

AICPA 1031 Seminar

Like-Kind Exchange

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Statutory Requirements

- *Property used in business or for investment*
- *Like-kind properties*
- *Properties are exchanged*
- *The property is not inventory or held for sale*

Used in Business or Held for Investment

- *Precludes personal use property*
- *Consider converting personal use property to rental*
- *An allocated portion of dual use property may qualify*

Like-kind Property

- *Determined by nature or character of property*
- *Real property may include tenancy in common or leasehold*
- *Personal property determined by North American Industry Class System*

Improvements to Real Property

- *Not considered real property if done on land already owned*
- *Considered as part of replacement property if done by intermediary*
- *Construction may involve a deferred or reverse exchange*

Properties Must Be Exchanged

- *A sale and subsequent purchase of property does not qualify*
- *Deferred and reverse exchanges are permitted*

Inventory or Property Held for Sale

- *The exchange may not involve inventory or property held for sale*
- *Issue for real estate developers*
- *Is partnership property distributed to partners and then exchanged held for sale*

Recognized Gain

- *Generally no gain will be recognized of taxpayer trades up in value and in equity*

Recognized Gain

- *Gain is recognized to the extent of money or other property received*
- *Installment note received may be boot*
- *Gain recognized may be 1250 recapture*
- *Refinancing prior to exchange may create boot*

Boot Offset Rules

- *Boot received may be offset by boot given*
- *Assumption of mortgage by buyer may create boot received*
- *Mortgage boot received may be offset by mortgage boot given or cash paid*

Basis

- *Section 1031 (d) contains formula*
- *Equal to FMV of property received less deferred gain*

Depreciation

- *To the extent of basis carried over, depreciate over remaining life using same method*
- *New regulations this year address autos, additional first year depreciation and other issues.*
- *Taxpayers may elect out*

Deferred Three-Party Exchange

- *Relinquished to be sold before replacement purchased*
- *Replacement property may not be identified*
- *Taxpayer or agent is not permitted to receive funds and reinvest*

Structure of Deferred Exchange Using Qualified Intermediary

- *Qualified Intermediary receives funds from sale of relinquished*
- *Taxpayer identifies replacement property*
- *Qualified intermediary purchases replacement property*
- *Qualified intermediary completes exchange*

Qualified Intermediary

- *Receipt of funds by QI avoids constructive receipt by taxpayer*
- *Other methods are available in the regulations*
- *QI can't be a disqualified person*
- *Exchange Agreement establishes terms*

Exchange Agreement

- *Secures the obligation of the QI*
- *Provides for investment of the funds*
- *Provides for receipt of excess funds by taxpayer*
- *Taxpayer may receive growth factor*

Reverse Exchanges

- *Revenue Procedure 2000-37 permits reverse exchanges*
- *Replacement property is acquire before the relinquished is sold*
- *Non safe harbor reverse exchanges may be done*

Reverse Exchange Structure

- *May park either replacement or relinquished property with EAT*
- *Property may be parked for 180 days*
- *Property to be relinquished must be identified within 45 days*
- *Qualified exchange agreement entered into with EAT*

Qualified Exchange Agreement

- *EAT is treated as owner for tax purposes*
- *Taxpayer may guarantee debt of EAT, loan funds, lease property, and oversee construction of improvements*
- *Allows taxpayer to use or improve replacement property while parked*

Revenue Procedure 2004-51 limits 2000-37

- *Replacement property may not have been owned by taxpayer during 180 day period.*
- *May prevent construction of improvements on property owned by taxpayer from qualifying*