

Vacation Home §1031 Exchange Guidance

Revenue Procedure 2008-16 Creates Safe Harbor Definition

The IRS recently released Revenue Procedure (2008-16) which sets forth the guidelines for §1031 exchange transactions involving a **vacation home**. The ruling creates a safe harbor definition of investment property and applies to transactions which close after March 10, 2008.

This safe harbor Procedure provides useful guidance for those taxpayers who might wish to exchange their vacation property under the provisions of Section 1031. Essentially, the IRS will not challenge whether a residential property or vacation home property qualifies for §1031 treatment if certain specified ownership and use requirements are met.

To avoid any possibility of a challenge to your vacation home exchange, you have to meet certain requirements for your vacation property. The IRS will not challenge whether a vacation home qualifies as §1031 exchange property held for productive use in a trade or business or for investment if: (1) the relinquished property is owned by the taxpayer for at least 24 months immediately prior to the exchange and a replacement property is owned for at least 24 months immediately after the exchange (the “qualifying use period”) and (2) within each of the two 12 month periods constituting the qualifying use period, the taxpayer must:

- (a) Rent the property to another person or persons at a fair rental for 14 or more days; and
- (b) The taxpayer’s personal use of the property cannot exceed the greater of 14 days or 10 percent of the number of days during the 12 month period the property is rented at a fair rental.

Under the Procedure, personal use of a property occurs on any day in which the taxpayer is deemed to use the property for personal purposes under §280A(d)(2) (taking into account §280A(d)(3) but not §280A(d)(4)). Thus, personal use includes:

- (1) use by the taxpayer or any other person who has an interest in the property or by a family member;
- (2) use by any individual who uses the property under an arrangement which enables the taxpayer to use some other property (whether or not a rental is charged for the use of such other property; or
- (3) use by any other individual if rented for less than fair market value. A taxpayer can rent the property to a family member if the family member uses the property as a primary residence and the family member pays fair market rent. Whether a property is rented at a fair rental is determined based on all the facts and circumstances that exist when the rental agreement is entered into. All rights and obligations of the parties to the rental agreement are taken into account.

It should be noted that property which does not meet the exact requirements of the ruling may nevertheless still qualify as the relinquished or replacement property under Section 1031. Of course, any exchange must meet all other applicable legal requirements and every taxpayer should consult with their legal and tax advisor before engaging in any §1031 exchange.

Click here to view [Revenue Procedure 2008-16](#)

If you are now doing a vacation home exchange, or plan to do one in the future, we can help with your replacement property needs. Call us for further details.



Steven M. Wennerstrom, Registered Representative

§1031 Exchange Solutions

Direct: (303) 489-4013 • Toll-Free: (866) 359-6465

Email: stevewennerstrom@pwfinancial.net

Securities offered through Pacific West Securities, Inc., A Registered Broker/Dealer, Member FINRA/SIPC
Investment advisory services through Pacific West Financial Consultants, Inc. A Registered Investment Advisor