

# The Power of Exchange™

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# Disclaimer

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This presentation is only intended to provide a broad overview of IRC Section 1031 tax-deferred exchanges and does not address every potential 1031 exchange situation or all applicable 1031 exchange rules.

This tax-related information should not be construed as tax or legal advice specific to your situation and should not be relied upon in making any business, legal or tax related decision. A proper evaluation of the benefits and risks associated with a particular transaction or tax return position often requires advice from a competent tax and/or legal advisor familiar with your specific transaction, objectives and the relevant facts. You are urged to involve your tax and/or legal advisor (or to seek such advice) in any significant real estate or business-related transaction.

# Outline

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- 1031 Exchange Terminology
- Capital Gain Taxes and other Tax Issues
- 1031 Exchange Update
- 1031 Exchanges: Hold, Sell, Exchange and Taxpayers Motives
- Sale versus a 1031 Exchange
- IRC Section 1031 and Exceptions
- Partnership Issues and 1031 Exchanges
- Exchange Entities and Related Party Rules
- Like-Kind Real Property and Creative Like-Kind Property Variations
- The Exchange Equation
- Delayed Exchanges and Identification Rules
- Parking Arrangements (Reverse & Improvement Exchanges)
- IRS Form 8824: Like-Kind Exchanges
- Qualified Intermediary (QI) Due Diligence
- Questions and Answers

# 1031 Exchange Terminology

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- Actual Receipt
- Boot
- Cash Boot
- Constructive Receipt
- Direct Deeding
- Exchanger/Investor/Taxpayer
- Exchange Agreement
- Exchange Period
- Identification Period
- Like-Kind Property
- Mortgage Boot/Debt Relief
- Qualified Intermediary (QI)
- Relinquished Property
- Replacement Property
- Sequential Property

# Capital Gain Taxation

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## Capital gain taxation includes 4 components:

1. Depreciation Recapture (25%)
2. Remaining Federal Gain (15%/20%)
3. Net Investment Income Tax (3.8%)
4. State Taxes (0 – 13.3%)

= TOTAL TAXES OWED

Contact your tax advisor/CPA prior to closing and have them provide an estimate of taxes owed if the relinquished property is sold in a taxable sale.



# Capital Gain Tax Rates - 2026

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- Taxpayers owe federal capital gain taxes on their economic gain depending upon their taxable income.
- A 20% capital gain tax applies to single filers exceeding \$545,500 in taxable income and married couples filing jointly with over \$613,700 in taxable income.
- The capital gain tax rate of 15% remains for taxpayers below these threshold income amounts.
- No capital gain tax applies to single filers below \$49,450 in taxable income and married couples filing jointly with below \$98,900 in taxable income.

# 3.8% Net Investment Income Tax (IRC §1411)

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- The Health Care and Education Reconciliation Act of 2010 added a 3.8% on “net investment income” (NIIT).
- This 3.8% tax applies to taxpayers with “net investment income” who exceed threshold income amounts of \$200,000 for single filers and \$250,000 for married couples filing jointly.
- Pursuant to IRC Section 1411, “net investment income” includes interest, dividends, **capital gains**, retirement income and income from partnerships (as well as other forms of “unearned income”).

# Investor 1031 Exchange Motives

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- Tax deferral
- Leverage
- Cash flow
- Diversification (asset class or geography)
- Consolidation
- Management considerations
- Estate planning

# Sale Versus 1031 Exchange

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## Taxable Sale

- Taxpayer transfers property for cash
- Simple description: Property for cash

## 1031 Exchange

- Taxpayer transfers relinquished property held for investment and receives like-kind replacement property also held for investment.
- Simple description: Property for property

# Sales Versus Exchange

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- A married couple filing jointly sells an investment property in California for \$1,000,000 (net of closing costs) with no debt.
- The couple originally purchased the property for \$400,000.
- 75%, or \$300,000 of the initial purchase price, was allocated to the building and has been fully depreciated.
- The capital gain is approximately \$900,000 (today's net sales price of \$1,000,000 minus the net adjusted basis of \$100,000) and this is the only source of the couple's investment income.
- The couple's modified adjusted gross income is \$1,400,000 (includes income from other sources and capital gain from this sale) for purposes of calculating the net investment income tax (NIIT).
- This couple will be taxed at 25% on their prior depreciation deductions taken, 20% federal capital gains tax rate, face the 3.8% net investment income tax and be in the 13.3% California state tax bracket.

# Sale Versus Exchange

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Today's Net Sales Price (after closing costs) \$1,000,000

## Less: Taxes Owed:

- \$300,000 depreciation recapture @ 25% = \$75,000
- \$600,000 federal capital gain @ 20% = \$120,000
- \$900,000 net investment income tax @ 3.8% = \$34,200
- \$900,000 state tax @ 13.3% = \$119,700

**Total taxes owed = \$348,900**

## After-Tax Net Equity

Sales Price – Taxes Owed = Net Equity

\$1,000,000 – \$348,900 = \$651,100

# Sale Versus Exchange

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Taxable Sale After-Tax Net Equity = \$651,100  
1031 Exchange Gross Equity = \$1,000,000

## Replacement Property Purchase

Taxable Sale: Net Equity x 4 = \$2,604,400  
1031 Exchange: Gross Equity x 4 = \$4,000,000

\* Almost \$1.4M more replacement property by doing a 1031 exchange versus a taxable assuming a 75% LTV.

