

The importance of keeping your name

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This time of year, I tend to reflect back on my name. I certainly do not regret changing from my maiden to my married name, but as we approach one of my favorite holidays this March, I remember how proud I was to be "Patty McParland" and celebrate with a bit o' the green! Your name is your identity to the world, and you carry it with you as you go through life, both personally and professionally. Although I did briefly consider keeping my last name when I married, in the end, obviously, I did not.

In the world of exchanges, however, people are not as free to change their name at will. To satisfy Section 1031, the taxpayer must take title to the new replacement property in the same entity that held title to the relinquished property. In reality, business considerations, liability issues and lender requirements often make it difficult for the exchanger to keep the same vesting on the purchase side. Businesses want separate entities for each property to aid in tax reporting; lender underwriting may only allow title to be held in certain entities that follow national guidelines. Through the years we have learned there are some exceptions. Given that single member LLC's are treated as disregarded entities, they are a useful tool for corporations as a flow-through back to the original entity's TIN. Additionally, revocable living trusts or grantor trusts may acquire replacement property in the name of the exchanger individually, as long as the trust is disregarded for federal tax purposes. Illinois Land Trusts and Mass. Nominee Trusts are also considered disregarded entities and therefore give taxpayers options going forward. Advanced planning is key. To avoid disqualifying the exchange, the taxpayer should not make any changes in the vesting of the relinquished or replacement properties immediately prior to or during the exchange. Tax or legal counsel should be consulted regarding how vesting will impact the structure of the exchange before any transfer. Proper planning for name changes can make the difference between a successful exchange and a taxable problem.

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