Tips for 1031 Exchanges for Real Estate

A 1031 exchange is one of the last remaining legal tax strategies that allows an owner of investment or business property, including a private party or a corporation, or an LLC, to indefinitely defer their capital gains taxes when they sell a property. Real estate may be exchanged for other like-kind real property; improved real estate may be exchanged for unimproved land. Here are some tips regarding this strategy:

- Follow the 45 day rule. You have 45 days after the date you close on the property that you are "selling" to identify in writing the new potential properties you may wish to "buy."
- Follow the 180 day rule. You also have 180 days from the date of the closing of your old property to complete your final closing of your replacement property or properties, completing the exchange. These dates are hard and fast rules. If the 45th day or 180th day falls on a holiday, you do not get an extra day. The deadlines are the exact number of days no matter where the last day falls.
- At the end of the exchange, you will need to complete IRS tax form 8824 when you file your tax return for the year of the sale of your old property. Form 8824 part 1-3 is your outline of the exchange and IRS notification.
- "1031" refers to the tax code section number that allows this exchange. You can look it up at http://www.gpo.gov/fdsys/pkg/USCODE-2011-title26/pdf/USCODE-2011-title26-subtitleA-chap1-subchapO-partIII-sec1031.pdf for the exact tax code language.

- There is no limit to the number of exchanges you wish to do.

· You can only exchange US Property to other US Property not any Foreign Property. You cannot exchange stocks, bonds, mutual funds, or REITs.

- You cannot allow the proceeds from the exchange or property to pass into your hands. Instead, you will need to retain a qualified intermediary to facilitate your exchange. You must make sure that you do not receive the money or have constructive receipt of the proceeds during the exchange period.
- You cannot do a 1031 like-kind exchange by yourself without a qualified intermediary. You personally cannot be your own qualified intermediary, nor can your family members, attorney, agents or employees. These people are disqualified from being your qualified intermediary.

- If you have unutilized exchange funds left over after the exchange period is done, the qualified intermediary will return these funds to you at the end of the 180 days. That cash is called "boot" and is taxed, generally as a capital gain.
- Beware of Triggering Gain from Debt Relief and Mortgages. You must offset the debt from mortgage loans or other debt on your old property you relinquish, with either new debt on the replacement property you acquire, or by adding additional cash toward the purchase. Even if you don't receive cash back but your liability goes down, that, too, may trigger the recognition of gain just like the receipt of cash.

- Speak with your CPA or tax consultant to determine whether this type of exchange is good for you and your situation.

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