\*\* The loan-to-value ratio (LTV) can vary based upon asset class and lender requirements. In many commercial transactions, it is common to have a 35% required down payment and financing on only 65% of the purchase price.

# The Exchange Equation

**For full tax deferral, a taxpayer must meet two requirements:**

1. Reinvest all net exchange proceeds
2. Acquire property with the same or greater debt.

	Relinquished
Value	\$900,000
- Debt	\$300,000
- Cost of Sale	\$60,000
Net Equity	\$540,000

# The Exchange Equation

**For full tax deferral, a taxpayer must meet two requirements:**

1. Reinvest all net exchange proceeds
2. Acquire property with the same or greater debt.

	Relinquished	Replacement
Value	\$900,000	\$1,200,000
- Debt	\$300,000	\$660,000
- Cost of Sale	\$60,000	
Net Equity	\$540,000	\$540,000

# The Exchange Equation

**For full tax deferral, a taxpayer must meet two requirements:**

1. Reinvest all net exchange proceeds
2. Acquire property with the same or greater debt.

	Relinquished	Replacement	Boot
Value	\$900,000	\$1,200,000	
- Debt	\$300,000	\$660,000	\$ 0
- Cost of Sale	\$60,000		
Net Equity	\$540,000	\$540,000	\$ 0

The taxpayer acquired property of greater value, reinvesting all net equity and increasing the debt on the replacement property.

**Analysis:** There is no boot.

# The Exchange Equation

**For full tax deferral, a taxpayer must meet two requirements:**

1. Reinvest all net exchange proceeds
2. Acquire property with the same or greater debt.

	Relinquished	Replacement	Boot
Value	\$900,000	\$700,000	
- Debt	\$300,000	\$260,000	\$ 40,000
- Cost of Sale	\$60,000		
Net Equity	\$540,000	\$440,000	\$ 100,000
Total Boot			\$ 140,000

The taxpayer acquired property of a lower value, keeps \$100,000 of the net equity and acquired a replacement property with \$40,000 less debt.

**Analysis:** This results in a total of \$140,000 in boot.  
(\$40,000 mortgage boot and \$100,000 in cash boot = \$140,000)

# IRC §1031 Exchanges

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**Taxpayers continue to explore strategies to reduce or defer taxes which has led to an increase in 1031 exchanges.**

- Since 1921, one aspect of the tax code provides taxpayers who own investment real estate a significant tax advantage – an IRC Section 1031 tax-deferred exchange, more commonly referred to as a 1031 exchange.
- Section 1031 allows taxpayers holding real property for investment or business purposes to potentially defer all taxes that would otherwise be incurred upon an otherwise taxable sale of investment property.

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*“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.”*

# Exceptions

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- Stock in trade or other property held primarily for sale
- Stocks, bonds, or notes
- Other securities or evidences of indebtedness or interest
- Interests in a partnership
- Certificates of trust or beneficial interest
- Choses in action

# Property Held for Sale

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- The purpose for which the property was initially acquired
- The purpose for which the property was subsequently held
- The purpose for which the property was being held at the time of sale
- The extent to which improvements, if any, were made to the property
- The frequency, number and continuity of sales
- The extent and nature of the transaction involved
- The ordinary course of business of the taxpayer
- The extent of advertising, promotion of the other active efforts used in soliciting buyers for the sales of the property
- The listing of property with brokers

# Intent to Hold for Investment

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- “Intent” is the taxpayer’s subjective intent
- The IRS will look at objective factors that either support or negate the taxpayer’s intent to hold for investment
- All facts and circumstances taken into account
- The holding period is just one (of many) factors
- Ideally the taxpayer has multiple factors to establish the intent to hold for investment
- Contrary facts may lead the IRS to conclude the property was not held for investment purposes
- Goolsby v. Commissioner (2010)
- Reesink v. Commissioner (2012)

# §1031 - Partnership Issues

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- **A Partnership/LLC 1031 Exchange Scenario:** A property is owned by a partnership/LLC. Some partners may want the partnership to stay together and do a 1031 exchange; others may want to do their own separate exchange with their portion of the property; others may want to receive cash and pay the taxes owed.
- The fact the partnership owns a capital asset does not mean the partners have an ownership interest in that asset.
- The partners merely own partnership interests.
- Partnership interests are specifically excluded from Section 1031 under section 1031(a)(2)(D).
- Therefore, if a partner wants to exchange, they must convert the partnership interest into an interest in the capital asset owned by the partnership.

# §1031 - Partnership Issues

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- “Drop and Swap” - Involves the liquidation of a partnership interest by distributing an interest in the property owned by the partnership.
- After completing the “drop” the former partner will have converted their partnership interest into an interest in the actual property, as a tenant-in-common with the partnership.
- The property can then be sold with the former partner and the partnership entitled to do what they wish (sale or exchange) with their respective interests.
- “Swap and Drop” - This alternative involves the same two steps, but in the reverse order. The partnership completes the exchange (the “swap”) and then distributes an interest in the replacement property to the departing partner.

