

Vacation Home Safe Harbor- 1031 with personal use

Revenue Procedure 2008-16 provides a safe harbor for exchanging a vacation home. Briefly, a vacation home that a taxpayer intends to be used as either a Relinquished or Replacement property in a §1031 exchange qualifies if:

- (i) the property is owned by the taxpayer for at least 24 months immediately before the exchange and
- (ii) in each of the two 12-month periods immediately preceding the start of the exchange the taxpayer must rent the relinquished property to another person at a fair market rent for 14 days or more, and
- (iii) the taxpayer's personal use of the property cannot exceed the greater of 14 days or 10% of the days rented during the 12-month period the relinquished property is rented.

These same time requirements and restrictions must be followed for the Replacement property to qualify.

The Rev. Proc. further describes use by a family member and use by the taxpayer for maintenance matters.

Also it indirectly addresses 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.

While these guidelines provide a taxpayer a safe harbor, an exchange may fall outside these parameters and still meet the statutory requirements. You should however expect heightened IRS scrutiny in such a case. If you would like more information on this topic or a copy of Rev. Proc. 2008-16 please contact our office 1031@starker.com or 800.332.1031.