CARL PIKUS VP

CARL.PIKUS@ipx1031.com

IPX 1031® Investment Property Exchange Services, Inc.

Tax Deferred Exchange Solutions Nationwide

512-956-0908 Main

512-956-0908 Austin / San Antonio

972-371-5371 Dallas

Exchange Structures with A Qualified Intermediary

- Simultaneous

  *With Qualified Intermediary

  *Without Qualified Intermediary

- Delayed
- Build-to-Suit
- Reverse
- Reverse Build-to-Suit

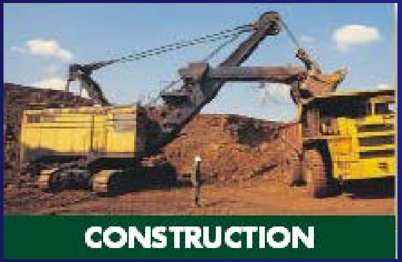
LIKE KIND REAL PROPERTY

ALL DOMESTIC REAL PROPERTY HELD FOR A QUALIFIED USE IS **LIKE KIND** TO ALL DOMESTIC REAL PROPERTY HELD FOR A QUALIFIED USE.

DOMESTIC – UNITED STATES (INCLUDING THE DISTRICT OF COLUMBIA), GUAM, U.S. VIRGIN ISLANDS, AMERICAN SOMOA, NORTHERN MARIANA ISLANDS.

REAL PROPERTY – LAND, THINGS PERMANENTLY ATTACHED TO THE LAND AND THOSE THINGS THAT ARE DEFINED BY STATE LAW TO BE A REAL PROPERTY RIGHT..

QUALIFIED USE – INVESTMENT OR PRODUCTIVE USE IN A TRADE OR BUSINESS.



LIKE KIND PERSONAL PROPERTY

PERSONAL PROPERTY MUST BE HELD FOR A QUALIFIED USE AND USED PREDOMINANTLY FOR TWO YEARS IN A GEOGRAPHICALLY SIMILAR LOCATION.

DOMESTIC FOR DOMESTIC OR FOREIGN FOR FOREIGN

GENERAL ASSET CLASS –
1 of 13 General Asset Classes

Any asset in one general asset class for any asset in the same general asset class.

Or

PRODUCT CLASS –
North American Industry Classification System

Any asset in the one product class for any asset in the same product class.

Delayed Exchange Time Limits

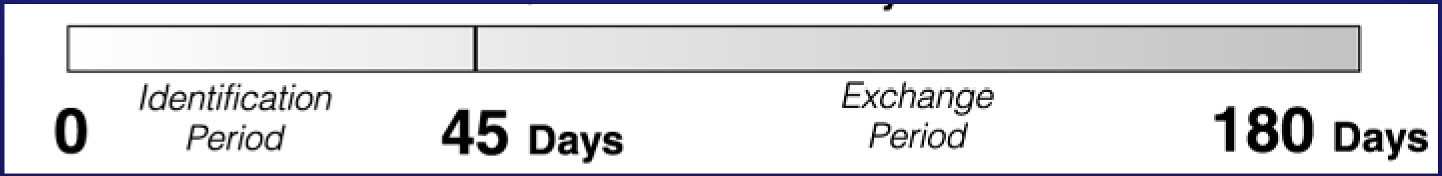
1. <u>180-Day Rule</u>: The Exchanger must acquire all the replacement property (ies) within 180 days, or the date the Exchanger must file the tax return (including extensions) for the year of the transfer of the relinquished property, whichever occurs first.

2. <u>45-Day Rule</u>: The Exchanger must identify the potential replacement property (ies) within the first 45 days of the 180-day Exchange Period.

3. There is no extension of these deadlines for Saturdays, Sundays or holidays.

4. The time limits begin to run on the date the Exchanger transfers the first relinquished property to the buyer.

5. The "date of transfer" will be the date of recording or transfer of the benefits and burdens of ownership, whichever occurs first.



Delayed Exchange Identification Rules

1. **Three Property Rule:** The Exchanger may identify up to three properties regardless of the aggregate value identified.

Delayed Exchange Identification Rules

2. **<u>200% Rule:</u>** The Exchanger may identify more than three properties, but the total fair market value of what is identified cannot exceed 200% of the fair market value of the relinquished property.