# §1031 - Partnership Issues

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## Holding Period Issues:

- If the “drop” occurs close in time to the “swap” (or visa versa) there may be a question as to whether the relinquished property (or replacement property) was “held for investment.”
- If the “drop” occurs too close to the “swap”, the partner’s exchange may be deemed an exchange by the partnership under the *Court Holdings* case.
- The more time that passes between the “drop” and “swap” the better.



# §1031 - Partnership Issues

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## Holding Period Issues:

- Numerous federal cases (*Bolker, Mason, Maloney*) provide taxpayer-friendly authority against challenges by the IRS.
- Some state tax authorities, such as the Franchise Tax Board (FTB) in California, challenge the federal cases and argue they are not bound by the federal cases.
- Changes made in 2008 to the federal partnership tax return (IRS Form 1065) make it easier to detect when a drop and swap transaction has occurred, thus making such transactions more vulnerable to challenge by taxing authorities.

# §1031 - Partnership Issues

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## Partnership Installment Note (“PIN”):

- An alternative is known as a partnership installment note (“PIN”) transaction which results in the gain associated with the “boot” is recognized only by the departing partners. In a PIN transaction, instead of receiving cash, the partnership receives an installment note in the amount necessary to cash out the departing partner(s).
- The note is transferred to the departing partner(s) as consideration for their partnership interests. If at least one payment under the note is received in the year following the 1031 exchange, the gain associated with the note is taxed under the IRC Section 453 installment method and recognized only when the actual payments are received by the departed partner(s).

# Exchange Entities - General

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**The same tax owner should take title to the replacement property in the same manner they held title to the relinquished property.**

- Wife relinquishes, wife acquires
- Smith LLC relinquishes, Smith LLC acquires
- Gemco Corp. relinquishes, Gemco Corp. acquires
- Durst Partnership relinquishes, Durst Partnership acquires
- However, having the vesting the same is only a guideline.
- The key issue is the 'tax owner' of the relinquished property must acquire tax ownership of the replacement property.

# Exchange Entities – Exceptions

It is necessary to distinguish between 1) federal tax ownership, 2) state law ownership, and 3) vesting.

A taxpayer who elects taxation as a sole proprietorship (disregarded entity for Federal tax purposes) can sell relinquished property as an individual but acquire replacement property as a single member LLC.

An LLC with two members will be considered a single member LLC if the sole role of the other member is to prevent the other member from placing the LLC into bankruptcy and the limited role member LLC has no interest in profits/losses nor any managing rights.



# Related Party

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## Who is a Related Party?

### Four Different Scenarios:

1. Simultaneous Exchange (Swap)
2. Delayed – Selling to a Related Party
3. Delayed – Purchasing from a Related Party  
(See Rev. Ruling 2002-83, PLR 9748006)
4. Delayed – Purchasing from a Related Party who is Exchanging  
(See PLR 2004-40002)

# Like-Kind Property

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# Like-Kind Property

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## What Real Property is Excluded?

- Principal residence
- Property held for sale/dealer property

## Qualifying Real Property

- Any relinquished real property held for productive use in a trade or business or investment exchanged for replacement real property held for productive use in a trade or business or investment.

## Real Property Definition Can be Broad

- Can include raw land, commercial, single-family rental (SFR), multi-family, office, industrial, easements, air rights, water rights, vacation homes held for investment under Rev. Proc. 2008-16, fractional ownership, etc.

# Creative Like-Kind Property Issues

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- **Air Rights** - Air rights, also known as “Transferable Development Rights,” (TDRs) are defined as unused rights to develop a property to the extent permitted under state or local law.
- TDRs are “like-kind” to a fee interest in real property.
- In PLR 200805012, the “IRS” noted that “[t]he types of property rights and interests that constitute interests in real property...for purposes of §1031 are broad” and that “[w]hether property constitutes real or personal property generally is determined under state or local law.”

# Creative Like-Kind Property Issues

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## Perpetual Communications Easement (Cell Tower)

- If the communication easement is perpetual (e.g., runs with the land), then there is another 1031 exchange structuring opportunity.
- The creation of a lease or the grant of a license results in a contract right to receive rent or license fees over time. Rents and license fees are generally included in the taxpayer's income when received.
- A perpetual easement can be exchanged for a fee simple interest.
- A conservation easement in a farm property can be exchanged for a fee simple interest in other real property.
- An agricultural use easements qualifies for tax deferral.
- Timber rights for a fee simple interest.

# Creative Like-Kind Property Issues

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## Oil, Gas & Mineral Rights

- Permitted if the mineral rights constitute an interest in real property.
- The determination of whether real property depends on (i) the specific nature of the rights granted under the mineral contract (ii) the duration of those rights and (iii) whether state laws recognize the mineral interests as interests in real property versus personal property.
- A “production payment” is considered personal property because it is a right to receive income rather than an ownership interest in the minerals. Personal property does not qualify under Section 1031.
- A royalty interest is generally considered real property due to the term of the interest. The royalty continues until the gas or oil is exhausted (contrasted with a production payment which terminates when a specified quantity of oil or gas have been produced.)

