

REAL ESTATE TAX DEFERRED EXCHANGES: IDENTIFICATION OF 1031 PROPERTY

By Charles Darwin Davidson, Jr., C.P.A., J.D., Davidson Law Firm, Ltd.

IRS Code 1031 (a)(3) has strict identification requirements for tax deferred exchange property. Failure to timely identify replacement property will cause a loss of the tax deferral.

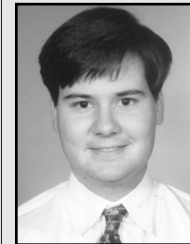
IDENTIFICATION PERIOD. The "identification period" begins on the date the taxpayer transfers the first property and ends at midnight at the end of the 45th following day. The date on which the taxpayer transfers the relinquished property is the date on which the benefits and burdens of ownership of the property are transferred. Typically this is the date the deed is delivered, but it may be an earlier or later date, depending on the circumstances. There is no provision for extending or waiving of the limits of the identification period even if this period ends on a Saturday, Sunday or holiday. When a taxpayer actually

requires replacement property by the 45th day, the designation requirements are deemed to have been met.

DESIGNATION NOTICE.

Replacement property must be identified by either: (1) a written agreement covering the exchange that is signed by all parties before the end of the identification period; or (2) a written document signed by the taxpayer and hand delivered, mailed, faxed, or otherwise sent before the end of the identification period to a person involved in the exchange (such as an intermediary, escrow agent or title company) other than the taxpayer or a related party. In either case, the replacement property must be unambiguously described. Real property generally is best described by a legal description or street address.

ALTERNATIVE AND MULTIPLE PROPERTIES. More than one property may be identified as replacement property. However, regardless of the number of relinquished properties transferred in the same deferred exchange, the maximum number of identified replacement properties is: (1) three properties of any fair market value; or (2) any number of properties, so long as their aggregate fair market value at the end of the identification period does not exceed 200% of the aggregate fair market value of all the relinquished property as of the date of transfer.



DAVIDSON LAW FIRM
Cantrell at State
Little Rock, Arkansas 72203
374-9977
www.davidsonlawfirm.net

*Charles Darwin Davidson, Jr.,
C.P.A., J.D.*