



CAPITAL EXCHANGE SERVICES

1031 EXCHANGE CHEAT SHEET

IRC § 1031

“No gain or loss shall be recognized on the exchange of real property held for productive use in a trade or business or for investment if such real property is exchanged solely for real property of like kind which is to be held either for productive use in a trade or business or for investment.” IRC § 1031(a)(1).

“Exception for real property held for sale. - This subsection shall not apply to any exchange of real property held primarily for sale.” IRC § 1031(a)(2). This exception probably applies to Fix-and-Flip properties.

WHY

- Defer capital gains tax
- Consolidation or diversification of investments
- Leverage of appreciation
- Relocation of investment to another market or location
- Greater cash flow

WHY NOT

- Reduced tax basis in replacement property
- Increased transactional costs
- Limitation on use of equity
- Reinvestment only in identified Replacement Property

TERMS

Taxpayer - The party seeking tax deferred treatment under § 1031; Sometimes referred to as the “Exchangor.”

Qualified Intermediary (“QI”) - Middleman in the exchange; Acquires Relinquished Property to convey to the Buyer; Acquires the Replacement Property to convey to the Taxpayer.

Qualified Property - Generally, all types of real property. Personal property (eg. vehicles, air craft, boats) is no longer Qualified Property. Personal property like stocks, bonds, and partnership interests, were never Qualified Property.

Like Kind Property - Property that is similar in nature or character, notwithstanding differences in grade or quality; Generally, all real property is like kind to other real property.

Relinquished Property - Property Taxpayer seeks to dispose of in the exchange. Also, the “downleg” property.

Replacement Property - Property Taxpayer seek to acquire in the exchange. Also, the “target” or “upleg” property.

Boot - Not an official IRC term. Commonly used to refer to taxable property received by Taxpayer in an exchange, such as cash, cash equivalents, or promissory notes.

Reverse Exchange - 1031 exchange where the Replacement Property is obtained before the Relinquished Property is transferred.

Exchange Accommodation Titleholder (“EAT”) - Takes title to Replacement Property to facilitate a Reverse Exchange

TIMES

Identification Period - 45 days from the date the Taxpayer transfers the Relinquished Property.

Exchange Period - The earlier of (a) 180 days from the date the Taxpayer transfers the Relinquished Property, or (b) the due date (including extension) for the Taxpayer’s tax return for the taxable year in which the transfer of the Relinquished Property occurs.

TIPS

Identify Replacement Property as soon as possible - Failure to do so is the most common reason 1031 exchanges fail. Include 1031 accommodation language in all contracts to ensure the other party will cooperate with your 1031 exchange. Notify contract parties, closing agents and lenders as soon as possible before closing if a 1031 exchange is required. Be aware as soon as possible if the other party to your contract is coming out of or going into a 1031 exchange. Always consult your accountant, tax attorney or qualified tax advisor before you begin the 1031 exchange process.

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