

BOOT

"Boot" refers to anything the *Exchangor* receives other than the *like-kind* Replacement Property in a 1031 exchange. Boot is generally characterized as either "cash" boot or "mortgage" boot. Gain is recognized to the extent of net boot received in the exchange. Cash proceeds are the most common form of boot and may be in the form of money, cash equivalents or other non-qualifying property. Mortgage boot or debt reduction boot occurs when an *Exchangor's* debt on Replacement Property is less than the debt which was on the Relinquished Property. As with cash boot, mortgage boot can occur when an *Exchangor* is "trading down" in the exchange. Keep in mind that an *Exchangor* may need some of the cash proceeds from an exchange and may choose to receive boot. The exchange is not completely invalidated due to the receipt of boot, however gain will generally be recognized dollar for dollar on boot received.

Some common examples of Boot are:

- ❖ Cash proceeds an *Exchangor* receives from the Qualified Intermediary during or after the exchange;
- ❖ Nonqualified property, such as stocks, bonds, notes or partnership interests;
- ❖ Proceeds taken from the exchange in the form of a note or contract for sale of the property. An *Exchangor* can utilize the installment sale provisions of the code to defer recognition of gain on note or obligation received in an exchange as the payments become due.
- ❖ Relief from debt on the Relinquished Property due to assumption of an existing mortgage, that is otherwise not placed against the Replacement Property;
- ❖ Property which is not "*like-kind*" to the Relinquished Property.
- ❖ Property that is intended primarily for personal use

After characterizing the money or other property given and received by the *Exchangor* as cash boot or mortgage boot the following four basic boot "netting rules" can be applied:

- ❖ Cash (equity) put into the exchange offsets cash boot
- ❖ Cash put into the exchange offsets mortgage boot (debt relief)
- ❖ Mortgage obligation incurred (debt assumed) offsets mortgage boot
- ❖ Mortgage obligation incurred does not offset cash boot (cannot take cash out and replace with debt)

In general, to avoid the recognition of gain, the *Exchangor* should:

- ❖ Purchase "*like-kind*" Replacement Property of equal or greater value than the Relinquished Property;
- ❖ Reinvest all of the net equity (exchange funds) from the sale of the Relinquished Property in the purchase of the Replacement Property; and

DISCLAIMER

Attorneys & Accountants 1031 Services, LLC is available to assist Exchangors and their advisors with exchange strategies and technical support, however Attorneys and Accountants 1031 Services, LLC cannot provide legal or tax services or advice and the Exchangor must consult with their legal and tax professionals as to the intended exchange and any legal or tax implications thereof.

- ❖ Obtain equal or greater debt on the Replacement Property than was paid off, assumed, or taken subject to on the Relinquished Property, or put in additional equity to offset any debt reduction

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