

PUBLICATION

1031 Exchanges of Residential Property: IRS Issues New Safe-Harbor Guidelines

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Rev Proc 2008-16, 2008-10 IRB.

A new IRS Revenue Procedure provides a safe harbor under which the IRS will not challenge whether a dwelling unit qualifies as property held for productive use in a trade or business or for investment under Code Sec. 1031. Rev. Proc. 2008-16 sets rental standards, establishes a qualifying use period, and concludes that limited personal use will not prevent a dwelling unit from qualifying under the holding purpose test of the tax-free exchange rules. This Revenue Procedure comes on the heels of *Moore v. Commissioner*, T.C. Memo. 2007-134 (the recent vacation home case analyzed in the last newsletter).

Personal residences cannot be exchanged tax-free under Code Sec. 1031 because they are not held for productive use in a trade or business or for investment. The question challenging taxpayers has been "How much rental is needed to meet the holding purpose test?" Rev. Proc. 2008-16 squarely answers this and also provides indirect guidance on the issue of converting a principal residence into qualifying relinquished property prior to an exchange, or converting replacement property into a personal residence after an exchange.