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Like kind exchange does not fail as a result of the exchangerâ€™s death

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A “like-kind exchange” is an advantageous provision under the Internal Revenue Code (the Code) because it allows a taxpayer to defer the payment of taxes on realized gain when real estate that is used in a trade or business or that is held for investment (referred to as the relinquished property) is exchanged for other real estate that is to be used in a trade or business or held for investment (referred to as the replacement property). Section 1031 of the Internal Revenue Code provides strict time requirements for identifying and acquiring the replacement property. There must be strict adherence to these requirements in order to achieve the desired result of deferring the gain on the relinquished property or the exchange will fail. Sometimes, however, even the most careful plan can’t take into account every eventuality. For example, what happens if the taxpayer dies before the replacement property is acquired.

Fortunately, the IRS has ruled in a Private Letter Ruling that the taxpayer’s death will not kill (pardon the pun) the like-kind exchange. Thus, even though the deceased taxpayer does not live to see the replacement property, the IRS will treat the deceased taxpayer as owning the replacement property at the time of his or her death. What’s more, the replacement property will acquire a “stepped-up” basis in the hands of the person who acquires the replacement property from the deceased taxpayer.

This is a favorable ruling, but taxpayers should be cautioned that a Private Letter Ruling is directed only to the taxpayer who requested it and is not otherwise binding upon the IRS. Accordingly, taxpayers are advised to live until the replacement property is acquired.

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