



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

OFFICE OF  
CHIEF COUNSEL

June 10, 2005

Number: **INFO 2005-0088**  
Release Date: 6/30/05  
UIL No.: 1031.05-00

CC:ITA:B04  
CONEX-129903-05

The Honorable Bill Nelson  
United States Senator  
225 East Robinson Street, Suite 410  
Orlando, FL 32801

Attention: Dolly Kobernat

Dear Senator Nelson:

This letter responds to your inquiry, dated May 18, 2005, on behalf of your constituents, . They wrote about obtaining a private letter ruling granting them additional time to complete a like-kind exchange of properties. They need additional time because the severe hurricanes and tropical storms that struck Florida in 2004 delayed construction of the replacement property beyond the prior extension periods. They also wrote that they never actually received the proceeds of the property they sold because the proceeds remained in escrow.

Unfortunately, the transaction does not qualify as a like-kind exchange under section 1031 of the Internal Revenue Code. We contacted them to discuss their situation. The told us that they directed the qualified intermediary who was holding the cash proceeds to turn the proceeds over to their realtor. The realtor is now holding the proceeds to fund the construction of the new property.

Under current law, receipt of cash proceeds by a taxpayer or the taxpayer's agent disqualifies the taxpayer from deferring tax on the gain of the property they sold. If a qualified intermediary turns over exchange funds to the seller or his realtor, the "exchange" ends, the transaction becomes a "sale," and the seller must recognize any realized gain. We do not have authority to change this result.

I hope this information is helpful. If we can assist you further, please contact me or at (202) 622-4920.

Sincerely,

Michael J. Montemurro  
Acting Branch Chief  
Office of Associate Chief Counsel  
(Income Tax & Accounting)