DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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UIL No.: 1031.05-00

The Honorable Barney Frank
Member, U.S. House of Representatives
29 Crafts Street, Suite 375
Newton, MA 02458

Attention:

Dear Congressman Frank:

I am responding to your inquiry, dated July 25, 2007, on behalf of your constituent, . He asked about an extension of the period in section 1031(a)(3) of the Internal Revenue Code (the Code) to complete a like-kind exchange. said the business he used to facilitate his like-kind exchange is in bankruptcy. Thus, he may not be able to complete his exchange within the statutorily mandated period.

Although I appreciate situation, section 1031 of the Code does not provide for an extension of the statutorily mandated period. The law only authorizes us to postpone deadlines such as the one in section 1031(a)(3) of the Code for Presidentially declared disasters or terrorist or military actions (Section 7508A of the Code). The bankruptcy action described is not one of the events covered in section 7508A of the Code authorizing us to suspend or extend a statutorily mandated due date.

Under section 1031(a)(1) of the Code, no gain or loss is recognized on the exchange of business or investment property if the owner exchanges the property for like-kind business or investment property. Under section 1031(a)(3) of the Code, property received by the taxpayer in the exchange (the replacement property) must be received by the earlier of 180 days after the date on which the taxpayer transfers the property relinquished in the exchange (the relinquished property), or the due date (determined with regard to extension) of the taxpayer's federal income tax return for the year in which the transfer of the relinquished property occurs.

The Income Tax Regulations (the Regulations) allow a taxpayer to use a qualified intermediary (QI) to facilitate a like-kind exchange (Section 1.1031(k)-1(g)(4) of the Regulations). When a taxpayer uses a QI, generally he or she will transfer the relinquished property to the QI, who will sell the property to a buyer. The QI will then take the proceeds of the sale of the relinquished property, purchase the replacement property, and transfer the replacement property to the taxpayer. If the taxpayer receives the replacement property within the period prescribed in section 1031(a)(3) of the Code and meets the other requirements of section 1031, the law considers the taxpayer to have engaged in a like-kind exchange of property with the QI and he or she will not recognize gain or loss on the exchange.

In recent months, a number of QI businesses have experienced financial difficulties that have resulted in bankruptcy filings, and these bankruptcies may cause hardships to taxpayers engaged in section 1031 exchanges. Therefore, we are considering whether it may be appropriate to provide some type of relief and, if so, the nature of that relief.

I hope this information is helpful. If we can assist you further, please contact
or me at ( ) .

Sincerely,

Michael J. Montemurro
Branch Chief
Office of Associate Chief Counsel
(Income Tax & Accounting)