Top ten 1031 tax-deferred exchange questions - by Brendan Greene

October 25, 2024 - Spotlights

Brendan Greene

1. What is a 1031 tax-deferred exchange?

A 1031 tax-deferred exchange is a method allowed by Internal Revenue Code (IRC) §1031, whereby an owner of certain investment or business property may defer paying capital gains taxes on the sale of such property if the owner acquires “like kind” property within a certain period of time.

2. What property qualifies as “like kind” property?

All real estate held for investment or business purposes may be considered “like kind” to any other real estate held for investment or business purposes. For example, raw land can be exchanged for an apartment building. The exchanger must be able to demonstrate that both the property being sold and the property being bought is held for business or investment purposes.

3. Besides deferring capital gains taxes, are there other motives for an exchange?

Deferring capital gains taxes is clearly a key reason to exchange. However, by exchanging, the exchanger may also accomplish the following: (i) exchange several smaller hard to manage properties for one larger easier to manage property; (ii) exchange a partial interest in one property to a full interest in another property; (iii) exchange raw land for rental property to generate cash flow; (iv) exchange depreciated property to higher value property that can be depreciated; or (v) exchange a rental property in Boston for a rental property in Florida, which might later be a principal residence or a vacation home.

4. What is a Qualified Intermediary?

A Qualified Intermediary (QI) is a neutral party who facilitates the exchange by drafting the proper documentation and by holding the proceeds from the sale of the relinquished property and then uses such proceeds for the purchase of the replacement property.

5. What are the mechanics of an exchange?

Most exchanges are delayed exchanges wherein the exchanger first sells the relinquished property, and the net proceeds go to the QI. Exchanger buys a replacement property and the QI delivers the monies that they are holding to the closing attorney.

6. What must I do in order to defer paying all capital gains taxes?

In order for an investor to defer all capital gains taxes:

1. The replacement property must be equal to or greater in value than the relinquished property.

2. All net proceeds must be used to acquire replacement property.

3. To the extent that the value, debt or equity on the replacement property is less than the value, debt or equity on the relinquished property, the exchanger may have taxable boot.

7. Are there time limitations to complete an exchange?

An exchanger must identify the replacement property within 45 days after the sale of the relinquished property and close on an identified replacement property within 180 days after the close of the relinquished property.

8. How many properties can I identify?
Three Property Rule: You can identify up to three properties regardless of their price.

200% Rule: You can identify more than three properties so long as the fair market value of all the properties you identify is not more than twice as much as the relinquished property.

9. Can I buy a replacement property before I sell my relinquished property?
This is known as a “reverse exchange.” In September, 2000, the IRS issued Revenue Procedure 2000-37 which is a “safe harbor” for completing 1031 reverse exchanges. Although somewhat more complicated, with careful structuring and planning, reverse exchanges (and construction and improvement exchanges) can be a viable option.

10. In what tax year is the exchange reported?
The exchanger must file Form 8824 for each tax year property was transferred to another party in an exchange.

BONUS Q&A. Taxpayers need to be careful to file for an extension on their tax returns to preserve the time of 180 days to complete a tax deferred exchange.

The exchange period commences on the date the taxpayer transfers the relinquished property and ends at midnight on the earlier of either the 180th day thereafter or the due date (including extension) for the taxpayer’s tax return for the taxable year in which the transfer of the relinquished property occurs.

As a result, sales of relinquished property which close on or after October 16 or 17 for an individual whose tax return is due April 15 of the following year, have less than 180 days are available to close on the replacement property unless an extension for filing the tax return is requested. Similarly, a corporation with a due date of March 15 for filing its tax return will have less than 180 days if the closing date on its relinquished property is on or after a similar alternative September date unless an extension for filings its return is requested.

A taxpayer must file Form 4868 (for individuals) on or before the normal due date of the return to obtain the automatic extension for filing. If this form is not filed properly and timely the exchange period ends on the normal due date of the return and any replacement property acquired after the normal due date will not qualify for the exchange.

Brendan Greene, Esq. is a principal in Greater Boston Exchange Co., LLC and is partner in the law firm McCue, Lee & Greene, LLP, Boston, Mass.