IRS EXTENDS DEADLINES FOR 1031 EXCHANGES AND OPPORTUNITY ZONE INVESTMENTS

On April 9, 2020, the Internal Revenue Service ("IRS") released Notice 2020-23 (the "Notice"), which provides additional relief for real estate investors affected by the ongoing COVID-19 pandemic. Among other actions, the Notice extends the deadline until July 15, 2020 for certain time-sensitive real estate investments with due dates occurring between April 1, 2020 through July 14, 2020.

1031 TAX-DEFERRED EXCHANGE

Section 1031 of the Internal Revenue Code generally allows taxpayers to sell real property and reinvest the proceeds in new similar use real property while deferring all capital gains taxes ("1031 Exchange"). The 1031 Exchange rules require a taxpayer to identify all potential replacement property within 45 days after the sale of the relinquished property (the "Identification Period") and to acquire the replacement property within 180 days after the sale of the relinquished property (the "Exchange Period").

As a result of the Notice, the IRS has automatically extended a taxpayer's 1031 Exchange deadlines as follows:

- If a taxpayer's 45-day Identification Period deadline is between April 1, 2020 and July 14, 2020 (i.e., the investor's initial capital gain was realized between February 16, 2020 and May 30, 2020), then the Identification Period is automatically extended to July 15, 2020.
- If a taxpayer's 180-day Exchange Period deadline is between April 1, 2020 and July 14, 2020 (i.e., the investor's initial capital gain was realized between October 4, 2019 and January 16, 2020), then the Exchange Period is automatically extended to July 15, 2020.

It is important to note that taxpayers will only be granted an extension for deadlines that fall between April 1, 2020 and July 14, 2020. For example, if an investor sold property on March 1, 2020, the investor's 45-day Identification Period, which would ordinarily expire April 15, 2020, would be automatically extended to July 15, 2020. However, since the investor's 180-day Exchange Period deadline does not fall within the April 1, 2020 to July 14, 2020 time period, the Exchange Period deadline would remain August 28, 2020 and would not be affected by the extension of the Identification Period. In addition, the Notice does not provide any retroactive application to any 1031 Exchange in which either the Identification Period or Exchange Period fell before April 1, 2020.

OPPORTUNITY ZONE INVESTMENTS

As outlined in a prior Hall Render article, the Opportunity Zone program was enacted as part of the Tax Cuts and Jobs Act of 2017 to encourage investment and economic growth in distressed communities that have been designated as Qualified Opportunity Zones ("QOZs"). Taxpayers who invest gains in QOZs and meet relevant holding period thresholds can qualify for temporary tax deferral of capital gains, partial exclusion (via basis step-ups) for previously deferred gains, and permanent exclusion of taxable income on new gains from the sale of QOZ investments.

Similar to the Exchange Period under the 1031 Exchange rules, the Opportunity Zone program requires capital gains to be reinvested in QOZs within 180 days of realization. Under the Notice, if an investor has an Opportunity Zone investment deadline between April 1, 2020 and July 14, 2020, the deadline is automatically extended to July 15, 2020. In general, this relief will apply to Opportunity Zone investors seeking to defer capital gains realized between October 4, 2019 and January 16, 2020.

PRACTICAL TAKEAWAYS

The Notice provides welcome relief to those real estate investors who are fast approaching deadlines for their 1031 Exchange or Opportunity Zone investment. The Notice also gives additional flexibility to those investors who may be reconsidering their 1031 Exchange or Opportunity Zone investment due to the COVID-19 outbreak in the U.S.

Prior to the Notice, many prominent commercial real estate organizations had petitioned the U.S. Treasury Secretary for the extension of both of the relevant 1031 Exchange deadlines for 120 days. Although the Identification Period extension adopted in the Notice was not as generous as the 120 days requested, it remains possible that the Treasury Department and/or IRS may take further action on these real estate investment deadlines due to the fluid nature of the COVID-19 pandemic. Hall Render will continue to track any developments on this

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topic.

The rules regarding 1031 Exchanges and Opportunity Zone investments are complex and should be evaluated with your tax advisor. If you have any questions or would like assistance with your 1031 Exchange or Opportunity Zone investment, Hall Render can help. Please contact:

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- Your regular Hall Render attorney.

Hall Render's attorneys and professionals continue to maintain the most up-to-date information and resources, which are available at our COVID-19 Resource page, through our 24/7 COVID-19 Hotline at (317) 429-3900 or by contacting your regular Hall Render attorney.

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