# Vacation Homes

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## Revenue Procedure 2008-16

- Creates safe harbor for vacation home exchanges.
- IRS will consider a dwelling unit held for investment if certain requirements are met.

### Requirements:

- The relinquished and replacement properties are owned by the taxpayer for at least 24 months (the qualifying use period);
- Within each of these two 12-month periods constituting the qualifying use period the taxpayer must:
- Rent the property to another person or persons at fair market rent for 14 or more days (family members qualify if pay fair market rent); and
- The taxpayer's personal use of the dwelling unit cannot exceed the greater of 14 days or 10 percent of the time it is rented.

# 1031 Fractional Ownership: DST & TIC

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- What is a typical fractional ownership investment?
- Advantages of fractional ownership
- Disadvantages/risks involved of fractional ownership
- Delaware Statutory Trust (DST): Revenue Ruling 2004-86
- Tenant-In-Common (TIC): Revenue Procedure 2002-22
- For more information on fractional ownership, visit: [adisa.org](http://adisa.org) (Alternative and Direct Investment Securities Organization)



# Fractional Ownership: DST

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- Only for an “accredited investor” (a high-net-worth investor as defined in Regulation D of the Securities Act of 1933).
- A Delaware Statutory Trust (DST) is a separate legal entity created as a trust under the laws of Delaware in which each owner has a “beneficial interest” in the DST and is treated as owning an undivided fractional ownership in the property.
- Sold through registered financial advisors with the appropriate security licenses, not through real estate brokers.
- Investors only right to the property is receiving distributions and they have no voting authority regarding the operation of the property.
- “Bad boy carve outs” are eliminated and the lender looks to the sponsor for these carve outs from the non-recourse provisions of the loan.

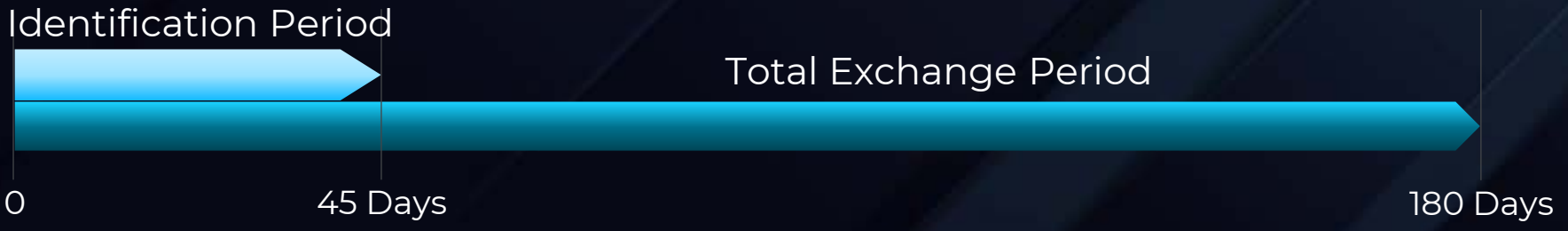
# Formats & Variations

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- Two-Party Trade (“Swap”)
- Three-Party Format (“Alderson”)
- Delayed Exchange with a Qualified Intermediary (“QI”)
- Reverse Exchange (“Parking Arrangement”)
- Improvement Exchange (“Parking Arrangement”)
- Reverse/Improvement (“Parking Arrangement”)



# The Delayed Exchange



# Highlights of the Delayed Exchange

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1. Consult with an experienced qualified intermediary (QI) and tax advisor prior to closing on the sale of the relinquished property.
2. Ensure that the sale contract is assignable and that the buyer is made aware of such assignment in writing.
3. The 1031 exchange cooperation clause should establish:
  - a. Intent to perform a 1031 tax-deferred exchange;
  - b. Release the buyer from any liabilities or costs resulting in the exchange;
  - c. Notify the buyer in writing of the assignment to a qualified intermediary.

# Highlights of the Delayed Exchange

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4. The qualified intermediary's exchange agreement and all exchange documents must be executed prior to closing on the sale of the relinquished property.
5. The taxpayer must identify the replacement property to be acquired in accordance with the Rules of Identification and within 45 calendar days.
6. The taxpayer must close on the replacement property by the 180th calendar day (or their tax filing date – whichever is earlier) from the close of the relinquished property sale.



## **Cooperation Clause - Relinquished**

*“Buyer is aware that seller intends to perform an IRC Section 1031 tax-deferred exchange. Seller requests buyer’s cooperation in such an exchange and agrees to hold buyer harmless from any and all claims, costs, liabilities, or delays in time resulting from such an exchange. Buyer agrees to an assignment of this contract to Asset Preservation, Inc. as a qualified intermediary (QI) by the seller.”*



## **Cooperation Clause - Replacement**

*“Seller is aware that buyer intends to perform an IRC Section 1031 tax-deferred exchange. Buyer requests seller’s cooperation in such an exchange and agrees to hold seller harmless from any and all claims, costs, liabilities, or delays in time resulting from such an exchange. Seller agrees to an assignment of this contract to Asset Preservation, Inc. as a qualified intermediary (QI) by the buyer.”*

# Time requirements



## **45 Day Identification Period:**

The taxpayer must identify potential replacement property(s) by midnight of the 45th day from the date of sale.



