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## 1033 Exchange

Posted by Brian - 2008/06/30 10:35

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I have a client who has had a property condemned by eminent domain, therefore being sold to a developer. The property was originally a storage plant for a seafood company. He is the owner of the seafood company, but it is a C-Corp.

His other company (Company B) owns a large storage plant in another city (same state of California) and the seafood company has been a tenant at this property since the condemnation. With the 1033 Exchange he needs to use the money from the sale of his original property within 36 months to avoid any taxes on the capital gains.

The property that Company B owns has a 1.5 million dollar loan on it that is now 6 months old. His first choice is to refinance this loan, and have his seafood company take over as the owner (assume the loan), and he also wants to pull some cash out, (assume the property is worth a significant amount more). Or he can do a purchase contract where the seafood company buys the property from company B, but then he will have a step in basis for property taxes.

Does anyone know if he CAN do the refinance deal and assume the loan by the seafood company to satisfy 1033 exchange rules (assuming the property will pass like tests)?

Thanks in advance for your help.

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## Re:1033 Exchange

Posted by Miami LS - 2008/06/30 14:40

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Q: Does anyone know if he CAN do the refinance deal and assume the loan by the seafood company to satisfy 1033 exchange rules (assuming the property will pass like tests)?

Assuming that your client passes the like-kind test then the financing should not affect the exchange. The only exception i can think of is if he was not rolling over the proceeds from the first transfer into company B and he was trying to you recourse financing to qualify for the 1033. In that case he would not qualify.

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## Re:1033 Exchange

Posted by Sumo - 2008/07/01 09:05

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You can post the proceeds to the transaction. Close the transaction and the 1033 will qualify even in the face of a refinance, and you can attach a credit line to the transaction that teh client can access to take money out with. that works.

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