

IRC Section 1031 “Like-Kind” Property

Where Does Property Have to be Located to Qualify for Deferral?

1031

Knowledge



The term “like-kind” property isn’t specifically defined in the tax code. Any real property held for productive use in a trade or business or for investment can be considered like-kind property. Properties are of like-kind if they are of the same nature or character, even if they differ in grade or quality. Real property is generally considered to be of like-kind regardless of whether the properties are improved or unimproved.

U.S. PROPERTY = U.S. PROPERTY

U.S. PROPERTY ≠ FOREIGN PROPERTY

Real property held for investment in the United States must be exchanged for other real property held for investment in the United States. Exchangers cannot exchange United States property for foreign property or vice versa. However, in one Private Letter Ruling (PLR 9038030), an investor was allowed to exchange into the U.S. Virgin Islands as part of a qualifying 1031 exchange. However, as with any PLR, it is very important to carefully take account of the unique facts and circumstances of the taxpayer’s situation. PLR 9038030 allowed an exchange into the U.S. Virgin Islands because it cited Section 932 of the Code, specifically that the taxpayer intended to have income derived from sources within the Virgin Islands, and based upon this Code Section, the term “United States” was enlarged to include the U.S. Virgin Islands. Section 932 of the code also includes Guam and the Mariana Islands. Puerto Rico is not included in this code section and consequently is not considered part of the “United States.”

BACKGROUND ON FOREIGN PROPERTY

Prior to 1989, exchangers could exchange U.S. property for property outside of the U.S. However, for all 1031 exchanges occurring after July 10, 1989, only U.S. property can be considered like-kind for purposes of §1031.

CONCRETE EXAMPLE

An investor can exchange out of a 100-acre parcel of unimproved land in Oregon worth \$1.2M and acquire the following properties (which will be held for investment) and be able to achieve full tax deferral:

40 acres of unimproved land in Kansas for \$300,000;

A rental home near the Florida coast for \$350,000;

A rental duplex in Colorado for \$550,000.

Compliments of:



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