## **180 Day Exchange Period:**

The taxpayer must acquire the replacement property by midnight of the 180th day, or the date the taxpayer must file its tax return (including extensions) for the year of the transfer of the relinquished property, whichever is earlier.

# Identification Rules

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## 3 Property Rule

The taxpayer may identify up to three properties of any fair market value.

## 200% Rule

The taxpayer may identify an unlimited number of properties provided the total fair market value of all properties identified does not exceed 200% of the fair market value of the relinquished property.

## 95% Rule

If the taxpayer identifies properties in excess of both of the other rules, then the investor must acquire 95% of the value of all properties identified.

# Identification Rules

## Identification must be:

- Made in writing
- Unambiguously describe the property
- Hand delivered, mailed, telecopied or otherwise sent
- Sent by midnight of the 45th day
- Delivered to the qualified intermediary or a party related to the exchange who is not a disqualified person



# What Not To Do In An Exchange

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## **Christensen v. Commissioner**

(Didn't file extension to obtain full 180 days)

## **Knight v. Commissioner**

(Closed after the 180th day)

## **Dobrich v. Commissioner**

(Backdated the Identification Notice)

# Closing Issues with Exchanges

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## Can a 1031 Exchange be Set Up at the Last Minute?

- **Yes!**
- As long as the transaction has not closed
- If the burdens and benefits of ownership have not transferred from the seller to the buyer, a 1031 exchange can be set up at the last minute or at closing table.

# Closing Issues with Exchanges

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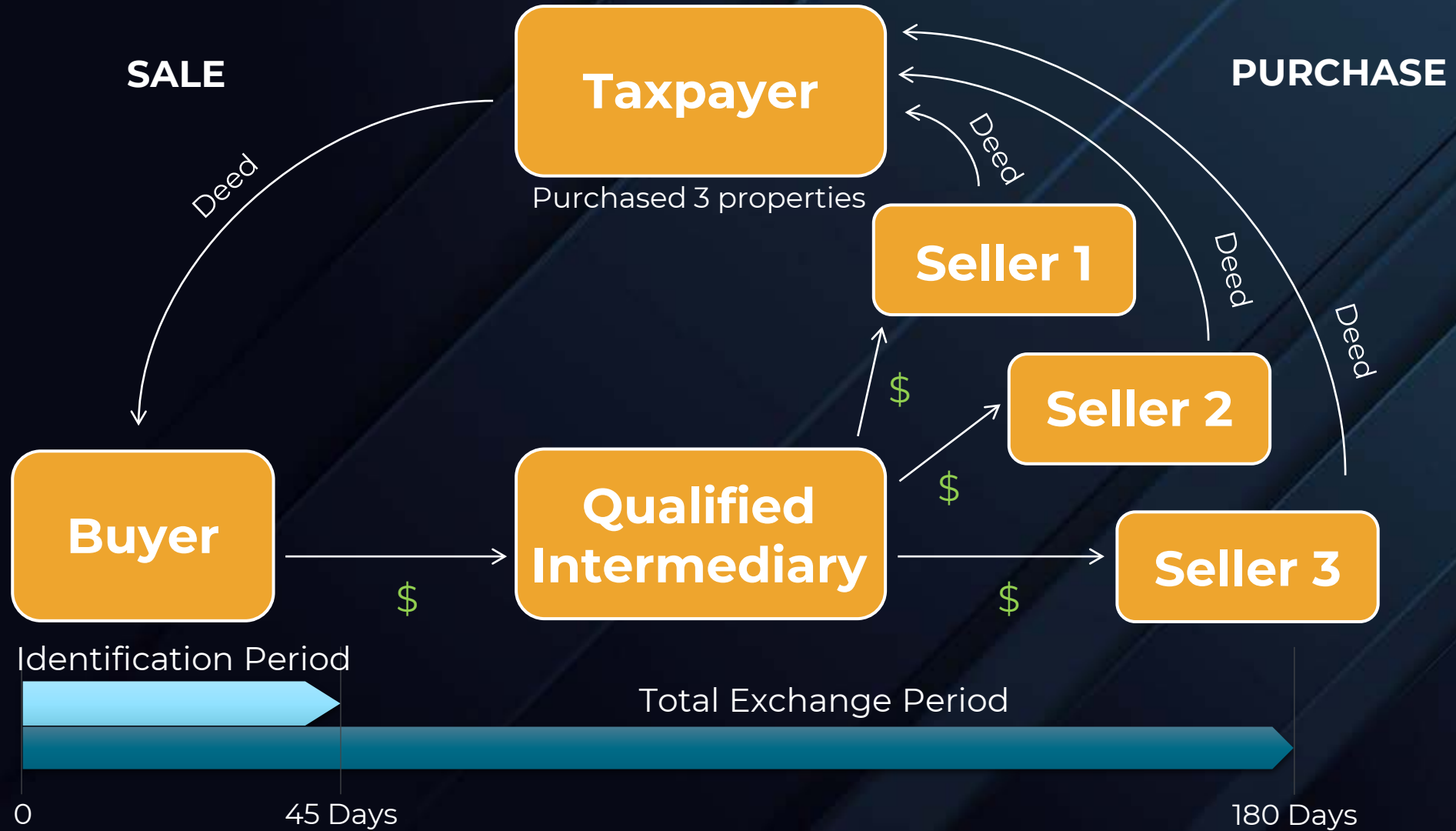
## What Needs to be Done to Set Up a Last-Minute Exchange?

