



## Revenue Procedure 2008-16: Vacation Home Exchanges

Vacation Home investors have guidance for determining whether property qualifies for exchange treatment. Revenue Procedure 2008-16 provides a safe harbor under which the IRS will accept that the use of a dwelling unit qualifies for exchange treatment under IRC Section 1031. A dwelling unit is real property improved with a house, apartment, condominium, etc., that provides basic living accommodations including sleeping space, bathroom and cooking facilities.

A dwelling unit that a taxpayer intends to consider as **Relinquished Property** in an exchange, qualifies if:

- (a) Owned by the taxpayer at least 24 months immediately before the exchange (the “qualifying use period”); and
- (b) Within that period, in each of the two 12-month periods immediately preceding the exchange,
  - (i) The taxpayer rents the dwelling unit to unrelated persons at a fair rental for 14 days or more, and
  - (ii) The period of the taxpayer's personal use does not exceed the greater of:
    - 14 days, or
    - 10% of the days the dwelling unit is rented at a fair rental during the 12-month period.

The first 12-month period ends on the day before the exchange takes place (and begins 12 months prior to that day), and the second ends on the day before the first 12-month period begins (and begins 12 months prior to that day).

Similarly, a dwelling unit that a taxpayer intends to be **Replacement Property** in an exchange qualifies if:

- (a) Owned by the taxpayer at least 24 months immediately after the exchange (the “qualifying use period”); and
- (b) Within that period, in each of the two 12-month periods immediately after the exchange,
  - (i) The taxpayer rents the dwelling unit to unrelated persons at a fair rental for 14 days or more, and
  - (ii) The period of the taxpayer's personal use does not exceed the greater of:
    - 14 days or
    - 10 percent of the days the dwelling unit is rented at a fair rental during the 12-month period.

Replacement Property 12 month periods are handled similarly as for relinquished property, just going into the future, not the past.

Property use is deemed to be personal if used by:

- (A) The taxpayer or any other person who has an interest in such unit (including a tenant in common), or by any member of the family of the taxpayer or such other person; or,
- (B) Any individual who uses the unit under an arrangement which enables the taxpayer to use some other dwelling unit (whether or not a rental is charged for the use of such other unit); or
- (C) By any individual, if rented for less than fair market value rental.

This safe harbor may provide some relief to those worried about past usage of a vacation rental property. One should note that use by a family member of a fellow tenant-in-common (over which one may have little control) could count against another tenant-in-common's allowed personal usage. And, that a taxpayer may rent the dwelling unit to a family member if the family member uses it as a principal residence (not as a vacation home) and the family member pays fair market rent. Some taxpayer usage may be allowed for repairs and annual maintenance.

This procedure creates a safe harbor. However, an exchange may still fall outside the parameters set forth above and still meet the statutory requirements of section 1031. Taxpayers should consult their tax advisors regarding their specific transaction. The safe harbor is effective for exchanges occurring on or after March 10, 2008.

## Contact us for more information (877) 596-1031

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