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Tax deferments on incomplete condominiums could hit in 2010

South Florida Business Journal - by [Oscar Pedro Musibay](#)

If proposed tax deferments on incomplete projects set to benefit condo developers and contractors are approved, they likely wouldn't take effect until 2010, according to a tax expert lobbying for the change.

The proposed change would allow developers to treat each of their unsold units as a separate building and qualify for deferred tax exceptions already in effect for builders of single-family homes and townhomes.

Some following the issue hoped the change would be effective for the 2008 tax year and beyond. But, the likely scenario pushes approval into next year and its implementation into 2010, said accountant Rich Shavell, chairman of the tax advisory group for Associated Builders and Contractors (ABC).

The change would be monumental for condo developers and contractors. The Internal Revenue Service currently bases taxes on a percentage-of-completion formula. So, developers and contractors are being taxed for partially completed units yielding no revenue. Developers collect up to 20 percent of a unit's sale price until its sale closes, and contractors are paid in installments.

Shavell's involvement on the issues goes back to the 1990s, a few years after the IRS narrowed the definition of which builders could apply for the deferment. Most recently, he met with IRS officials in 2005 and again in 2007.

Stakeholders supporting the change include the Construction Financial Management Association and Arlington, Va.-based ABC, which has one of its largest offices in Coconut Creek.

"It wasn't until this August that these proposed regs were finally issued," Shavell said. "The achievement is profound for the industry in that we were able to achieve much of what we wanted and then even more. None of the stakeholders in the meetings asked for the condo definition, but it was included in the proposed regs by IRS personnel based on pure technical grounds and fairness."

The IRS has a standard policy that it will not comment on proposed regulations.

Pushing for transition rules

ABC is also pushing to have the IRS institute transition rules that would grandfather in jobs started in 2008 or 2009.

Howard Lucas, a partner and CEO at accounting firm Goldstein Schechter Koch, said regulators may be particularly sensitive to the financial burden on the construction industry because of the real estate meltdown.

"In this market, they would be on a faster track," Lucas said. "Everybody is looking for ways to help the real estate market."

Shavell explained that some condo developers and contractors may not take advantage of the deferral.

"If the job will result in a loss - now that the market has changed - they may not want to defer, but to recognize a percentage of the loss," he said. "Assuming the condo developer or contractor understands the rules available, current market situations dictate that an informed decision be considered carefully only after a full analysis."

Shavell said that condo developers - and specifically land developers who own land and prime it through rezoning and installation of infrastructure - may have interpreted the current rules as applying to them. Indications from the regulation documents the IRS released in August are that land developers may be singled out in separate regulations as not being eligible for the deferments.

"If they put it out there, the land developer has to take a position," he explained. "The IRS puts out regulations. It is not law. It is not Congress. They could take it to court – and they have."

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