- Stop the closing
- Promptly contact a Qualified Intermediary and explain you have a transaction closing right now and you need 1031 exchange documents prepared and forwarded immediately.
- Once the 1031 exchange documents arrive, have the seller and buyer sign the appropriate 1031 exchange documents.

# MULTIPLE PROPERTY EXCHANGES



# MULTIPLE PROPERTY EXCHANGES



# Parking Arrangements

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## What is a Reverse Exchange?

- Closing on the replacement property before the sale of the relinquished property. Note: contracting to buy the replacement before the sale of the relinquished property does not constitute a reverse exchange.

## What is an Improvement Exchange?

- Building a new replacement property from the ground-up or making improvements to an existing replacement property.

## What is a Reverse/Improvement Exchange?

- Purchase the replacement first and begin construction before closing on the sale of the relinquished property.

## Leasehold Improvement Exchange

- Construct improvements on a long-term (30+ years) leasehold interest and transfer the leasehold interest with improvements to the taxpayer.

# Rev. Proc. 2000-37

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## Effective September 15, 2000

- Provides a “safe harbor” for reverse exchange transactions that stay within the parameters of the Revenue Procedure.
- Reverse exchanges may be structured outside the safe harbor.



# The Reverse Exchange

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## Parking the Replacement Property

### POSITIVES:

- Exchange equity does not need to be present
- Allows for multiple relinquished properties

### NEGATIVES:

- Lender may have issues lending to the Exchange Accommodation Titleholder (EAT)
- Beware Prepayment Penalty
- Nonrecourse to EAT-guarantee permissible



# The Reverse Exchange

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## Parking the Relinquished Property

### **POSITIVES:**

- Loan and purchase easier (direct loan to taxpayer)

### **NEGATIVES:**

- Equity and debt should match at the beginning to avoid boot
- Lender issues (due on sale)

# The Improvement Exchange

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## Why Perform an Improvement Exchange?

- The property to be acquired in the exchange is not of equal or greater value to property being sold.
- Build a new investment from ground-up.
- The new investment is of equal or greater value, but it needs refurbishments.





## The Improvement Exchange

*...if not within the provisions of Section 1031(a) if the relinquished property is transferred in exchange for services (including production services). Thus, any additional production occurring with respect to the replacement property after the property is received by the taxpayer will not be treated as the receipt of property of like-kind.”*



