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IRC Section 1031 - A vital and cost effective economic stimulant

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A spate of commonly held misconceptions about like-kind exchanges have spurred the introduction of several legislative proposals to either repeal or severely restrict the application of IRC Section 1031. These proposals are misguided and if enacted would undermine a vital economic stimulant.

IRC Section 1031 allows taxpayers to exchange real, personal or intangible property that is held for investment or for use in a trade or business, for other property of a like-kind (or a like class) without recognizing gain currently on the sale of the old property. The premise and rationale for the tax-deferral provided by Section 1031 is as valid today as it was when the exception was first introduced in The Revenue Act of 1921, namely; to prevent unjustified taxation where a Taxpayer demonstrates continuity of investment in property and to encourage active reinvestment in like-kind property.

Contrary to one prevailing myth, the rules regarding what constitutes like-kind property are well established and understood by Taxpayers and practitioners alike. The 1991 Treasury Regulations provide specific frameworks for determining whether assets are like-kind - there is no lack of clarity on this issue. Additionally the Treasury Regulations create a number of safe harbors Taxpayers can utilize to structure their transaction. These safe harbors facilitate straight-forward transactions that are subject to easily-comprehended rules, documents and procedures, which minimize abuse and maximize Taxpayer compliance.

Like-kind exchanges are not just the purview of the wealthy. A recent industry survey confirmed that 60% of all like-kind exchanges involved properties with values less than \$1 million and more than one-third involved properties with values less than \$500,000. Exchanges benefit millions of American investors and businesses every year across a wide spectrum of assets - improved real estate, land (including conservation easements), heavy construction and agricultural equipment, railcars, pipelines and aircraft - just to name a few.

Eliminating like-kind exchanges will not raise significant revenue. When the impacts of the economic stimulus effect of Section 1031 are taken into account, any revenue raised from eliminating tax-deferred exchanges is negligible. The Joint Committee on Taxation tax expenditure number ignores the fact that Section 1031 is powerful economic stimulator that promotes job growth and capital formation. Additionally, the transactional activity generated by Section 1031 contributes to state, local and federal tax revenue through additional transfer taxes, sales and use taxes and increased property taxes.

The ability to defer gain under Section 1031 is a critical stimulus that encourages businesses to expand, invest in infrastructure and efficiently recycle capital assets. Absent the tax-deferral benefit that Section 1031 provides, small and medium sized businesses will not be able to reinvest in their businesses, real estate values will decline, the U.S. economy will suffer, and enterprises of all sizes

will forego opportunities to increase capital investments and grow their businesses.

Please communicate with your congressional representatives and help us persuade lawmakers that these legislative proposals should not be enacted. For more information about the critical economic benefits provided by like-kind exchanges, please visit www.1031taxreform.com.

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