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Exchanging beyond just real estate

Patricia Flowers, Investment Property Exchange Services, Inc.

Real Estate Exchanges are the "flagship" of the 1031 code, and certainly the more well known of the tax deferred exchange structures. However, a great many business investment deals are solely personal property transfers or have a personal property component attached. In many cases, deferring the Depreciation Recapture Tax is the main reason for structuring a personal property exchange.

In this context, "personal property" refers to any property, other than real estate, that is held for productive use in a trade or business or for investment.

This may include charter boats, fishing vessels, planes, cars, trucks, construction or agriculture equipment, artwork and collections, as well as intangible property, such as franchise licenses, broadcast spectrums or copyrights.

Taxpayers selling multiple asset property such as hotels, restaurants or gas stations may need to structure several exchanges to accommodate the real property and the personal property like-kind requirements. Often owned under different entities, the deferred gain and basis calculations may be different. Goodwill is not exchangeable.

Under the Personal Property 1031 regulations, "like-kind" actually does mean like kind. Depreciable tangible personal property must be "like-kind" or "like-class," following the same General Asset Class or Product Class. Intangibles depend on the "nature or character of rights involved" and the "nature or character of the underlying property to which the intangible personal property relates."

Due to the varied nature of businesses and personal property as a whole, these exchanges are best handled by an experienced qualified intermediary in conjunction with the taxpayers' tax and legal advisors.

Patricia Flowers is asst. vice president for Investment Property Exchange Services, Inc. (IPX1031), Boston, Mass.

Tel: 781-878-4540 / Fax: 781-871-1853 / 800-654-4993 / info@nerej.com / www.nerej.com