

## 2005 - THE YEAR OF THE TIC

Some commentators have referred to 2004 as "The year of Section 1031." Indeed, there was an abundance of guidance issued in the context of like kind exchanges in the past year. It is just as likely that 2005 will be referred to as "The year of the TIC." Many are undoubtedly familiar with the Tenancy In Common "TIC" phenomenon that has caught the attention of real estate investors nationwide. Sponsors and syndicators of TIC units have popped up everywhere, and the market's appetite for these "armchair investments" is presently so hot that some properties are oversubscribed. Combined with the much discussed "bubble" in certain regional markets, and Chairman Greenspan's recent observation that there seemed to be some "froth" in the real estate markets, some have likened the current situation to the demand for tech stocks in the late 1990's.

Clearly, there is significant appeal to a TIC investment: little or no management responsibility, steady income stream, nonrecourse financing. Fundamentally, TICs are investments in real estate, regardless of whether the promoter packages the TIC interest as an interest in a security, with the requisite disclosures, or whether its sold simply as an interest in real estate.

Revenue Procedure 2002-22, issued in March 2003, was essentially an invitation to a party hosted by the Treasury Department. Admission being

conditioned on passing a series of 15 tests, some of which are easily accomplished, some of which are nearly impossible to achieve in a commercial environment, and some of which seem not to matter. The intriguing result is that with the issuance of the Rev. Proc. approaching its third year, only two private rulings have been given: PLR 200327003 and PLR 200513010. The rest of the field is relying on legal opinions that their offerings meet the requirements of common law and, at least, the most important aspects of the Rev. Proc.

The first PLR: 200327003, while not groundbreaking, did deviate from a few of the Rev. Proc. guidelines. At the outset the sponsor represented that the facts in the ruling were not connected with a real live deal. Nevertheless, the Service gave the ruling and it was widely welcomed as an initial indication that the Service was willing to issue rulings in the interest of sound tax policy even where the facts were not in strict compliance with the Rev. Proc.

The second ruling, PLR 200513010 was much bolder than its predecessor, containing two substantive departures from the Rev. Proc. The first related to the requirement that the management agreement be renewed at least annually by unanimous consent of the co-owners. The Service concluded that a deemed consent was sufficient pro-

vided any objecting co-owner could name a substitute manager.

The second departure related to the sponsor permanently retaining an ownership interest in the property that was the subject of the ruling. The Service concluded that the sponsor's activities related to the property in question, and not activities related to other properties the sponsor might own, were the only activities that needed to be considered in connection with the 'no business activity' rule. The non-tax importance of this conclusion cannot be overemphasized. Allowing the sponsor to stay in the property aligns the long term goals of both the sponsor and the investor.

What makes investing so tough is that where the action is today, is almost certainly not where it will be tomorrow, so three requirements should be foremost on any investor's mind when considering whether to join together with other investors in a TIC Venture:

- 1 Obtain independent advice that the investment meets your individual tax and business objectives.
- 2 Inspect the property, examine the leases, review the management agreement.
- 3 Interview the sponsor.



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