

WHAT IS "LIKE-KIND" PROPERTY

Internal Revenue Service Regulations Section 1031(a)(1) states that no gain or loss is recognized if property held for productive use in a trade or business or for investment is exchanged solely for property of a like-kind to be held either for productive use in a trade or business or for investment. The starting point in an analysis as to whether an exchange will qualify for treatment under Section 1031 is whether the Relinquished Property is "like-kind" to the Replacement Property.

As used in section 1031(a) of the Internal Revenue Service Regulations, the words "*like-kind*" refers to the nature or character of the property and not to its grade or quality. Other than property held by a "dealer" (developer) all real property located in the United States, for use in a business or trade or for investment is like-kind to other property located in the United States, for use in a business or trade or for investment. Personal property is not like-kind as to real property.

Examples of interest that are considered like-kind real property under this Section 1031 include: unimproved land held for investment; a multi-family apartment building; single family rental property; property used for a car dealership, medical, legal, accounting or other professional office; land farmed or mined, or rented out to be farmed or mined; leasehold interests for a term of thirty years or more, mineral rights; rights under contracts to purchase land; and tenant-in-common interests. Section 1031 can also apply to a portion of a primary residence used for business and the portion of a multi-family home rented out to non-related parties. If there is a question regarding applicability of a particular property, please call Attorneys & Accountants 1031 Services, LLC for general guidelines and your tax and/or legal advisor for individual guidance.

The interpretation as to whether personal property is "like-kind" to other personal property is more restrictive. Such exchanges are limited to property of the same General Asset Class or Property Class which are terms defined under applicable IRS Regulations and Revenue Procedures. The manner in which such property is used may also factor into the applicability of Section 1031 to a personal property exchange. Personal property used primarily within the United States and personal property used primarily outside the United States are not considered like-kind property for purposes of Section 1031, however Taxpayers who sell and buy foreign property and who are subject to capital gains tax on their United States tax return should not rule out utilizing a tax deferred exchange.

There are certain classes of property that are ineligible for tax deferred treatment under Section 1031. Section 1031(a)(2) of the IRS Regulations provides that the following do not qualify for like-kind exchange treatment:

(i) Stock in trade or other property held primarily for sale;

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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.

- (ii) Stocks, bonds, or notes;
- (iii) Other securities or evidences of indebtedness or interest;
- (iv) Interests in a partnership*;
- (v) Certificates of trust or beneficial interests; or
- (vi) Choses in action.

*Section 1031(a)(1) generally does not apply to any exchange of interests in a partnership, however interests in a partnership that has elected to be excluded from the application of Subchapter K may qualify for tax deferral under Section 1031, and advice should be sought from the Exchangor's tax professionals with regard to structuring such exchanges.

Attorneys & Accountants 1031 Services, LLC is here to provide reference material and guidance to your tax and legal professionals to aid in their determination of what property qualifies for tax deferred exchanges.

Another issue regarding whether property is like-kind to other property arises when Exchangors seek to exchange property located in the United States for property located outside the United States. For tax purposes, the United States is defined as the 50 States and the District of Columbia (IRC §1031(h) and §7701(a)(9)). Subject to the other requirements of §1031, Exchangors may freely exchange property located within the United States for other property located in the same or any other state or the District of Columbia. Foreign property (real or personal property) is not like-kind to United States based property, (IRC §1031(h) and §7701(a)(9)). Temporary Regulations issued in 2005 (T.D. 9194) provide a limited exception to this rule, permitting exchanges, under certain circumstances, of U.S. based property and property located within the U.S. Virgin Islands, Guam and the Northern Mariana Islands. Treas. Reg. §1.932-1(T)(g)(ii)(E) and §1.935-1(T)(c)(ii)(E). Note that property located in other U.S. Territories may not qualify for like-kind treatment to United States property. For example, property located in Puerto Rico, is not like-kind to property located within the United States. The issue of which US territories qualify for like-kind treatment to properties located within the United States is not settled and the most current interpretations are made pursuant to temporary IRS regulations.

In exchanges involving personal property, the same rules as above apply. In determining whether personal property is classified as United States property or foreign property, the locale in which the property was predominantly used for the 2 years prior to the sale of the relinquished property and the 2 years after the acquisition of the replacement property are controlling. The 2-year predominant use test also extends to intangible property, such as patents, and requires that the predominant use of the underlying property to which the intangible property relates be considered. For example, a manufacturer could not exchange a patent for construction machinery produced in the Exchanger's factory in Germany, for a patent for other construction machinery to be manufactured in the Exchangor's U.S.

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factory. The patents would not be like-kind to each other unless the predominant use of the underlying property for the patents was either both domestic or both foreign.

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