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## RESCUE OF FAILING 1031 EXCHANGE WITH M453<sup>SM</sup>

### Concepts

What is an installment sale? It is any sale in which some part of the selling price is received after the year of sale.<sup>1</sup>

What is an exchange that is intended to be tax-deferred under Section 1031, but that instead fails? It is a sale.<sup>2</sup> Who is treated as the buyer of relinquished property, in an exchange that fails? The accommodator.<sup>3</sup>

What is an exchange that fails and therefore becomes a sale, if the sale proceeds are not paid to the seller (the former exchangor) within the year of sale? It is an installment sale.<sup>4</sup>

When an exchange fails, does the law require that the exchange accommodator disburse the sale proceeds to the seller in the year of sale? Not unless the exchange agreement which they signed requires the accommodator to do so.<sup>5</sup>

### Mechanism of Rescuing a Failing 1031 Exchange

1. Before the end of the exchange period (or before the end of the identification period, if no identification of replacement property is made), and with the consent of the would-be exchangor, the 1031 accommodator/buyer assigns its position in the exchange agreement to S.Crow Collateral Corp., which becomes the successor accommodator/buyer;

<sup>1</sup> Section 453(b)(1), *Internal Revenue Code*.

<sup>2</sup> "If the taxpayer actually or constructively receives money or property which does not meet the requirements of section 1031(a) in the full amount of the consideration for the relinquished property, the transaction will constitute a sale, and not a deferred exchange, even though the taxpayer may ultimately receive like-kind replacement property." Treasury Regulations Section 1.1031(k)-1(a).

<sup>3</sup> "Example: (i) M is a corporation that files its Federal income tax return on a calendar year basis. M and C enter into an agreement for an exchange of property that requires M to transfer property X to C. Under the agreement, M is to identify like-kind replacement property which C is required to purchase and to transfer to M. M transfers property X to C on November 16, 1992." Treasury Regulations Section 1.1031(k)-1(b)(3).

<sup>4</sup> Treasury Regulations Section 1.1031(k)-1(j)(2)(vi), Examples 3 and 5.

<sup>5</sup> "(iii) If B's right to demand payment of the \$100,000 were subject to a substantial limitation or restriction (e.g., the agreement provided that B had no right to demand payment before November 14, 1991 (the end of the exchange period)), then, for purposes of this section, B would not be in actual or constructive receipt of the money unless (or until) the limitation or restriction lapsed, expired, or was waived." Treasury Regulations Section 1.1031(k)-1(f).

2. The would-be exchangor and S.Crow Collateral Corp. then amend the exchange agreement to provide for a Monetized Installment Sale (M453<sub>SM</sub>), instead of lump-sum payment of the sale proceeds to the seller/would-be exchanger; and
3. The third-party lender's monetization loan to the would-be exchangor/now seller can be funded when S.Crow Collateral Corp. becomes the successor of the 1031 accommodator and converts the exchange agreement to a Monetized Installment Sale (M453<sub>SM</sub>) transaction.

See "M453 Executive Summary" for what then follows.

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