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Patricia Flowers - What hotels, gas stations, boats and artwork have in common

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Real estate exchanges are the "flagship" of the 1031 Code, and certainly more widely known. However, a great many business investment deals are solely personal property transfers or have a personal property component attached. Even though an asset's value at sale may be less than its original price, tax on the amount subject to recapture is substantial (upwards of 35%).

Has your client done a Cost Segregation of the property? Beneficial at the time, but subsequent sale of that property may trigger a larger amount to recapture...all can be deferred with a 1031 Exchange!

"Personal property" may include equipment, charter boats, fishing vessels, planes, 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 often structure several exchanges to accommodate the real and personal property components. Generally owned under different entities, the deferred gain and basis calculations may be different.

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 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." For instance, a copyright on a novel is like-kind to a copyright on a novel but is not like-kind to a copyright on a song.

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 assistant vice president for Investment Property Exchange Services, Inc., Boston.