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"Like-Kind" Exchanges offer valuable opportunities for investors

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Having an office located in Southwest Florida, a majority of the exchanges we facilitate are for taxpayers selling investment property in Northern states, and exchanging into property in the Florida sunshine. These clients' primary objective is to rent the property for income, but, also have the opportunity to enjoy it themselves. Previously, it had been difficult to determine what the IRS expects when it comes to vacation homes and how they would be treated in the context of the 1031 exchange. Thanks to Revenue Procedure 2008-16 and Moore v. Commissioner, we now have clear guidelines as to what would qualify and what would not. In order for a vacation home to qualify for 1031 treatment, the following criteria must be met:

During the 24 months prior to the sale:

- 1.) You must show that you have rented the property at fair market value for at least 14 days each year.
2. Personal use does not exceed the greater of 14 days or 10% of the number of days the property was rented each year.

These same criteria apply to the replacement property if acquired as a vacation home.

Here is an example:

John and Mary Smith own a Condo on Fort Myers Beach that they are about to sell, and would like to do a 1031 exchange.

Here are the details on the property:

- * Owned Condo for 7 years
- * Condo has been in a Rental Program and rented 200 days each year
- * Personal use is 17 days each year

Based on the criteria outlined, they cannot use the property more than 10% of the number of days that the property was rented each year, or 20 days. Since they only used it for 17 days each year, they meet the criteria.

There are some other steps you can take to support that your vacation property is a viable exchange property. First, deduct any mortgage interest and property taxes on Schedule E as a business expense, as well as any repair costs, depreciation and miscellaneous expenses. Next, make sure that it is clear from the beginning that your intention with this property is to treat it as an investment. Finally, keep a log of what days you use it personally, what days you were doing work on the property, etc. These are all easy steps to take to further ensure that your exchange is solid should you ever find yourself as the subject of an IRS audit.

While most of the exchanges we facilitate involve the purchase of residential property as the replacement property, it is important to expand on the definition of "like kind." All real estate is like kind as long as it is held for investment or business use. For those individuals who no longer wish to

be landlords of residential or commercial property, they have the option of selling that property in an exchange and reinvesting into a more passive income-producing vehicle.

Below is a list of like kind options that some may have not considered as such:

- * Triple Net Lease (Net Lease or NNN) Investment Properties;
- * Agricultural (Farm) Properties;
- * Vacant Undeveloped Land;
- * Oil & Gas Interests;
- * Mineral Rights;
- * Water Rights;
- * Air Rights;
- * Easements in perpetuity;
- * Leases with a remaining life, including options, of 30 years or more;
- * Tenant-In-Common "TIC" Investment Property Interests; and
- * Delaware Statutory Trusts "DSTs" Investment Property Interests.

With this a 1031 offers the taxpayer a valuable tool for not only saving tax dollars but also a myriad of other benefits, such as, diversification, market relocation and consolidation.

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