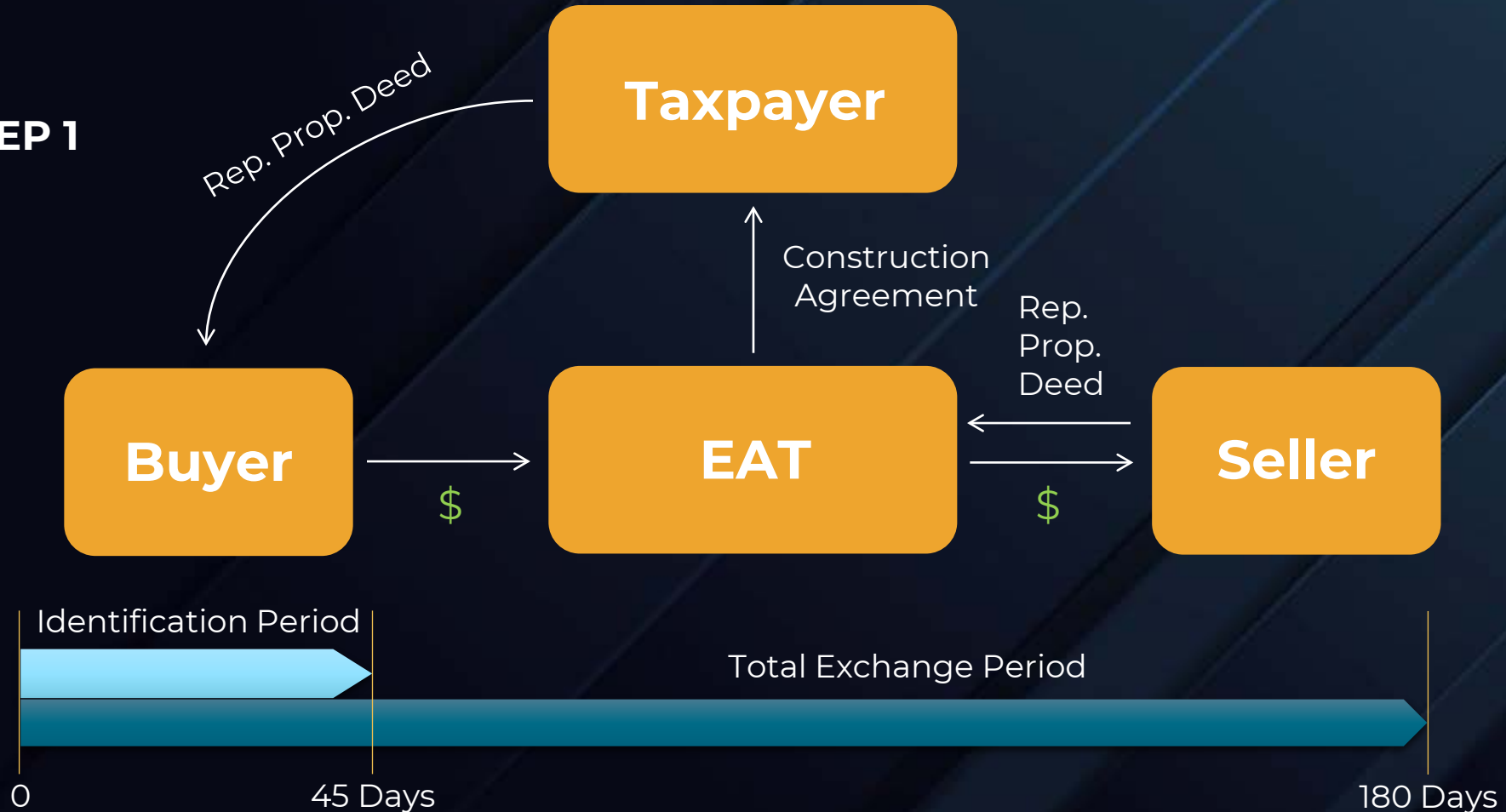
## The Improvement Exchange

**Identification of Replacement Property to be Produced**

*...if a legal description is provided for the underlying land and as much detail is provided regarding construction of the improvements as is practicable at the time identification is made.”*

# The Improvement Exchange

STEP 1



# The Improvement Exchange

STEP 2



# The Improvement Exchange

How do the numbers work out?

Relinquished Property	
Sales Price	\$5,000,000
Debt	\$0
Cost of Sale	\$300,000
Net Equity to QI	\$4,700,000

Replacement Property	
Lot Purchase (cash)	\$3,000,000
Draw 1 site work	\$1,200,000
Draw 2 foundation	\$500,000
Exchange Value	\$4,700,000

# Revenue Procedure 2004-51

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An exchange of real estate owned by a taxpayer for improvements on land owned by the same taxpayer does not meet the requirements of §1031.

See *Decleene v. Commissioner*, 115 T.C. 457 (2000); *Bloomington Coca-Cola Bottling Co. v. Commissioner*, 89 F.2d 14 (7th Cir. 1951). Rev. Rul. 67-225, 1967 2 C. B. 270, holds that a building constructed on land owned by a taxpayer is not of a like-kind to Taxpayer.

# Improvements: Affiliate/Related Party

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- In a typical improvement exchange, the taxpayer uses a Qualified Intermediary (QI) to sell its relinquished property. An affiliate of the QI, an Exchange Accommodation Titleholder (EAT), uses the proceeds from this sale to purchase a new replacement property from a third-party seller, improve the replacement property, and transfer improved property to the taxpayer within 180 days.
- However, the IRS released Private Letter Rulings 200251008 and 200329021 and other PLRs, which set forth structures where an EAT made improvements to a leasehold interest in a property owned by an *affiliate* or *related party* and then the taxpayer received the improved leasehold as qualifying replacement property.

# QI Due Diligence

This is the most important choice a taxpayer will make in a Section 1031 exchange.

Paramount to every 1031 exchange is the safety of funds held by the Qualified Intermediary (QI).

- ✓ Does the QI provide depository options?
- ✓ Does the QI provide written backing from a large creditworthy entity?



# QI Due Diligence

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- ✓ Does the Qualified Intermediary offer segregated accounts?
- ✓ Does the Qualified Intermediary offer a qualified escrow account?
- ✓ Does the Qualified Intermediary offer a qualified trust account?
- ✓ Does the Qualified Intermediary have sufficient fidelity bond coverage?



# IRS Form 8824

**8824** Like-Kind Exchanges (and section 1043 conflict-of-interest rules)

Department of the Treasury  
Internal Revenue Service

OMB No. 1545-0047  
**20**  
OMB No. 1545-0047  
Expires 12-31-10

Go to [www.irs.gov/Form8824](http://www.irs.gov/Form8824) for instructions and the latest information.

OMB No. 1545-0047  
Expires 12-31-10

**Part I Information on the Like-Kind Exchange**

**Note.** Generally, only real property should be described on lines 1 and 2. However, you may describe personal property transferred prior to January 1, 2015, as part of an exchange subject to the like-kind exchange character rule described in the instructions, except real property on line 1 and 2. If you are filing this form to report the disposition of property acquired in a previously reported related party like-kind exchange, if the property described on line 1 or line 2 is real or personal property located outside the United States, file this form in court.

