
TAX-FREE LIKE-KIND EXCHANGES

By
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To Sam and Claire

Preface

Congress enacted the first like-kind exchange provision almost ninety years ago. Since then Section 1031 like-kind exchanges have become very popular among property owners who wish to exchange property tax free. As the popularity of Section 1031 exchanges has increased, so has the complexity of Section 1031. Congress, courts, and Treasury have considered various aspects of Section 1031, providing a significant body of law to guide property owners and tax advisors in planning like-kind exchanges. The increasing complexity and numerous nuances of Section 1031 suggest the need for this comprehensive coverage of tax-free like-kind exchanges.

Section 1031 is peculiar among tax provisions in its universal applicability. One qualified intermediary claims to have facilitated the exchange of a \$15,000 property. Apparently, the owner, after considering the cost of doing the exchange, determined that the tax savings and desire to reinvest the proceeds in like-kind property outweighed the cost of structuring the transaction as a Section 1031 exchange. On the other end of the spectrum, the world's largest corporations structure multibillion dollar transactions as Section 1031 exchanges. To fully serve the market of tax advisors and exchange facilitators, this book covers Section 1031 from its basic concepts to its most complicated and sophisticated exchange structures. Therefore, both those advising multinational corporations and those advising single-asset property owners will be able to turn to its pages for discussions of issues that arise in the numerous exchange contexts.

To obtain the benefits of Section 1031, exchangers generally must comply with strict rules governing the transfer of relinquished property, the identification of replacement property, and the receipt of replacement property. To comply with those rules, even routine exchanges generally require careful documentation. The book includes sample documents that will help introduce the novice to the intricacies of exchanges and the exchange process, and the seasoned practitioner may find some aspect of the documents informative. Nonetheless, the documents are intended to be examples of typical exchange documents. No one should use any portion of a document without giving careful thought to each provision in the document. Although many exchanges have common characteristics, each exchange is unique and requires careful consideration. The documents for each exchange will also be unique and require careful attention. Furthermore, different provisions in the documents will have differing relevance and importance depending upon the party considering the documents.

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The documents included in the appendices are the product of the efforts of many. Several people at the law firm, Oppenheimer, Blend, Harrison & Tate, Inc., have participated in different capacities in preparing documents that form the base of the examples in the appendices. In particular, Stanley Blend, Jerry Cohen, Barbara Spudis deMarigny, Ken Gindy, Laura Mason, David Oppenheimer, and Richey Wyatt made significant contributions in preparing the documents. It has always been a pleasure to work with these great lawyers and learn from them. I thank Oppenheimer, Blend, Harrison & Tate, Inc., for allowing me to draw from documents we prepared at the firm and reproduce them in the appendices.

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Although many people made contributions to this book, I alone accept responsibility for any errors in it and the views and interpretations it contains.

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July 2007

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