SALE PRICE $10 MILLION

AGGREGATE VALUE IDENTIFIED CANNOT EXCEED $20 MILLION IN THIS EXAMPLE.

1 + 2 + 3 + 4 + 5 + 6 < 200%

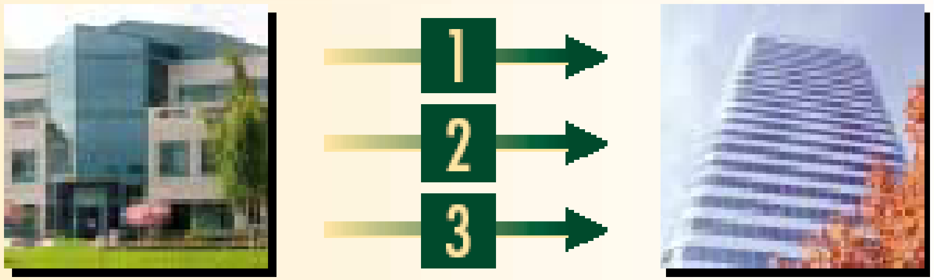
Delayed Exchange Identification Rules

95% Exception:

If the identification contains more than 3 properties AND in the aggregate the fair market value (FMV) of identified property exceeds 200% of the value of the property relinquished, then there is deemed to be NO property identified.

HOWEVER, the Taxpayer can still achieve a deferral if they close on 95% of greater of the fmv they attempted to identify.

Exchange Requirements



Relinquished Property **Replacement Property**

As a general rule of thumb, to avoid paying any capital gain taxes in an exchange, the investor should always attempt to:

1. Purchase equal or greater in net sales price (value).
2. Reinvest all of the net equity in replacement property.
3. Obtain equal or greater debt on replacement property. **Exception:** A reduction in debt can be offset with additional cash from exchanger, but increasing debt cannot offset a reduction in exchange equity.

