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Does a timeshare or share in a REIT qualify for tax deferral?

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A vast array of real property can be exchanged under Internal Revenue Code §1031 as qualifying "like-kind" property. Any real property held for productive use in a trade or business or for investment can be considered "like-kind" property.

WHAT ABOUT A TIMESHARE?

There are generally two types of timeshares that can be purchased by a taxpayer:

(1) The first variation was widely promoted in the 1970's and 1980's and generally consists of a right to use a type of unit at a particular location for a specified period of time. These are generally considered personal property and are not eligible for §1031 tax deferral.

(2) The other variation has become more popular in the past 10-15 years and generally consists of a taxpayer purchasing legal title, not merely rights to use a property, to a specific unit for a specified period of time. This second variation is generally considered real property and may qualify for §1031 tax deferral.

Even if the timeshare owner has title to a real property interest, they should be able to support that the primary intent for holding the timeshare is for investment purposes. In *Dewey vs. Commissioner*, the IRS did not allow §1031 tax deferral because they determined the taxpayer's primary purpose for a one-week timeshare purchase was personal enjoyment and not for investment purposes. As with any §1031 exchange, the taxpayer should be able to substantiate that the primary intent for holding the property was either for investment or business purposes.

WHAT ABOUT A REIT?

A real estate investment trust, commonly referred to by the acronym "REIT", is an entity where many taxpayers pool their resources by purchasing shares in a REIT that will own commercial property. The REIT acquires, owns and manages the commercial property for the benefit of the REIT shareholders. The individual shares owned by the investors in the REIT are considered personal property, not real property, and generally will not qualify for tax deferral under IRC §1031. The reason is that for a property to be considered "like-kind," real property held for investment or business purposes must be exchanged for other real property held for investment or business purposes.

However, the REIT entity who actually holds title to the real property may be able to exchange the entire property in a valid §1031 exchange. Asset Preservation has facilitated exchanges for a number of larger REIT entities nationally.

Taxpayers and their legal or tax advisors are encouraged to contact our National Headquarters to discuss specific timeshare or REIT issues in more detail.

For more information on Section 1031 tax deferred exchanges, call 1-866-394-1031 or email: paul@apiexchange.com. This information is not intended to replace qualified legal and/or tax advisors. Every taxpayer should review their specific transaction with their own legal and/or tax counsel.

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