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

OFFICE OF
CHIEF COUNSEL

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The Honorable Earl Blumenauer
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Blumenauer:

This letter responds to your inquiry dated April 10, 2009. You wrote on behalf of your constituent, . and other taxpayers may not be able to complete a like-kind exchange under section 1031 of the Internal Revenue Code (Code) due to the bankruptcy of the qualified intermediary (QI) used to facilitate the like-kind exchange.

Section 1031(a) of the Code permits a taxpayer to defer the recognition of gain or loss on the like-kind exchange of property. To qualify for deferral, a taxpayer must obtain replacement property by the earlier of 180 days after the date the taxpayer transfers the relinquished property or the due date (determined by extension) of the taxpayer's federal income tax return for the year in which the transfer of the relinquished property occurs (Section 1031(a)(3) of the Code).

Regulations allow a taxpayer to exchange property through a third party facilitator, a QI. When using a QI, a taxpayer will generally transfer its (relinquished) property to the QI, who will sell the property and use the proceeds of the sale to purchase replacement property for 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 taxpayer will not recognize gain or loss on the like-kind exchange. However, if the QI fails to complete the transactions, the taxpayer cannot satisfy the requirements for deferral under section 1031. In the situation describes, the exchanging taxpayer has sold its property but the QI has failed to complete the section 1031 exchange by purchasing replacement property. The taxpayer cannot defer gain on the sale under section 1031, even though the QI has not returned the proceeds of the sale to the taxpayer.

We appreciate the hardship caused by failed like-kind exchanges. Regrettably, the 180-day period for reinvesting proceeds in a like-kind exchange is prescribed by statute and cannot be extended by the IRS. A modification of the 180-day requirement would require legislation. We understand that a bill pending in the House of Representatives (H.R. 1301) would suspend the 180-day period in the case of bankrupt QIs.

We are independently coordinating with the Office of Tax Policy at the Treasury Department to determine whether we can provide relief through published guidance or other administrative means.

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

Sincerely,

George J. Blaine
Associate Chief Counsel
(Income Tax & Accounting)