TOTAL DEFERRAL - NO BOOT

1. REINVEST ALL EXCHANGE CASH
2. OFF SET ALL DEBT RELIEF
3. BUY ONLY LIKE KIND PROPERTY

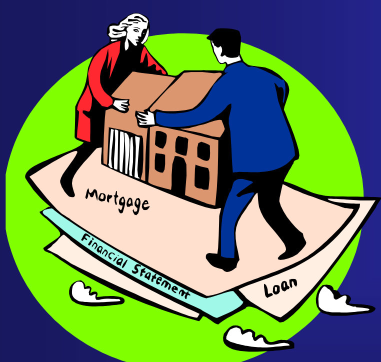
Sell for
$100

FOR A TOTAL DEFERRAL

Buy for
$100

ALL CASH MUST BE USED
TO PURCHASE
REPLACEMENT PROPERTY

AND



$40 Debt
Relief

DEBT ***CAN BE REPLACED WITH ALL DEBT***

OR

DEBT ***CAN BE REPLACED WITH CASH + DEBT***

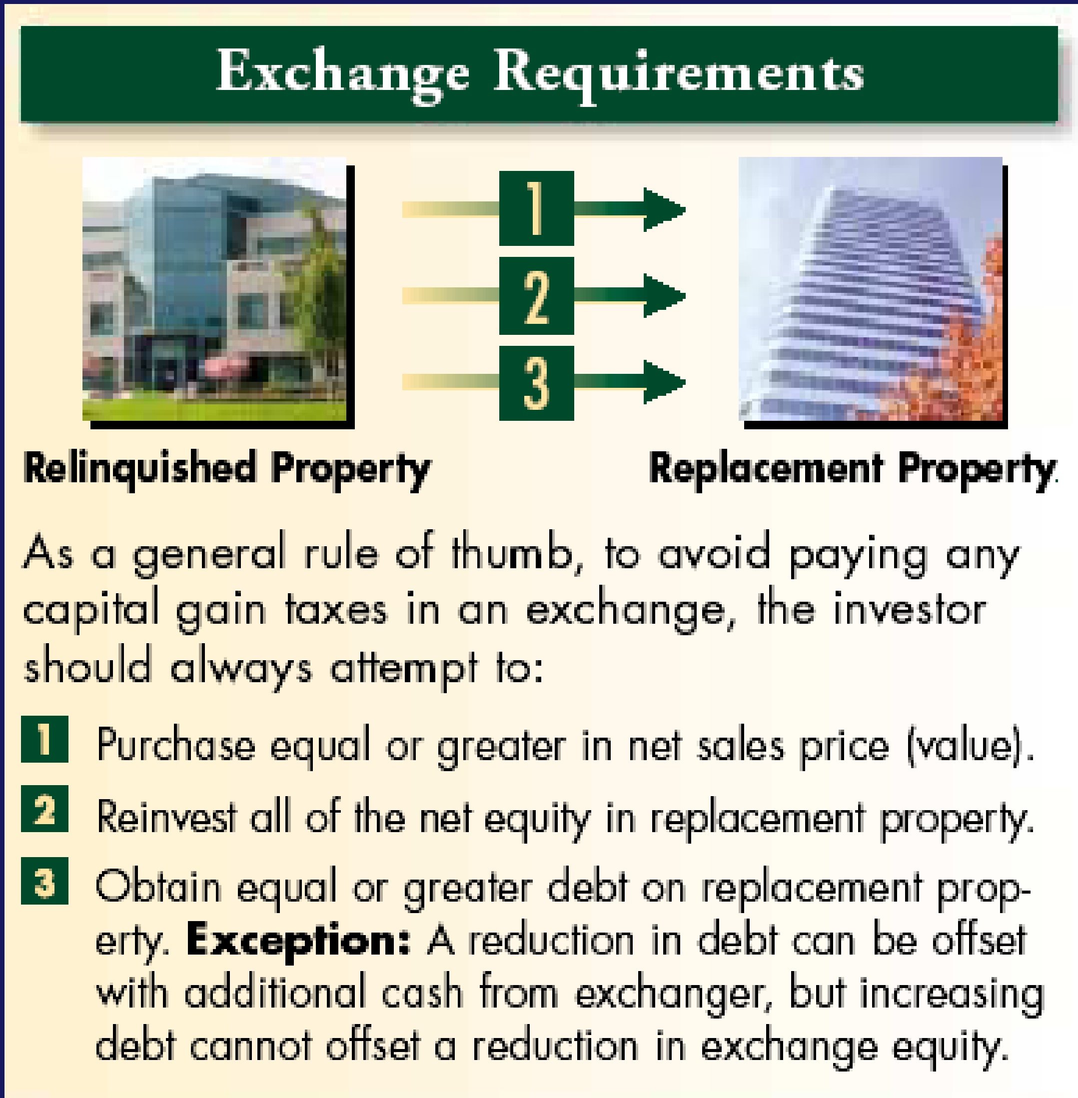
OR

DEBT ***CAN BE REPLACED WITH ALL CASH***

$40 Debt

$10 Cash + $30 Debt

$40 Cash



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PARTIAL DEFERRAL - SOME BOOT

1. BUY LIKE KIND PROPERTY
2. THAT COSTS MORE THAN THE BASIS OF THE RELINQUISHED PROPERTY
3. TAKE LESS CASH BOOT THAN REALIZED GAIN

PARTIAL DEFERRAL - SOME BOOT

Sell for $100	Buy for $200 **Bought above Basis**
Basis $20	**Partial Deferral**
Debt $0	Debt $150
Cash from Sale = $100	Cash from sale used = $50
Realized Gain = $80	Boot = $50 (cash not used)
	Gain Recognized = $50 instead of $80

Sell for $100	Buy for $200 **Bought above Basis**
Basis $80	**NO Deferral**
Debt $0	Debt $150
Cash from Sale = $100	Cash from sale used = $50
Realized Gain = $20	Boot = $50 (cash not used)
	Gain Recognized = $20 No benefit

Tax Deferred Exchange Terminology

Tax Deferred Exchange terminology may be confusing to those who are unfamiliar with these transactions. The following are some of the typical exchange terms and phrases, with their interpretation.

1. **Boot:** Fair Market Value of non-qualified (not "like kind") property received in an exchange. (Examples: cash, notes, seller financing, furniture, supplies, reduction in debt obligations.)

