

**1031 Tax Free Real Estate Exchanges
Primer & Current Developments**

What You Need to Know About One of the Few Remaining Tax Breaks



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1031 Tax Free Exchanges

INTRODUCTION

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INTRODUCTION

– A tax deferral mechanism

“Under Section 1031(a), no gain or loss is recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like-kind that is to be held either for productive use in a trade or business or for investment.”

– Allows taxpayer to defer paying capital gains tax

– Purpose

- Administrative convenience
- Continuity of investment

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FOUR (4) REQUIREMENTS

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FOUR (4) REQUIREMENTS:

1. An “exchange”

- Using QIs
- Using qualified escrows
- “Boot” – cash, relief from liabilities

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FOUR (4) REQUIREMENTS contd.:

2. Qualifying property

- Real estate
- Personal property
- Not stock; not partnership interests

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FOUR (4) REQUIREMENTS contd.:

- 3. Replacement property of "like-kind"**
- 4. Property (both relinquished and replacement) must be held for productive use in a trade or business**
 - Not residential property

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BASIS RULES

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RELATED PARTY RULES

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- TAXPAYER CONTINUITY**
 - Single member LLC

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- DEFERRED EXCHANGES**
 - 45 day rule
 - 180 day rule

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- DEFERRED EXCHANGES contd.**
 - Identification rules
 - Unambiguous
 - Done in writing / signed by the taxpayer
 - Made to a party to the exchange
 - Most QIs have standard id forms
 - 3 property rule / 200% rule / 95% rule
 - Changing the identified property

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DEFERRED EXCHANGES contd.
– **Qualified Intermediaries**

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REVERSE EXCHANGES
(Revenue Procedure 2000-37)

- **Use of "EATs"**
- **Safe Harbor vs. non-Safe Harbor transactions**

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TICs
(Revenue Procedure 2002-22)

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OTHER ISSUES

- Leverage before or after an exchange
- “Drop and Swap” transactions

Questions ?

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Thank You

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