



CELEBRATING
55 YEARS

nerej

1031 Exchanges and Like-Kind Real Estate Interests - by Bill Lopriore

May 01, 2020 - Front Section



Bill Lopriore

Internal Revenue Code Section 1031 allows for the deferral of capital gain tax if property held for productive use in a trade, business or for investment is exchanged for property of “like-kind.” For real estate, the definition of “like-kind” is quite broad.

For example, the sale of less than a fee interest may qualify for tax-deferral under §1031, if certain criteria are met. Development rights can, in certain cases, be exchanged for fee interests in real property. The IRS concluded that development rights were “effectively perpetual in nature,” where state and local law did not specify an expiration period, and were, under applicable state and local law, interests in real property.

Additionally, the IRS has found certain types of conservation and agricultural easements to be “like-kind” to real estate. These are voluntary agreements entered into by landowners that convey certain rights and generally limiting the type or amount of development on their property, while still retaining ownership of the land. Generally, a conservation easement must be perpetual in nature and considered an interest in real estate under state law in order to be considered “like-kind” to real estate. Landowners typically receive cash or a charitable deduction for granting the easement. When cash is received, a 1031 exchange may be a good option to defer the capital gains taxes.

Bill Lopriore is the northeast regional manager and counsel for First American Exchange Company, LLC. First American Exchange Company, LLC, a Qualified Intermediary, is not a financial or real estate broker, agent or salesperson, and is precluded from giving financial, real estate, tax or legal advice. Consult with your financial, real estate, tax or legal advisor about your specific circumstances.

Nothing contained in this article is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. This article is intended for educational and informational purposes only. The views and opinions expressed in this article are solely those of this author, and do not necessarily reflect the views, opinions, or policies of this author’s employer, First American Exchange Company, LLC.