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EXCHANGE AUTHORITY LLC
QUALIFIED 1031 INTERMEDIARIES

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Like Kind Exchanges – 2009 Updates

Related Party Rulings

- IRS ruled that the trust for a deceased sibling's spouse and children is not a related party to the surviving siblings for the purposes of Section 1031(f) in *PLR 200919027 and PLR 200920032*
- Exchange with a Related Party LLC was denied by Tax Court. The Court denied purchase of replacement property from related party out of concern over a basis shift; taxpayer being "tempted to exchange the low basis property for a high basis property owned by a related person." *Ocmulgee Fields, Inc., (2009) 132 TC No. 6*

Autos are Like-Kind to Light Duty Trucks

In a recent letter ruling IRS determined that cars, light general purpose trucks and vehicles that share characteristics of both (13,000 lbs, e.g., crossovers, sport utility vehicles, minivans, cargo vans and similar vehicles) are like-kind for 1031 Exchange purposes even though they are in different Asset or Product Classes. The ruling went on to say that Asset and Product Classes are only "safe harbors" – not the exclusive way to determine if personal property is like-kind. *PLR 200912004*

Treasury Regulations 468(b) – Regulation for QI Escrow Funds

Treasury Regulations 468(B) provides exchange escrow account guidelines for Qualified Intermediaries who share interest earnings with their customers. The regulations do not apply to deposits of \$2M or less when the funds are held for six months or less.

IRS Fact Sheet 2008-18

This new fact sheet was released to help taxpayers better understand how to successfully structure and complete a 1031 exchange transaction. The fact sheet encourages the use of Qualified Intermediaries and warns of QI bankruptcies and promoters of schemes.

State Regulation

California, Nevada and Idaho have all enacted laws regulating Qualified Intermediaries (*CO, AZ & WA have pending legislation*). The states generally require that QI's carry a Fidelity Bond and E&O Policy and that QI's segregate exchange funds from operating funds and that a "prudent investor" standard is met.

The New Hampshire Department of Revenue took the position that the holding entity of a replacement property in a §1031 exchange must be the exact same entity as the relinquished property. This position effectively ignores the "disregarded entity" rule for NH Business Profits Tax in a §1031 exchange.

New England's 1st Authority on IRS §1031 Exchanges
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Tax Inspector General Report on the QI Industry

A report released by the Treasury Inspector General for Tax Administration (TIGTA) on the QI industry recommends that changes to IRS Publication 544 (*Sales and Dispositions of Assets*) be expanded to include a fuller explanation of §1031 and the risks involved. It also recommends a fuller explanation of the Safe Harbor provisions pertaining to QI escrow procedures. The IRS reported that the number of exchanges more than doubled between 2001 and 2005, when \$101.3 billion was recorded in deferred gains from 429,000 like-kind exchanges.

Revenue Procedure 2008-16 – Vacation Homes “Safe Harbor Rules”

Revenue Procedure 2008-16 provides a safe harbor under which the IRS will not challenge whether a dwelling unit qualifies as property held for productive use in a trade or business or for investment. The safe harbor includes a two year ownership test, 14 days of fair market rent to a non-related party per year, and personal use must be limited to no more than 14 days or 10 percent of the number of days rented in a 12 month period.

Amended §121 – Primary Residence Exclusion

The Housing Assistance Tax Act of 2008 includes a modification to the §121 exclusion of gain on the sale of a primary residence. This modification may affect taxpayers who exchange into a residential property, and then later convert that property to a primary residence. The §121 exclusion may be reduced by “Non Qualified” use periods.

Effects of the Farm Bill on Section §1031

The 2008 Farm Bill amended §1031(a)(2)(b) to exclude from the term stocks, mutual ditch, reservoir, or irrigation company stock. Otherwise they would not be eligible for §1031 exchange treatment. The stock has to be recognized as real property or interest in real property under state law where the company is located.

Exchange Authority is New England’s 1st Authority on IRC §1031 and has Certified Exchange Specialists® (CES®) on staff and ready to assist you in all your §1031 needs.

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