fund because of the disaster
- A title insurance policy cannot be issued due to the disaster

To be eligible for relief, the Exchanger must have sold the Relinquished Property before the date of the Federally declared disaster, or in the case of a reverse exchange, the Exchange Accommodation Titleholder (EAT) must have taken title to either the Relinquished or Replacement Property on or before the date of the Federally declared disaster. Only the deadlines that fall on or after the date of the Federally declared disaster will be extended.

The IRS publishes Disaster Relief Notices on its website. It frequently updates these notices in the weeks following the disaster to add counties to the disaster zone. Exchangers who wish to take advantage of these deadline extensions should check the IRS website frequently to determine if disaster relief is available.

This disaster relief is optional. Exchangers that are “affected taxpayers” must advise their Qualified Intermediary that they are eligible for disaster relief, and that their exchange deadline(s) are extended, otherwise the original 45-day and 180-day deadlines will control.