MULTIPLE PROPERTY DISPOSITIONS

Where an Exchangor hopes to combine the disposition of several Replacement Properties into one exchange, advance planning is critical.

The basic problem revolves around the start of the 45 day and 180 day deadlines. Both deadlines start when the **first** Relinquished Property is closed. The issue becomes which Replacement Property should be identified?

Example: Sam Exchangor has three Relinquished Properties which he intends to combine into one exchange. He hopes to acquire the maximum value Replacement Property he can acquire with 30% down payment. The Relinquished Properties have the following characteristics:

	Property A:	**Property B:**	**Property C:**
Fair Market Value:	$100,000	$200,000	$400,000
Closing Costs:	10,000	20,000	40,000
Adjusted Sales Price:	90,000	180,000	360,000
Debt:	10,000	100,000	100,000
Equity:	80,000	80,000	260,000
Capital Gain:	30,000	60,000	120,000
Estimated Closing Date:	9/29/2008	10/30/2008	11/30/2008

Property A sale closes, as scheduled, on September 30, 2008. Sam's exchange now has an identification deadline of November 13, 2008 and a closing deadline of March 28, 2009.

It is now November 10th, 3 days before Sam's identification deadline. The Buyer on Property B informs Sam that he is running into a "little delay" on getting his loan to close Property B, and probably won't be able to close the purchase until November 16th to November 20th, 2008. There is no offer on Property C but the Real Estate Broker informs Sam that she is convinced in that Property C will sell by December 30th or maybe early January, 2009, at the latest.

As the identification deadline of November 13, 2008 approaches, Sam is uncertain about which property or properties to identify. To obtain total deferral benefits, Sam needs to match value and equity from his Relinquished Property or Properties with the value and equity in the Replacement Property.

But what value or equity should Sam assume he needs to match? The value and equity from Property A ($90,000/$80,000)? The value and equity from Properties A and B ($270,000/$160,000)? The value and equity from Properties A, B and C ($630,000/ $420,000)? Sam knows that the sale of only one of his Relinquished Properties has closed. He also knows, as a practical matter, he cannot afford to buy a property which would cost more than $267,000 unless property B or C closes.

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Sam's dilemma is further compounded by the 200% rule. The 200% rules requires the Exchangor to acquire, realistically, all of the properties identified if the Exchangor identifies more than 3 properties which are worth more than 200% of his old property value. If only Property A has closed, Sam will be facing a 200% limit of $200,000 ($100,000 x 200%). To be safe, Sam must limit his identification to 3 properties. Sam still hopes to maximize the value of his Replacement Property by paying 30% down.

Should Sam's identify three properties with one identified property for each exchange scenario ?:

Identified Property One:	Value:	$ 267,000
	Equity Required:	80,000
Identified Property Two:	Value:	$ 533,000
	Equity Required:	160,000
Identified Property Three:	Value:	$1,400,000
	Equity Required:	420,000

While the identification rules do not require Sam to be in contract on any of his identified properties, he needs to be sure that he can acquire at least one Replacement Property. With only Property A closed, all Sam can afford to acquire is Identified Property One valued at $267,000.

Sam's exchange problems can best be viewed as having two components: time and money. Time, because the identification deadline will pass before Sam knows whether he will have sold one, two, or three properties. Money, because Sam does not know how much equity he will have available for his exchange.

Should Sam have placed all of his Relinquished Properties in one exchange basket?

Early review of Sam's exchange could lead to the following conclusions:

Property A with the earliest closing date is a major source of Sam's problems. The capital gain of $30,000 for Property A is small compared to the $60,000 gain for Property B and the $120,000 gain for Property C

Sam should have tried to extend the closing date of Property A to more closely match the closing dates for Properties B and C. Ideally, Sam's exchange would be structured so that all of the closing dates fall within the same 45 day identification deadline period. If Sam is unable to closely group the closing dates, he should consider other alternatives.

Sam could attempt to do separate exchanges for each of his Relinquished Properties; however, does Sam really want to buy three different Replacement Properties?

Will the IRS be willing to accept that each Relinquished Property is a separate exchange when two of the Relinquished Properties could close within the same 45 day period and all three of the Relinquished Properties will probably close within one 180 day period?

If separate exchanges are attempted, it becomes important to document the separateness of the exchanges. Having different buyers, using different escrow agents, and using different facilitators increases the chance of success. But it is still unclear that separating the exchanges will work.

From a defensive posture, Sam should focus on deferring the gain from Properties B and C. This would mean that Sam may have to sacrifice the deferral benefits from the Property A exchange to maximize his chances for deferring the gains on Properties B and C.

Sam's exchange illustrates the difficulty of combining Multiple Property Dispositions in one exchange and the necessity for advance strategic planning.

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