1 Description of like-kind property given up

2 Description of like-kind property received

3 Date like-kind property given up was originally acquired (month, day, year) 3 MM/DD/YYYY

4 Date you actually transferred your property to the other party (month, day, year) 4 MM/DD/YYYY

5 Date like-kind property you received was identified by written notice to another party (month, day, year). See instructions for 45-day written identification requirement. 5 MM/DD/YYYY

6 Date you actually received the like-kind property from other party (month, day, year). See instructions. 6 MM/DD/YYYY

7 Was the exchange of the interests given up or received made with a related party, either directly or indirectly (such as through an intermediary)? See instructions. If "Yes," complete Part II. If "No," go to Part III.  Yes  No

**Note.** Do not file this form if a related party sold property into the exchange, directly or indirectly (such as through an intermediary), that property became your replacement property, and none of the exceptions in line 11 applies to the exchange. Instead, report the disposition of the property sold in the exchange and basis table. If one of the exceptions in line 11 applies to the exchange, complete Part II.

**Part II Related Party Exchange Information**

8 How related are you?  Spouse  Child  Grandchild  Sibling  Other  None

9 During this tax year (and before the date that is 2 years after the last transfer of property that was part of the exchange), did the related party sell or dispose of any part of the like-kind property received from you (or an intermediary) in the exchange?  Yes  No

10 During this tax year (and before the date that is 2 years after the last transfer of property that was part of the exchange), did you sell or dispose of any part of the like-kind property you received?  Yes  No

If both lines 9 and 10 are "No" and you are the party of the exchange, go to line 11. If both lines 9 and 10 are "Yes" and you are not the party of the exchange, also check if either line 9 or line 10 is "Yes." Complete Part II and report on this year's return the deferred gain or loss from line 24 unless one of the exceptions in line 11 applies.

11 If one of the exceptions below applies to the disposition, check the applicable box.

The disposition was after the death of either of the related parties.

The disposition was an involuntary conversion, redemptive transfer of conversion, or exchange after the exchange.

You can establish to the satisfaction of the IRS that neither the exchange nor the disposition had tax avoidance as one of its principal purposes. If this box is checked, attach an explanation. See instructions.

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**Part III Realized Gain or (Loss), Recognized Gain, and Basis of Like-Kind Property Received**

**Caution:** If you transferred and received (a) more than one parcel of like-kind property or (b) cash or other non-like-kind property, see Reporting of Multiple Exchanges in the instructions.

**Note.** Complete lines 12 through 17 only if you gave up property that was not like-kind. Otherwise, go to line 18.

12 Fair market value (FMV) of other property given up 12 13

13 Adjusted basis of other property given up 13

14 Gain or (loss) recognized on other property given up. Subtract line 13 from line 12. Report the gain or (loss) in the same manner as if the exchange had been a sale. **14 18**

**Caution:** If the property given up was used personally or partly as a home, see Property Used as Home in the instructions.

15 Cash received 15% of other property received, plus net liabilities assumed by other party, reduced (but not below zero) by any exchange expenses you incurred. See instructions. 15 16

16 FMV of like-kind property given received 16

17 Add lines 15 and 16 17

18 Adjusted basis of like-kind property you gave up, net amounts paid to other party, plus any exchange expenses you paid on the 15. See instructions. 18 19

19 Realized gain or (loss). Subtract line 18 from line 17 19

20 Same as line 18 of line 19 or line 18, but not less than zero 20 21

21 Ordinary income under section 1250. Enter the amount from Form 1097, line 10. See instructions. 21

22 Subtract line 21 from line 20. If zero or less, enter 0. If more than zero, enter here and on Form 1041-D or Form 1097. See instructions for related rules. See instructions. 22 23

23 Recognized gain. Add line 21 and 22 23 24

24 Deferred gain or (loss). Subtract the 23 from line 19. If a related party exchange, see instructions. 24 25

25 Basis of like-kind property received. Subtract line 15 from the sum of lines 18 and 23 25

**Part IV Deferral of Gain From Section 1043 Conflict-of-Interest Rules**

**Note:** This part is to be used only by officers or employees of the executive branch of the federal government or judicial officers of the federal government. Including certain non-law, non-attorney or equivalent positions, and trainees as described in section 1043, for reporting the recognition of gain under section 1043 on the sale of property to complete such a conflict-of-interest agreement. This part can be used only if the cost of the replacement property is more than the sale of the disposed property.

26 Enter the number from the upper right corner of your own case of divestiture. (Do not attach a copy of your certificate. Keep the certificate with you records.) 26

27 Description of disposed property 27

28 Description of replacement property 28

29 Date disposed property was sold (month, day, year) 29 MM/DD/YYYY

30 Sales price of disposed property. See instructions. 30 31

31 Basis of disposed property 31

32 Realized gain. Subtract line 31 from line 30 32 33

33 Cost of replacement property purchased within 90 days after date of sale 33

34 Subtract line 33 from line 32. If zero or less, enter 0. 34

35 Ordinary income under section 1250. Enter the amount from Form 1097, line 10. See instructions. 35

36 Subtract line 35 from line 34. If zero or less, enter 0. If more than zero, enter here and on Form 1041-D or Form 1097. See instructions. 36 37

37 Deferred gain. Subtract the sum of line 35 and 36 from line 34. 37 38

38 Basis of replacement property. Subtract line 37 from line 33 38

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# Thank you. Questions?

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