You own $150 rent house free and clear

I own a $100 rent house free and clear

We swap and you want me to balance the exchange with

$50 cash = Cash Boot to You

or $50 boat = Non-LK Property Boot to You

You own $150 rent house w/ $50 mortgage

I own a $100 rent house free and clear

We swap and I assume your debt:

$50 debt relief = Mortgage Boot to You

Tax Deferred Exchange Terminology

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2. **Basis:** Method of measuring investment in property for tax purposes.

    a. Initial Basis - Original cost: price plus capitalized closing costs.

    b. Adjusted Basis - Initial Basis plus capital improvements minus depreciation allowed. (There could be other adjustments to basis as well. i.e. Casualty Losses / Insurance Proceeds)

    c. Substitute Basis – (not a term of art) – Cost of Replacement Property less Gain not Recognized in Exchange

    d. Exchanged Basis – Basis carried forward from Relinquished Property

    e. Excess Basis – Additional Basis when Taxpayer buys up in value.

Tax Deferred Exchange Terminology

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2. **Basis:** Examples of Replacement Property Substitute Basis in a 1031 Exchange

$100 Net Sale – no debt	$100 Net Sale – no debt	$100 Net Sale - no debt
$40 Basis	$40 Basis	$40 Basis
$60 Realized Gain	$60 Realized Gain	$60 Realized Gain
$100 Purchase	$90 Purchase	$200 Purchase
Assume Total Deferral	$10 Cash Boot	Assume Total Deferral
Substitute Basis = $40	Substitute Basis = $50	Substitute Basis = $140
($100 - $60)	($100 – ($60-$10))	($200 - $60)

Exchange Vesting Issues

Acceptable Variations:

1. **Grantor Trust** (e.g. revocable living trust): Trustee takes title to replacement property as an individual and then transfers it later to trust. Trust is disregarded for tax purposes.

2. **Death of Exchanger**: If Exchanger dies, Exchanger's estate can complete exchange.

3. **Single Asset Entities:** Exchanger who relinquished as an individual can acquire replacement property in a single-owner LLC. This entity is disregarded for tax purposes under the "check the box" rules.

Areas of Concern:

1. Lender may not loan to a trust and requires individual as borrower.

2. Lender qualification requires wife to be on loan and deed with husband, but husband is the only Exchanger.

Related Party Issues (cont'd)

Can you sell to a Related Party in a 1031?

Yes, but you will want to have a liquidated damage clause in the contract with the related party so that if he sells the property he purchased from you before two years has expired then he will pay your tax capital gains taxes.

It is important to note that at the end of this exchange neither of the related parties has cash.

UPDATE: MAY NOT BE A RELATED PARTY EXCHANGE. SEE PLR 200709036

Can you purchase from a Related Party in a 1031?

Yes, HOWEVER. The IRS treats the transaction as if it were a "swap" and a sell, because one of the related parties winds up with cash at the end of this transaction, so it is the Taxpayer's burden to show the exchange is valid.

But if Related Party does exchange then YES. PLR 200440002

Combining Seller Financing With an Exchange

If the Exchanger carries back financing for the buyer, the Exchanger can:

1. Treat the seller financing as an installment sale under IRC Section 453. The capital gain taxes are due when Exchanger receives principal payments on the note. Accrual basis taxpayers cannot use the installment method.

2. Exchanger can act as a “third-party lender” and loan the buyer the equivalent amount of Exchanger’s own funds at the close of the relinquished property. The note and security instrument is in Exchanger’s name. All exchange funds are transferred to Qualified Intermediary for use in the exchange. When buyer pays off note the proceeds are not taxable to Exchanger.

Combining Seller Financing With an Exchange (Cont'd)

3. Note and security instrument benefit Qualified Intermediary who sells the note to a third party Buyer during the exchange or to the Exchanger at the closing of the replacement property and combines the note proceeds with exchange cash proceeds to acquire replacement property totally tax deferred.

4. Note and security instrument benefit the Qualified Intermediary who assigns the note and cash exchange proceeds to the Seller and acquires replacement property totally tax deferred.

5. If the note benefiting the Qualified Intermediary cannot be used in the exchange, the note can be assigned back to the Exchanger and may be treated as an installment sale under IRC §453.

What to Look for

in a Qualified Intermediary

Security

- Written Guarantee of Funds
- $100,000,000 Fidelity Bond
- $30,000,000 E & O Insurance

Service

- 25 National Offices
- Rush Exchange Documents
- Complementary Consultation

Expertise

- Experienced Attorneys and Staff
- Specialized Reverse/Build-to-Suit Division
- Accredited Seminars and Training