



WHEN MAY AN EXCHANGOR OBTAIN CASH DURING A TAX DEFERRED EXCHANGE?

Exchangors many times ask about "taking a draw" or otherwise obtaining cash or other equity during the course of their tax deferred exchange. Any cash taken out of the exchange from the Qualified Intermediary is certainly "Boot" if it's taken out during allowable periods.

"Boot" means funds taken out of the exchange result in taxable income to the exchangor, but do not totally disqualify the exchange. The Qualified Intermediary is precluded by law from allowing a withdrawal of funds by an exchangor at any time other than certain I.R.S. approved times:

A. **AT THE TIME THE RELINQUISHED PROPERTY CLOSES:**

If the Qualified Intermediary has been informed, in advance, that the exchangor wishes to obtain some cash from the Relinquished Property closing, the exchange agreement can be documented to provide that some funds will be released at closing directly to the exchangor and will not be part of the exchange account. The Qualified Intermediary would then direct the escrow closer to disburse those funds directly to the exchangor.

**B. AFTER THE EXPIRATION OF 45 DAYS WITH NO IDENTIFICATION
BY EXCHANGOR OF REPLACEMENT PROPERTY:**

If the exchangor has not identified any property to the Qualified Intermediary at the expiration of 45 days from the Relinquished Property closing date, then all exchange funds will automatically be released to the exchangor on the 46th day and the exchange will end of that day as a failed Tax Deferred Exchange. The exchangor will pay capital gains tax as if no exchange ever occurred.

C. AFTER 45 DAYS AND ALL IDENTIFIED PROPERTIES CLOSED:

If the exchange has closed on all identified properties, then any remaining exchange funds held by the Qualified Intermediary would automatically be released to the exchangor.

D. AFTER EXPIRATION OF THE EXCHANGE PERIOD:

After 180 days has passed from the Relinquished Property closing or after the expiration of the due date for the exchangor's tax return for the year of sale, if that is earlier than 180 days, the Qualified Intermediary will release the exchange funds to the exchangor.

Most exchangors are surprised to learn that they cannot obtain the exchange funds on demand. After all, they reason, isn't it their money anyway? Why shouldn't they be able to get their money if they are willing to pay the tax?

The answer is very simple. The IRS says no.

The earliest the exchangor can get to the exchange funds is 46 days after the closing of the Relinquished Property. The latest the exchange funds can be held will depend on the individual circumstances of the exchangor's exchange transaction.

THIS LITERATURE IS PRODUCED TO PROVIDE A GENERAL OVERVIEW OF THE TAX-DEFERRED EXCHANGE PROCESS. YOU SHOULD NOT DEPEND UPON THIS LITERATURE WHEN DETERMINING WHETHER OR NOT YOU MAY WANT TO COMPLETE A TAX-DEFERRED EXCHANGE. YOUR DECISION TO DO SO RESTS ENTIRELY WITH YOU, WITH THE ADVISE OF YOUR OWN ACCOUNTING AND LEGAL PROFESSIONAL, WHETHER THAT BE YOUR ACCOUNTANT, C.P.A. OR ATTORNEY. WE ARE QUALIFIED INTERMEDIARIES AND ARE BY I.R.S. REGULATION PRECLUDED FROM ACTING AS YOUR QUALIFIED INTERMEDIARY IF WE HAVE BEEN YOUR ATTORNEY OR ACCOUNTANT DURING THE TWO (2) YEAR PERIOD BEFORE YOUR EXCHANGE. AS YOU CAN SEE, OUR SERVICES AS FACILITATOR DO NOT REPLACE THE TRULY PROFESSIONAL SERVICES OF YOUR ATTORNEY OR ACCOUNTANT!